



Queensland Child Protection Commission of Inquiry

Legal practitioners survey report

May 2013

Contents

- Contents..... 2
- Executive summary..... 3
- Methodology..... 7
 - Procedure..... **Error! Bookmark not defined.**7
 - Survey instrument 7
 - Respondent characteristics 8
- Results 10
 - Childrens Court proceedings..... 10
 - QCAT proceedings..... 14
 - Children’s views and wishes 16
 - Separate Representatives..... 18
 - Social Assessment Reports 18
 - Family Group Meetings 19
 - Legal representation..... 20
 - Legal aid funding 21
 - Professional development..... 22
- Appendix A: Survey instrument..... 24

Executive summary

The Queensland Child Protection Commission of Inquiry was established on 1 July 2012. The Commission's terms of reference include examining the effectiveness of the current Queensland government response to children and families in the child protection system.

To inform its deliberations the Commission undertook a survey of legal practitioners between 10 March 2013 and 2 April 2013. The survey was open to all legal practitioners whose caseload involved child protection matters in the last three years.

The survey sought views from members of the legal profession about their experience of child protection litigation including their legal experience, work in child protection, child protection proceedings in the Childrens Court, child protection decisions in QCAT, children's views and wishes, experience of separate representatives, social assessment reports and family group meetings, legal representation, legal aid funding and professional development opportunities.

A total of 117 responses were received. Of these respondents, 83 per cent were solicitors and 17 per cent were barristers. Just over half (59%) of the sample were employed by a private firm and a quarter (24%) by Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services or a community legal centre. A majority of respondents (74%) represented parents in child protection matters. This report provides an overview of the quantitative and qualitative responses to the survey. Key findings from the survey are outlined below.

Childrens Court proceedings

- The majority of respondents identified a number of areas to improve the effectiveness of the Childrens Court process. These areas include increased funding for legal representation, legal training for department staff, addressing the power imbalance between the department and parents, increased transparency in the department's investigation process, imposing shorter time frames for settling matters and introducing a less adversarial approach to dealing with cases.

Court ordered conferences

- The majority of respondents (92%) had attended at least one court ordered conference in the last three years but only half of the respondents (50%) believed that court ordered conferences were effective in helping to resolve matters.
- Most respondents suggested that court ordered conferences would be more effective if all parties attended with the intent to negotiate matters. Furthermore, they suggested that the conferences should be convened by qualified and experienced mediators who are knowledgeable in child protection matters and can communicate effectively with families from various socio-economic and cultural backgrounds.
- The majority of respondents suggested that court ordered conferences should occur very early in the proceedings or immediately after obtaining a social assessment report.

Cultural and special needs of parents and/or children

- The respondents considered Childrens Court processes as largely unresponsive to the cultural and special needs of parents and/or children. Less than one third of

respondents (32%) perceived Childrens Court processes as being responsive to the needs of Aboriginal and/or Torres Strait Islander groups, 23 per cent to the needs of culturally and linguistically diverse groups and only 17 per cent to the needs of intellectually impaired or mentally ill parents and/or children.

- Suggestions to improve the responsiveness of Childrens Court processes include engaging the services of required professionals (e.g. social worker, psychiatrists) at the first mention, ongoing cultural competency training for legal professionals and the department, and greater involvement from the recognised entity in court proceedings.

QCAT proceedings

- Half of the respondents (51%) had been involved in child protection decisions reviewed by QCAT in the last three years.
- At least half of the respondents believed increased Legal Aid funding and legal representation for parents and children would improve the effectiveness of QCAT processes. This was considered important given the inherent power imbalance against unrepresented parties. Other suggestions included 'speeding up' the process and making it less adversarial.

Compulsory conferences

- Compulsory conferencing involved 60 per cent of respondents in the last three years.
- Similar to court ordered conferences, the majority of respondents suggested that the effectiveness of compulsory conferences may be improved if parties attended with the intent to negotiate and compromise on issues.
- At least half of the respondents suggested that compulsory conferences should occur early in the proceedings. Most respondents agreed that conferences should be attended by department staff that have the authority to make decisions.

Cultural and special needs of parents and/or children

- The majority of respondents were 'undecided' as to whether QCAT processes were responsive to the cultural and special needs of Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse clients and clients who have a cognitive or other intellectual impairment. Less than a third were confident that QCAT processes were responsive to the cultural and special needs of these groups.
- It was suggested that having a social worker or support person/s for Aboriginal and Torres Strait Islander families and special needs clients may improve the responsiveness of QCAT processes to the needs of those groups. Also, cultural training and education should be a requirement for all stakeholders.

Children's views and wishes

- More than half of the respondents, 62 per cent, believed that children and young people were not given adequate and appropriate opportunity to have their views and wishes heard in Childrens Court and QCAT proceedings.

- About one third of respondents considered the appointment of a separate representative as providing an effective way for children to have their views and wishes heard in proceedings. It was suggested that the separate representative should spend more time speaking directly with children and older children should be informed of their right to legal representation.
- More than half of the respondents believed that the appointment of a separate representative (65%), commissioning of a social assessment report (68%) and involvement of a direct representative (53%) would be helpful in ensuring that the child or young person's views and wishes are made known to the Childrens Court and/or QCAT.

Separate representatives

- The majority of respondents reported that separate representatives were usually appointed in the following cases: complex or contested cases; cases involving physical, sexual or emotional abuse; cases involving parents with drug or mental health issues; and cases involving children who have the capacity to express their views.
- Most respondents suggested that separate representatives should be more proactive in spending time with children and families. Furthermore, increased funding for the position would ensure the proper discharge of this role.

Social assessment reports

- On average, respondents reported that social assessment reports are prepared in 80 per cent of child protection matters. The majority of respondents agreed that social assessment reports should be prepared in all child protection matters, and in particular when the matter involves complex issues or children with special needs.
- Respondents suggested that social assessment reports should be undertaken by independent, appropriately qualified report writers who are engaged early in the proceedings and have no previous affiliation with the department.

Family Group Meetings

- Over half of the respondents (52%) had attended more than 10 family group meetings in the last three years. The majority of respondents recommended at least one or more of the following changes to improve the effectiveness of family group meetings: early receipt of the department's agenda and/or case plan; use of independent convenors and neutral venues; and legal representation for all parties in attendance.

Legal representation

- Most respondents indicated that, in their experience, children and parents are only sometimes or rarely legally represented in the Childrens Court and QCAT. In contrast, most respondents reported that the department is 'always' legally represented in the Childrens Court and QCAT.
- The majority suggested that increased funding will enable parents to be legally represented at all stages of the proceedings, particularly at trial. Increased funding would improve the overall quality of legal representation because lawyers could invest more time in case preparation.

- Most respondents held the view that non-legal advocates played a support role in Childrens Court and QCAT proceedings, especially for unrepresented parents and parties with cultural and/or special needs. Non-legal advocates can assist parents through the stages of an application and connect parents with relevant support services.

Legal Aid funding

- The majority of respondents (88%) had undertaken legally aided child protection work in the past three years. A majority (89%) also reported that Legal Aid funding was 'inadequate' for child protection work.
- Most respondents suggested increases in funding and that funding should reflect the amount of work involved in child protection matters. Adequate funding should be provided for detailed case preparation, contact with clients, attendance at family group meetings, conferences and trials, and payment of counsel fees.

Professional development

- A majority (71%) reported that there was inadequate specialised training available to lawyers practising in child protection. Most felt that their training did not adequately equip them with the skills to communicate effectively with different client groups such as children and young people, Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse clients and clients who have a cognitive or other intellectual impairment.
- Most respondents agreed that more training should be made available to practitioners in this area and the training should be attached to a Continuing Professional Development program. A majority of respondents (86%) reported that they would benefit from joint training with other stakeholders working in child protection.

Methodology

Procedure

The survey was conducted by way of a self-administered online questionnaire. It was distributed to legal practitioners affiliated with one of the following bodies:

- Legal Aid Queensland
- Queensland Law Society
- Queensland Bar Association.

To be eligible, practitioners needed to have had at least one child protection matter as part of their caseload within the last three years.

Legal Aid Queensland and the Queensland Law Society distributed a link to the survey via their regular distribution channels, including bulk emails and the Legal Aid Queensland online grants system. The Commission sent a link to the Queensland Bar Association but also contacted barristers who were identified as working in the field.

The survey was available for completion between 10 March 2013 and 2 April 2013. Participation was voluntary and participants were informed that their responses would be confidential and not accessible by the department.

Survey instrument

The questionnaire comprised 57 sets of fixed response questions, rating scales and open-ended questions. A summary of the survey instrument is provided in Appendix A. Questions 1-14 of the survey collected information about the respondents relating to their legal experience and work in child protection. The survey then asked respondents to answer a further 43 sets of questions divided into the following topics:

- child protection proceedings in the Childrens Court
- child protection decisions in QCAT
- children's views and wishes
- separate representatives
- social assessment reports
- family group meetings
- legal representation
- Legal Aid funding
- professional development
- recommendations for reform of the child protection system.

The majority of these questions used an open ended question format. Some questions used a fixed response scale, for example:

- never
- rarely
- sometimes

- most of the time
- always.

Respondent characteristics

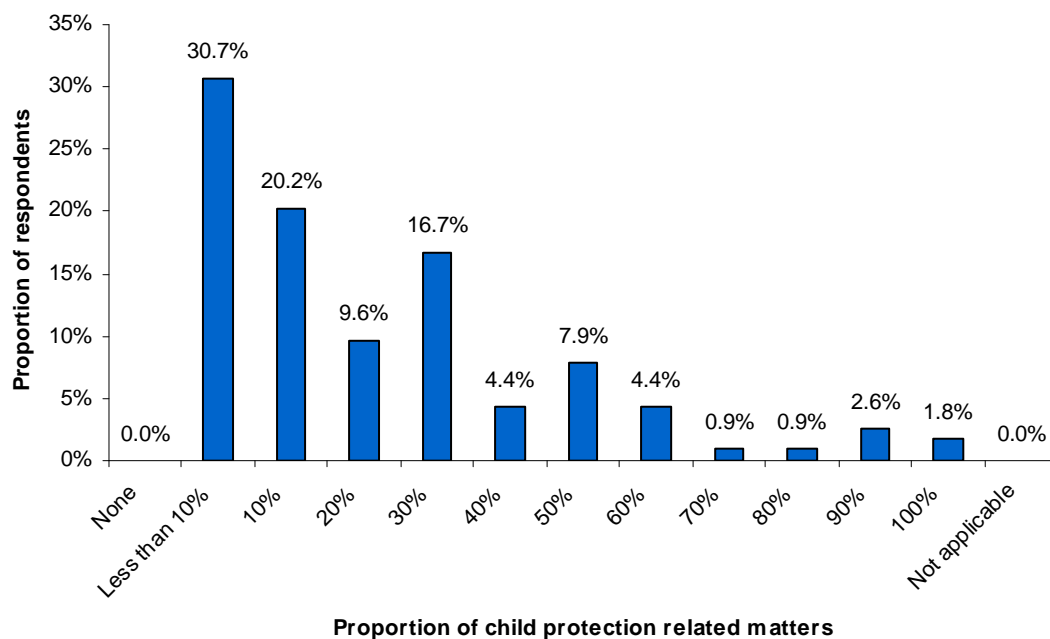
A total of 117 people responded to the survey. Of the total sample, 83 per cent of respondents were admitted as solicitors and 17 per cent were admitted as barristers. Just over half (52%) of the respondents had been admitted for more than 10 years, 30 per cent for less than 10 years but more than five years, 10 per cent for less than five years but more than one year and eight per cent for less than two years but more than one year.

In relation to employment, 59 per cent of respondents were currently employed in a private law firm, followed by Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services or a community legal centre (24%) and the private bar (13%). Four per cent of respondents identified 'other' places of employment including QCAT, Legal Aid preferred supplier, sole practitioner and consultant.

Over half of the respondents (56%) reported that the majority of their clients lived in a major town or city, 41 per cent of respondents had clients living in regional or rural locations and two per cent had clients in remote or very remote locations.

Forty-one per cent of respondents reported being involved in more than ten child protection matters over the past year, 22 per cent of respondents were involved in six to ten matters, followed by 36 per cent involved in one to five matters. Only one respondent reported being involved in no child protection related matters over the past year. On average, respondents reported that child protection matters comprised 10 per cent of their caseloads (Figure 1).

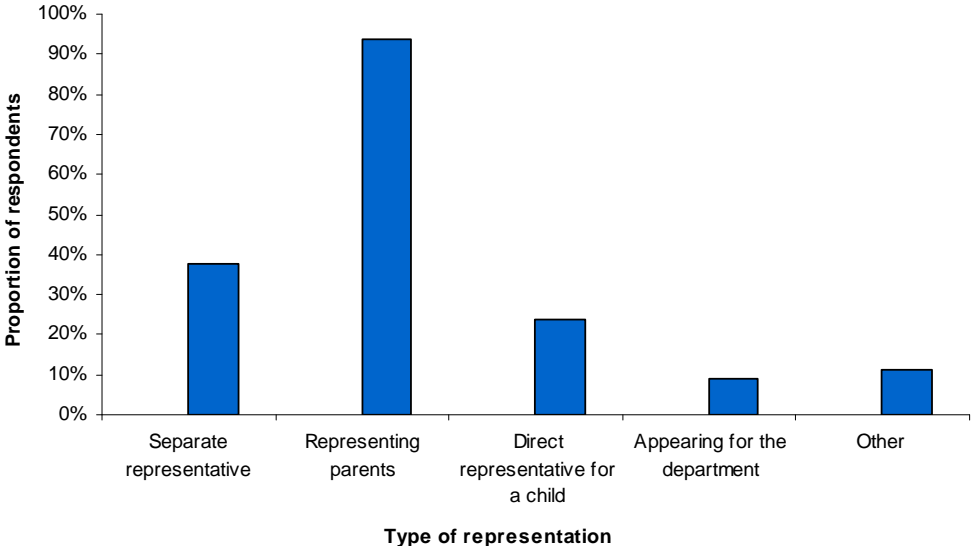
Figure 1: Proportion of child protection related matters in caseload



The majority of respondents (94%) have appeared in child protection matters as representatives for parents (Figure 2). Over one-third of respondents (38%) have appeared as the separate representative and almost one quarter of respondents (24%)

have appeared as the direct representative for a child. Only nine per cent of respondents have appeared for the department. A total of 11 per cent of respondents indicated that they had appeared in child protection matters in a different capacity from the roles provided, such as appearing on behalf of siblings, grandparents, kinship carers and non-party family members.

Figure 2: Type of legal representation in child protection matters



The majority of respondents (74%) reported that they mainly represented parents in child protection matters. Thirty-one per cent of respondents acted as separate representatives, followed by six per cent of respondents acting as the direct representative for a child and five per cent of respondents appearing for the department.

Some respondents reported that all of their clients were Aboriginal and/or Torres Strait Islander (11%). Almost one third of respondents reported that less than 10 per cent of their clients identified as Aboriginal and/or Torres Strait Islander, while 10 per cent of respondents indicated that none of their clients were Aboriginal and/or Torres Strait Islander.

About 40 per cent of respondents reported having clients from culturally and linguistically diverse backgrounds. Seventeen per cent of respondents reported having no culturally and linguistically diverse clients and 15 per cent reported having less than 10 per cent of clients from a culturally and linguistically diverse background.

Less than one fifth of the respondents (18%) reported that less than 10 per cent of their clients had a cognitive or other intellectual impairment or mental illness, while 17 per cent of respondents indicated that 10 per cent of their clients had cognitive impairments.

Results

Childrens Court proceedings

Over half of the respondents (56%) had attended 1-5 final hearings in the Childrens Court in the last three years, 11 per cent had attended 6-10 final hearings and only 10 per cent had attended more than ten hearings. Approximately one quarter (23%) had attended no final hearings.

Improvements to the Childrens Court process

Respondents were asked to provide their views on ways to improve the effectiveness of the Childrens Court process, including specific areas for improvement given the current fiscal constraints facing government. The majority of respondents (n=94) provided suggestions for improvement. They identified a number of areas for improvement:

- increase funding for legal representation
- provide legal training for departmental staff
- address the power imbalance between the department and parents
- provide greater transparency in the department's investigation process
- impose shorter time frames for settling child protection matters
- introduce a less adversarial approach to dealing with cases.

Funding

The majority of respondents reported that limited funding for child protection matters impeded parties' access to legal representation. Some respondents considered Legal Aid funding as 'completely inadequate' and that, 'the refusing of legal aid is the largest barrier to justice in the area of child protection'. The effect of limited funding is also apparent in the quality of legal presentation, the power imbalance between parties and the lengthy periods of time taken to settle child protection matters. Most respondents suggested that more funding was required to engage counsel, attend multiple mentions in court and accommodate for additional time spent with clients on case preparation.

A number of respondents indicated that parents should be informed of their right to legal representation and 'clients would benefit from representation during most stages [of proceedings]'. Limited access to funding meant that parents were left unrepresented at various stages of proceedings which placed them at a serious disadvantage to the department's resources. Some respondents argued that a lack of funding only served to exacerbate an existing power imbalance between the department and parents.

Training

A number of respondents held the view that departmental officers were not sufficiently trained in the preparation of legal documentation and the overall conduct of legal proceedings. These respondents noted that Child Safety officers, team leaders and other departmental staff involved in bringing applications to the Childrens Court need to '...develop their expertise in the Court process and what is required'.

In particular, respondents suggested that departmental staff should become familiar with rules of evidence and draft affidavits accordingly, so as to avoid issues with hearsay, opinion and other types of inadmissible evidence. This issue affects the timely completion

of proceedings and also places a significant burden on clients who need to respond to each allegation contained in department affidavits.

Power imbalance

A number of respondents commented on the power imbalance between the department and parents. For instance, one respondent made the following comment:

The Children's Court process would be much more effective if the power imbalance in the legislation was changed and parents and the Department went to court with an evenhanded chance to put their case. This does not happen due to the funding issues parents constantly come up against.

Some respondents believed that the current legislation gave 'too much power to the Department' and there needed to be 'far less reliance on allegations submitted by the Department of Child Safety'. Parents were considered disadvantaged if they resorted to self-representation and in these instances, parents were often pressured into consenting or agreeing to the department's proposed orders. The department was perceived as having a vast amount of resources to bring and defend applications whereas parents had very limited resources at their disposal.

Timeframes for proceedings

Many respondents commented that child protection matters can be 'dragged out interminably' and consequently, have a detrimental effect on families. These respondents suggested that matters need to be heard and brought to trial at a much faster rate so that families were not separated for indeterminate periods of time. The respondents compared the Queensland child protection system to other jurisdictions, such as South Australia and Victoria, which have imposed timeframes on the completion of child protection matters.

Some respondents argued that the department used 'delaying tactics', such as requesting multiple adjournments, to increase their time for investigation and assessment. These respondents suggested that the court process needs to be more streamlined to avoid the use of delay tactics. One respondent made the recommendation to 'streamline [the] process so applications do not drag on with children in temporary custody for months, even years. Introduce costs so litigation is conducted expeditiously and professionally'. Furthermore, magistrates should be proactive in ensuring that the department is held accountable for any unjustified delays.

Less adversarial process

Some respondents held the view that child protection proceedings should be conducted using a less adversarial approach or an inquisitorial system. Suggestions included:

- a panel of social workers, psychologists or Aboriginal or Torres Strait Islander Elders (if necessary) who know the family and can provide an opinion or assessment of the family
- 'child-friendly' courts that are removed from the main courts precinct
- judges speaking directly to the children if they are of an appropriate age and wish to appear before court
- reducing the formality of legal proceedings.

A small number of respondents suggested that parents and the department should engage more frequently in mediation processes prior to any court hearings. Respondents

also noted that using experienced magistrates who deal exclusively in child protection matters may provide a better outcome for all stakeholders.

Transparency

A small number of respondents suggested that department processes required greater transparency in relation to their investigations and the various criteria used to assess parenting ability and strategies. One respondent commented that 'full disclosure obligations' for all parties will enable complete advice to be given to parents and facilitate more productive discussions between the department and parents.

Court ordered conferences

Respondents reported participating in 1-5 court ordered conferences in the last three years (35%), 23 per cent attended 6-10 conferences, 34 per cent attended more than 10 conferences and nine per cent had attended no court ordered conferences. Of those who had participated in a conference, half (50%) reported that court ordered conferences were effective in resolving disputes.

Improvements to the process of court ordered conferences

Those who reported not finding conferences effective were asked to provide suggestions for how they could be improved. A total of 49 respondents provided suggestions. The majority of respondents suggested that court ordered conferences would be more effective if all parties attended the conference with the intent to negotiate matters. Some respondents stated that the department attended these conferences with entrenched views and that '...departmental officers do not come in with a will to settle, negotiate and compromise'. These respondents believed that the department attended court ordered conferences with the 'expectation that the parents will ultimately agree to the order they are seeking and are not prepared to negotiate beyond that'. Given this, these respondents felt that court ordered conferences were a 'waste of time' and 'pointless' if the department was unwilling to negotiate.

To improve the conduct of court ordered conferences, most respondents suggested that the conferences should be facilitated by qualified mediators who were knowledgeable in child protection matters and could effectively communicate with families from a range of socio-economic and cultural backgrounds. Some respondents suggested that there needed to be clearer guidelines or practice directions on the objectives of a court ordered conference and how it should be conducted. However, the majority of respondents appeared to focus more on the attitude and experience of the parties involved in the process, such as the department, parents or convenor, as being integral to the effectiveness of a court ordered conference.

Timing of court ordered conferences

The respondents were also asked about the circumstances in which they considered a court ordered conference to be most effective and why. About 70 per cent of all respondents (n=80) provided comments on the circumstances leading up to a court ordered conference and when these conferences were most effective in resolving matters.

The majority of respondents indicated that the court ordered conference should occur very early in the proceedings or immediately after obtaining a social assessment report. These respondents suggested that the benefit of an early court ordered conference is that it will serve to 'educate and manage the parties' expectations' and be an 'independent, external reality check' for parents. The court ordered conference will allow parties 'to assess the merits of their case and narrow the issues to be determined at a hearing'. Some

respondents suggested that having a court ordered conference after receiving a social assessment report is preferable but no reasons were provided as to why this may be the better option.

A small number of respondents suggested holding two court ordered conferences: one early in the proceedings and the other immediately prior to a hearing. Alternatively, some respondents suggested holding the court ordered conference as part of the family group meeting.

Cultural or special needs of parents and/or children

Respondents were asked to provide their views on the responsiveness of Childrens Court processes (including representation and decision-making) to the cultural or special needs of parents and/or children from three groups:

- Aboriginal and/or Torres Strait Islander
- culturally and linguistically diverse backgrounds
- cognitive or other intellectual impairment or mental illness.

Just under one third of respondents (32%) perceived Childrens Court processes as being responsive to the cultural and special needs of Aboriginal and Torres Strait Islander parents and/or children (Table 1). Less than one quarter of respondents (23%) considered Childrens Court processes as being responsive to the needs of culturally and linguistically diverse groups. Only a minority of respondents (17%) perceived Childrens Court processes as being responsive to the needs of intellectually impaired or mentally ill parents and/or children.

Table 1: Responsiveness of Childrens Court processes to the cultural or special needs of parents and/or children

How responsive are Childrens Court processes (including representation and decision making) to the cultural and special needs of parents and/or children who:	Very unresponsive	Mostly unresponsive	Undecided	Mostly responsive	Very responsive
Are Aboriginal and/or Torres Strait Islander	11.8%	27.4%	28.4%	27.5%	4.9%
Are from a culturally or linguistically diverse background	6.9%	25.5%	44.1%	20.6%	2.9%
Have a cognitive or other intellectual impairment or mental illness	13.7%	47.1%	22.6%	14.7%	2.0%

Approximately two thirds of all respondents (n=77) made suggestions for improving the responsiveness of the Childrens Court process to the cultural and special needs of parents and children. The respondents provided mixed views regarding appropriate measures for addressing the cultural and special needs of parents and children. Some respondents suggested determining cultural and/or special needs early in the proceedings and engaging the services of required professionals. For example, one respondent commented that the court should ‘ascertain, at the first mention, what are the cultural needs of the parents and make directions for an interpreter, or a representative from the RE [recognised entity] or for [Child Safety] to arrange a cognitive assessment’. Other respondents suggested ongoing cultural competency training or professional development for lawyers, judiciary and department officers.

In relation to Aboriginal and/or Torres Strait Islander families, some respondents suggested that a recognised entity officer should be involved in proceedings to provide and help implement culturally appropriate strategies for families. In addition, representatives from Aboriginal and Torres Strait Islander communities should be allowed to make submissions about the best interests of the child.

For parents with a disability or special needs, a number of respondents reported that the department viewed disability as equivalent to lacking capacity to care for a child. One respondent commented that 'special needs are treated by the department as concerns or evidence of a parent not being able or willing to protect'. These respondents held the view that departmental officers required better training and guidance in dealing with culturally and linguistically diverse families and people with an intellectual impairment or disability.

QCAT proceedings

Child protection decisions reviewed by QCAT

Respondents were asked about their involvement in child protection decisions reviewed by QCAT and final hearings relating to the review of contact and placements decisions.

Almost half of the respondents (48%) had been involved in no child protection decisions reviewed by QCAT in the last three years and about half of the respondents (47%) had been involved in 1-5 child protection cases reviewed by QCAT. Four per cent of respondents had been involved in 6-10 cases and only one respondent had been involved in more than ten cases.

Half of the respondents (50%) had never been involved in any QCAT final hearings related to contact and placement decisions in the last three years. Just under half of the respondents (46%) had been involved in 1-5 final hearings and only 4 per cent of respondents had been involved in 6-10 final hearings.

Improvements to the QCAT process

Respondents were asked to provide their views on ways to improve the effectiveness of QCAT processes in child protection related matters. Over one-quarter (n=31) of all respondents provided suggestions for improvement. Almost half of the respondents commented that limited funding prevented access to legal representation for families, and in particular Legal Aid did not provide sufficient funding for QCAT proceedings.

A small number of respondents believed the QCAT process was a mere 'rubber stamp' for the department and that QCAT outcomes tended to favour the department's position unless parents had adequate legal representation. There is potential for a significant power imbalance between the parties. One respondent made the following comment:

I suggest QCAT could be improved by a greater emphasis on supporting parties through a process where they have an adequate and respectful opportunity to set out their views, and then a transparent adjudication that is explicitly based on determining the matters in the best interests of the child and according to the principles set out in the Act, rather than on achieving 'agreement' at all costs.

Some respondents suggested that QCAT proceedings could be 'speedier' and less adversarial in approach. Again, the provision of funding for legal representation appears to be an ongoing concern for respondents. One respondent commented that 'the Department has no fiscal constraints in defending matters in QCAT leaving unrepresented clients to fend for themselves'. Alternatively, one respondent suggested that the process should be made easier for self-represented parties by reducing 'technical compliance' and

the amount of documentation in proceedings. However, a small number of respondents felt that the QCAT process was effective and provided a positive outcome for parties.

Compulsory conferences

Half of the respondents (50%) had attended 1-5 compulsory conferences in the last three years, 6 per cent of respondents had attended 6-10 conferences, four per cent had attended more than ten conferences and forty per cent of respondents had attended none. Of those who had participated in compulsory conferences, almost half (47%) felt that compulsory conferences were effective in assisting to resolve child protection matters.

Improvements to compulsory conferences

Those respondents who did not find compulsory conferences effective were asked to provide suggestions for improving the process of compulsory conferences. Only 17 respondents provided comments. The majority of those respondents suggested that the power imbalance between the department and parents (especially for self-represented parties) resulted in negative outcomes at conferences. Given the emphasis on 'reaching agreement' at the conference, parents may feel pressured to withdraw applications or consent to outcomes proposed by the department. An ongoing issue appears to be that department officers attend conferences having no intent to negotiate or compromise on any issues.

The respondents were also asked to consider the circumstances in which a compulsory conference would be most effective and why. Less than one fifth of all respondents (n=22) provided comments. At least half of the respondents suggested that compulsory conferences should occur very 'early' in the proceedings to manage parents' expectations and avoid 'entrenched' views. Some respondents noted that conferences should occur after clients had received the department's statement of reasons and been given sufficient time to consider the material. If the parties were expected to negotiate an outcome based on the material, the respondents suggested that the department improve its case management approach in order to provide that material at an earlier stage. One respondent stated:

It is very hard to prepare applicants for Compulsory Conferences because the department's voluminous statement of reasons in relation to the application is often received shortly before the Conference. This places an already vulnerable person at even greater disadvantage when they are expected to negotiate and reach an agreement in response to this material.

A small number of respondents preferred current arrangements for the compulsory conference to occur after all parties have filed their material and prior to the hearing.

Parties' attendance at compulsory conferences

The respondents were asked to consider who should attend QCAT compulsory conferences on behalf of the department and why. Less than one quarter of respondents (n=28) provided their views. The majority of respondents identified case workers (Child Safety officers), team leaders, court coordinators or 'decision-makers' as the key department staff to attend QCAT compulsory conferences. These respondents noted that case workers should attend because they had knowledge of the case, but often case workers did not have decision-making capacity. Most respondents commented that whoever attended the conference should have the authority to make decisions. Attendance by multiple department staff, especially those without decision-making capacity, only served to intimidate parents and create a power imbalance between the

department and parents. Some respondents emphasised the importance of having legal representation for the department and parents at compulsory conferences.

Cultural or special needs of parents and/or children

Respondents were asked to provide their views on the responsiveness of QCAT processes (including representation and decision-making) to the cultural or special needs of parents and/or children from three groups:

- Aboriginal and/or Torres Strait Islander
- culturally and linguistically diverse backgrounds
- cognitive or other intellectual impairment or mental illness.

Just under one third of respondents (30%) considered QCAT processes to be responsive to the needs of Aboriginal and/or Torres Strait Islander groups, a quarter (24%) of respondents felt it was responsive to the needs of culturally and linguistically diverse groups and a fifth (20%) believed the processes were responsive to groups with cognitive or other intellectual impairment or mental illness (Table 2).

Table 2: Responsiveness of QCAT processes to the cultural or special needs of parents and/or children

How responsive are QCAT processes (including representation and decision making) to the cultural and special needs of parents and/or children who:	Very unresponsive	Mostly unresponsive	Undecided	Mostly responsive	Very responsive
Are Aboriginal and/or Torres Strait Islander	4.0%	12.0%	54.0%	24.0%	6.0%
Are from a culturally or linguistically diverse background	4.0%	12.0%	60.0%	22.0%	2.0%
Have a cognitive or other intellectual impairment or mental illness	4.0%	18.0%	58.0%	16.0%	4.0%

A small number of respondents (n=20) provided suggestions on ways to improve the responsiveness of the QCAT process to the cultural and special needs of parents and children. Some respondents suggested having a social worker or support person/s for Aboriginal and Torres Strait Islander families and special needs clients and also providing legal representation as a right. Other respondents felt that education and training in cultural competence for all stakeholders should be a requirement.

Children’s views and wishes

The survey asked respondents whether children and young people are given adequate and appropriate opportunity to have their views and wishes heard in Childrens Court and QCAT proceedings. Over half of the respondents (62%) reported that children and young people were not given adequate opportunity to have their views and wishes heard in proceedings. These respondents were asked to provide their views on changes that could be made to ensure children’s views and wishes are heard.

About one-third of respondents considered the appointment of a separate representative as providing an effective means for children to have their views and wishes heard in proceedings. They suggested that the appointment of a separate representative should occur early in the proceedings and be considered a ‘mainstream’ part of child protection

matters. However, these respondents noted that the separate representative should spend more time speaking with children and be provided with greater resources/funding to facilitate this. Some respondents suggested that children should be given the opportunity to speak directly with the magistrate, write a letter or attend an informal session at 'child friendly courts'.

A number of respondents regarded older children (e.g. 12 years or older) as having capacity to express their views and wishes. For instance, one respondent believed that, 'if they are sufficiently mature enough...their views should carry significant weight instead of being largely ignored'. These respondents suggested that the department should advise older children of their entitlement to legal representation. There was also a range of responses suggesting the inclusion of court appointed counsellors or social workers for children, or an independent report writer.

Respondents were asked to consider how helpful they found specific processes in ensuring that the child or young person's views and wishes are made known to the Childrens Court and/or QCAT. The processes included the appointment of a separate representative, commissioning of a social assessment report and involvement of a direct representative (Table 3).

Table 3: Processes to help ensure children and young people's views and wishes are made known in the Childrens Court and QCAT

	Very unhelpful	Mostly unhelpful	Undecided	Mostly helpful	Very helpful
Appointment of a separate representative	12.2%	14.3%	8.2%	37.8%	27.6%
Commissioning of a social assessment report	12.2%	5.1%	14.3%	39.8%	28.6%
Involvement of a direct representative	8.2%	5.1%	33.7%	26.5%	26.5%

A majority of respondents (65%) considered the appointment of a separate representative as 'very helpful' or 'mostly helpful'. Similarly, 68 per cent of respondents believed the commissioning of a social assessment report was 'very helpful' or 'mostly helpful' in ensuring that children or young people's views and wishes are heard. Over half of the respondents (53%) considered the involvement of a direct representative as 'very helpful' or 'mostly helpful'.

Respondents were asked to suggest how these processes could be more effective in presenting children's views and wishes. About half of the respondents (n=61) provided suggestions on ways to improve these processes. Most respondents focused on the need for separate representatives to be more proactive in seeking out the views of the child. These respondents felt that separate representatives rarely met with children or spent a sufficient amount of time with them to gain a real understanding of their views. Some respondents suggested that limited funding meant that separate representatives were unable to spend enough time with children or devote adequate attention to briefing report writers.

A small number of respondents suggested that independent and objective processes will ensure children's views and wishes are made known in proceedings. For example, there was a view that the report writer should be appropriately qualified and completely independent from the department. Some respondents commented that the age of the child should be considered as older children will have greater capacity to express their views and wishes.

Separate representatives

Respondents were asked to report, in their experience, the circumstances in which the Childrens Court or QCAT are appointing a separate representative. Less than three quarters of all respondents (n=82) provided comments. The majority of respondents reported that separate representatives are usually appointed in the following circumstances:

- complex or contested cases
- cases involving allegations of physical, sexual or emotional abuse
- cases involving parents with drug or mental health issues
- when children have reached a specific age and can express their views regarding living arrangements.

Some respondents noted that a separate representative may also be appointed when the department or parents are requesting a separate representative or when the department is seeking long term guardianship orders.

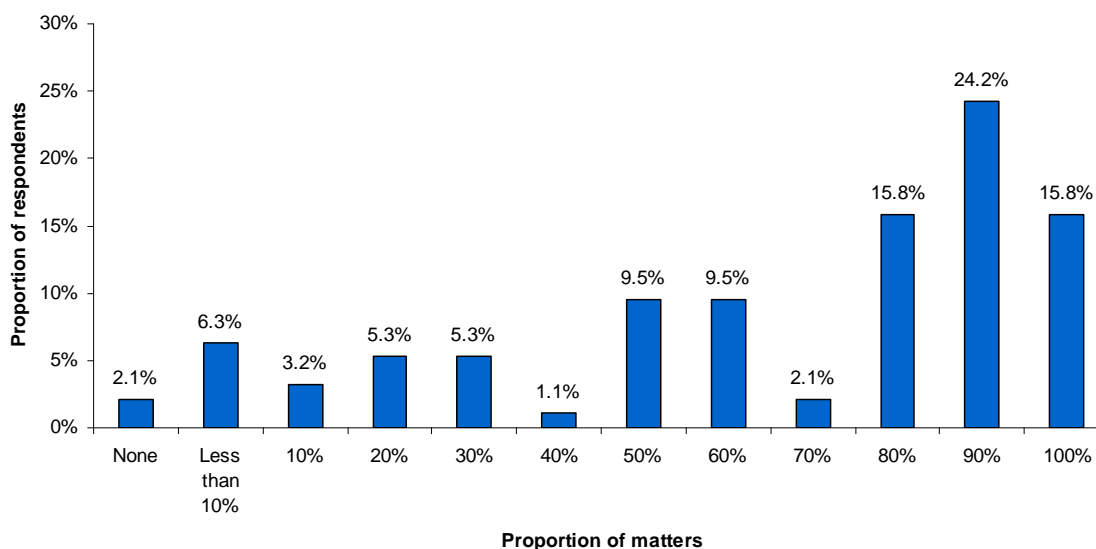
Over half of all respondents (n=67) suggested changes they would make to the role of the separate representative to improve its effectiveness. Most respondents suggested increased funding for the position to ensure that separate representatives could discharge their roles properly. These respondents believed that separate representatives needed to adopt a proactive role in child protection matters and invest more time in meeting with families in their communities.

Some respondents commented that separate representatives should 'engage directly with children and young people' and adopt 'a more hands on approach with the children'. These respondents felt that separate representatives required a better understanding of children's views (especially if the child is capable of expressing their views) to properly assess the 'best interests' of the child.

Social assessment reports

Respondents were asked about their involvement in matters where a social assessment report has been prepared. The survey responses showed that over half of the respondents (56%) had a social assessment report prepared in 80-100 per cent of their child protection matters. On average, respondents reported that social assessment reports were completed in 80 per cent of matters (Figure 4).

Figure 3: Proportion of matters involving social assessment reports



Almost two thirds of all respondents (61%) provided comments on the circumstances in which a social assessment report should be prepared for child protection proceedings. The majority of respondents agreed that social assessment reports should be prepared in all child protection matters and in particular, when the matter involves complex issues or children with special needs.

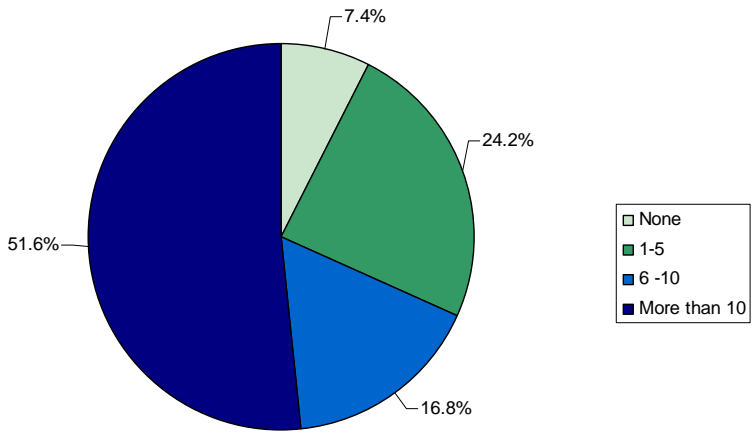
About half of all respondents (n=60) provided suggestions for improving the usefulness of social assessment reports in child protection proceedings. Some respondents felt that reports should be undertaken by independent, appropriately qualified report writers who are engaged early in the proceedings and have no former affiliations with the department. One respondent commented that it was important to ensure ‘...the report writers are independent of the department and not aligned with them in any way to give the parents assurance they will be heard but also reality tested by someone not engaged by the department’.

To produce an accurate report, a small number of respondents suggested that report writers need to engage directly with children and parents in their natural surroundings. However, some respondents commented on a need for additional funding so that report writers could spend a sufficient amount of time with families.

Family group meetings

Almost one quarter of respondents (24%) had attended 1-5 family group meetings, 17 per cent had attended 6-10 meetings and over half of the respondents (52%) had attended more than 10 family group meetings in the last three years. Family group meetings were not attended by seven per cent of respondents. The respondents who indicated ‘none’ were mostly barristers, and therefore not required to attend family group meetings (Figure 5).

Figure 4: Proportion of attendance by legal representatives at family group meetings



Just under two thirds of all respondents (n=72) suggested changes to improve the effectiveness of the family group meeting process. The majority of respondents recommended at least one or more of the following changes: early receipt of the meeting’s agenda and/or case plan; the use of independent convenors and ‘neutral’ venues to conduct family group meetings; and legal representation for all parties.

Receipt of agenda and/or case plan

Some respondents suggested that the department should send its meeting agenda and/or case plan to all parties before the meeting (e.g. one week in advance). This approach will aid in preparation and ‘improve the exchange of relevant information’ at meetings.

Independent convenors and ‘neutral’ venues

Most respondents recommended that family group meetings be facilitated by independent, external convenors who were not associated with the department. One respondent commented that, ‘the main problem with [family group meetings] is the poor performance of facilitators and the department’s use of internal facilitators’. Current convenors tend to be department employees or have had previous contact with the subject family as a Child Safety officer. These respondents felt that the use of independent convenors would help to alleviate any power imbalance between the department and parents.

Many respondents also suggested that family group meetings should be conducted at ‘neutral’ venues, away from department offices. Again, this suggestion attempts to address the issue of power imbalance as ‘parents will always be sceptical and mistrustful of any proceeding that occurs at [Child Safety’s] office’. These respondents believed that family group meetings can be disempowering for parents because the department rarely negotiated on issues, made concessions or acknowledged progress made by parents.

Legal representation

Some respondents suggested that parents should have legal representatives present at family group meetings and the department must ensure that all relevant stakeholders are invited to attend these meetings. Moreover, the agenda, case plan and other relevant documentation should be sent to parties (including lawyers) prior to the meeting so that lawyers have sufficient time to review and discuss matters with their clients.

Legal representation

Childrens Court

Respondents were asked how often children, parents and the department were legally represented in Childrens Court proceedings. A majority (82%) reported that parents are legally represented only ‘sometimes’ or ‘rarely’. A majority (71%) also reported that children were represented only ‘sometimes’ or ‘rarely’. In contrast, 69 per cent reported that the department are ‘always’ legally represented (Table 4).

Table 4: Frequency of legal representation for parties in Childrens Court proceedings

	Never	Rarely	Sometimes	Most of the time	Always
Children	7.4%	33.0%	38.3%	20.2%	1.1%
Parents	0%	22.3%	59.6%	17.0%	1.1%
The Department	3.2%	5.3%	13.8%	8.5%	69.2%

Almost two thirds of all respondents (n=71) provided suggestions for increasing the effectiveness of legal representation in Childrens Court proceedings. The majority of respondents agreed that increased funding would improve the effectiveness of legal representation. These respondents noted that increased funding would enable parents to be legally represented at all stages of the proceedings, particularly at trial. Furthermore,

these respondents felt that increased funding would improve the overall quality of legal representation because lawyers could invest more time in case preparation.

Some respondents recommended that the department should be obliged to inform parents of their right to legal representation. These respondents noted that parents were disadvantaged if they were unaware of this right and attended court proceedings without legal representation.

Over half of the respondents (n=63) provided comments on the role of non-legal advocates in the Childrens Court process. Most respondents believed that non-legal advocates played a ‘support’ role in proceedings, especially for unrepresented parents and parties with cultural or special needs. Some respondents suggested that non-legal advocates can assist parents through the stages of an application, explain the department’s expectations and facilitate engagement with support services available to parents.

Queensland Civil and Administrative Tribunal (QCAT)

Respondents were asked how often children, parents and the department were legally represented in QCAT proceedings. Similar to Childrens Court proceedings, the majority of respondents (65%) indicated that children have legal representation only ‘sometimes’ or ‘rarely’ in QCAT proceedings (Table 5). A majority of respondents (78%) reported that parents had legal representation only ‘sometimes’ or ‘rarely’ while 57 per cent of respondents indicated that the department ‘always’ had legal representation.

Table 5: Frequency of legal representation for parties in QCAT proceedings

	Never	Rarely	Sometimes	Most of the time	Always
Children	24.5%	29.8%	35.1%	7.4%	3.2%
Parents	16.0%	37.2%	40.4%	5.3%	1.1%
The Department	10.6%	4.3%	19.1%	8.5%	57.4%

Less than half of all respondents (n=53) provided comments on the circumstances in which parties should be legally represented in QCAT proceedings and why. The majority of respondents believed that parties should always be legally represented in QCAT proceedings. Two respondents commented that, ‘all parties should be legally represented to achieve the best and fairest outcome’ and ‘in all circumstances – most of the clients are not able to express themselves coherently or effectively, especially those with learning difficulties and none of them have any idea of how QCAT works’.

About one third of all respondents (n=41) provided comments on the role of non-legal advocates in the QCAT process. Similar to the Childrens Court process, most respondents felt that non-legal advocates played a supportive role for parents. Some respondents believed that preference was given to court co-ordinators to act as support persons, due to their experience, training and skill level.

Legal Aid funding

The majority of respondents (88%) had undertaken legally aided child protection work in the past three years. Those who had not undertaken legally aided child protection work provided various reasons such as insufficient funding, employment at a community legal centre and lack of specialisation.

The survey asked respondents to rate the adequacy of Legal Aid funding for child protection work. The majority of respondents (89%) reported that Legal Aid funding was

'inadequate', followed by 5 per cent indicating that funding was adequate and 5 per cent answered 'don't know/not applicable'.

Almost two thirds of all respondents (n=76) provided suggestions on changes that should be made to Legal Aid funding guidelines in child protection matters. The majority of respondents suggested increases in funding and that funding should reflect the amount of work involved in child protection matters. One respondent commented:

The grants for child protection work are vastly inadequate. The work is very time consuming, has large voluminous documents, and the parties often have varying problems which require further time to go over and explain the proceedings to them.

Most respondents reported that adequate funding should be provided for detailed case preparation, contact with clients, attendance at family group meetings, conferences and trials and payment of counsel fees. These respondents believed that increased funding would improve the overall quality of legal representation and attract more practitioners to undertake child protection work.

Some respondents commented that legal aid funding should be 'on par' with the funding provided in family law matters. In addition, a small number of respondents believed the merit test prevented access to Legal Aid because it was 'too hard' for some parents to meet the requirements and, at times, was applied inconsistently across cases. These respondents suggested that the merit test should be less onerous to allow greater access to funding.

Professional development

The majority of respondents (71%) felt that there was inadequate specialised training provided to lawyers practising in child protection.

The survey asked respondents how well the training available for lawyers working in child protection equipped them with the skills to communicate effectively with different client groups (Table 6). Few respondents felt their training had prepared them well to work with children and young people. Training was also considered poor in relation to working with Aboriginal and Torres Strait Islander clients, culturally and linguistically diverse clients and clients who have a cognitive or other intellectual impairment.

Table 6: Effectiveness of training available for lawyers in communicating with different client groups

	Very poorly	Poorly	Moderately	Well	Very well
Communicate effectively with children and young people	19.7%	29.0%	30.0%	9.2%	11.8%
Communicate effectively (including being culturally aware) with Aboriginal and Torres Strait Islander clients	25.3%	35.4%	26.6%	5.1%	7.6%
Communicate effectively (including being culturally aware) with CALD clients	23.1%	33.3%	30.8%	6.4%	6.4%
Communicate effectively with clients who have a cognitive or other intellectual impairment	25.3%	39.2%	25.3%	2.5%	7.6%

Less than half of all respondents (n=54) provided suggestions to improve the available training in child protection work. The majority of respondents agreed that more training should be made available for practitioners in this area and the training should be attached to a Continuing Professional Development program. One respondent commented that,

'...there appears to be little systemic impetus for child protection expertise for legal professionals, given how poorly funded and how little respect it often garners as an area of practice'. Some respondents suggested that legal practitioners will benefit from specialist courses and training in child protection work.

Respondents were asked whether lawyers would benefit from joint training with other stakeholders in the child protection area. The majority of respondents (86%) agreed this would be beneficial. These respondents were asked to identify specific stakeholders they would like to see involved in training. The respondents identified various stakeholders. The more common ones were the department, psychologists and counsellors, police, carers, social workers, doctors, legal and court personnel, non government organisations, and cultural leaders.

Appendix A

Survey instrument

Q1. Are you admitted as:

[Solicitor; Barrister]

Q2. How long have you been admitted?

[Up to 1 year; More than 1 but less than 2 years; More than 2 but less than 5 years; More than 5 but less than 10 years; More than 10 years]

Q3. Where are you currently employed?

[Legal Aid Queensland/ATSILS/Community legal centre; A private law firm; The private bar; Other (please specify)]

Q4. The majority of the clients I work with live in:

[A major town or city; Regional or rural locations; Remote or very remote locations; Not applicable/undecided]

Q5. Has your caseload included child protection related matters in the last 3 years?

[Yes; No]

Q6. How many years have you worked in child protection?

[Up to 1 year; More than 1 but less than 2 years; More than 2 but less than 5 years; More than 5 but less than 10 years; More than 10 years]

Q7. How many child protection related matters have you been involved in over the past year?

[None; 1 to 5; 6 to 10; More than 10]

Q8. How much of your caseload is usually made up of child protection related matters?

[None; Less than 10%; 10%; 20%; 30%; 40%; 50%; 60%; 70%; 80%; 90%; 100%;Not applicable]

Q9. Have you ever appeared in child protection matters in the following capacity?

[Separate Representative; Representing parents; Direct representative for a child; Appearing for the Department; Other (please specify)]

Q10. What has been your main area of practice in child protection matters?

[Separate Representative; Representing parents; Direct representative for a child; Appearing for the Department; Other (please specify)]

Q11. What percentage of your clients in child protection matters are Aboriginal and/or Torres Strait Islander?

[None; Less than 10%; 10%; 20%; 30%; 40%; 50%; 60%; 70%; 80%; 90%; 100%;Not applicable]

Q12. What percentage of your clients in child protection matters have a cognitive or other intellectual impairment or mental illness?

[None; Less than 10%; 10%; 20%; 30%; 40%; 50%; 60%; 70%; 80%; 90%; 100%;Not applicable]

Q13. What percentage of your clients in child protection matters are from culturally and linguistically diverse (CALD) backgrounds?

[None; Less than 10%; 10%; 20%; 30%; 40%; 50%; 60%; 70%; 80%; 90%; 100%;Not applicable]

Q14. How many final hearings have you attended at the Childrens Court in the last 3 years?

[None; 1-5; 6-10; More than 10]

Q15. What in your view would improve the effectiveness of the Childrens Court process?

[Comment]

Q16. Given the current fiscal constraints facing government, what do you think is the most important area for improvement in the Childrens Court proceedings and what improvement would you make there?

[Comment]

Q17. How many court ordered conferences have you attended in the last 3 years?

[None; 1-5; 6-10; More than 10]

Q18. Do you find court ordered conferences effective in assisting to resolve matters?

[Yes; No; If no, what improvements would you make to the process?]

Q19. In what circumstances (including at what stage of the proceedings) would a court ordered conference be most effective and why?

[Comment]

Q20. How responsive are Childrens Court processes (including representation and decision making) to the cultural and special needs of parents and/or children who:

Are Aboriginal and/or Torres Strait Islander

Are from a culturally or linguistically diverse background

Have a cognitive or other intellectual impairment or mental illness

[Very unresponsive; Mostly unresponsive; Undecided; Mostly responsive; Very responsive]

Q21. How would you improve the responsiveness of the Childrens Court process to the cultural and special needs of parents and children?

[Comment]

Q22. In the last 3 years, how many cases have you been involved in where child protection decisions have been reviewed by QCAT?

[None; 1-5; 6-10; More than 10]

Q23. In the last 3 years, how many QCAT final hearings relating to review of contact and placement decisions in child protection matters have you been involved in?

[None; 1-5; 6-10; More than 10]

Q24. What, in your view, would improve the effectiveness of the QCAT process in child protection related matters?

[Comment]

Q25. Given the current fiscal constraints facing government, what do you think is the most important area for improvement in the QCAT child protection proceedings and what improvement would you make there?

[Comment]

Q26. How many compulsory conferences have you attended in the last 3 years?

[None; 1-5; 6-10; More than 10]

Q27. Do you find compulsory conferences effective in assisting to resolve matters?

[Yes; No; Don't know; If no, what improvements would you make to the process?]

Q28. In what circumstances (including at what stage of the proceedings) would a compulsory conference be most effective and why?

[Comment]

Q29. Who do you think should attend QCAT compulsory conferences on behalf of the department and why?

[Comment]

Q30. How responsive are QCAT processes (including representation and decision making) to the cultural or special needs of parents and/or children who:

Are Aboriginal and/or Torres Strait Islander

Are from a culturally or linguistically diverse background

Have a cognitive or other intellectual impairment or mental illness

[Very unresponsive; Mostly unresponsive; Undecided; Mostly responsive; Very responsive]

Q31. How would you improve the responsiveness of the QCAT process to the cultural and special needs of parents and children?

[Comment]

Q32. Do you think that children and young people are given adequate and appropriate opportunity to have their views and wishes heard in Childrens Court and QCAT proceedings?

[Yes; No; Don't know; If no, what changes would you make to ensure children's views and wishes are heard?]

Q33. How helpful do you find the following in ensuring that the child or young person's views and wishes are made known to the Childrens Court and/or QCAT:

Appointment of a Separate Representative

Commissioning of a social assessment report

Involvement of a direct representative

[Very unhelpful; Mostly unhelpful; Undecided; Mostly helpful; Very helpful]

Q34. How could these processes be more effective in presenting children's views and wishes?

[Comment]

Q35. Are there other ways you find helpful in ensuring that the child or young person's views and wishes are made known to the Childrens Court and/or QCAT?

[Comment]

Q36. In your experience in what circumstances does the Childrens Court or QCAT appoint a separate representative?

[Comment]

Q37. What, if any, changes would you make to the role of the separate representative to make it more effective?

[Comment]

Q38. In what percentage of matters in which you have been involved have social assessment reports been prepared?

[None; Less than 10%; 10%; 20%; 30%; 40%; 50%; 60%; 70%; 80%; 90%; 100%;Not applicable]

Q39. In what circumstances do you think a social assessment report should be prepared for child protection proceedings?

[Comment]

Q40. What, if anything, would improve the usefulness of social assessment reports in child protection proceedings before the court or tribunal?

[Comment]

Q41. How many family group meetings have you attended in the last 3 years?

[None; 1-5; 6-10; More than 10; If none, why not?]

Q42. What changes, if any, would you make to the family group meeting process to make the meetings more effective?

[Comment]

Q43. In your experience, how often are the following parties legally represented in Childrens Court proceedings?

Children

Parents

The Department

[Never; Rarely; Sometimes; Most of the time; Always]

Q44. What, if anything, would increase the effectiveness of legal representation in Childrens Court proceedings?

[Comment]

Q45. What role, if any, can non-legal advocates play in Childrens Court process?

[Comment]

Q46. In your experience, how often are the following parties legally represented in QCAT proceedings?

Children

Parents

The Department

[Never; Rarely; Sometimes; Most of the time; Always]

Q47. In what circumstances should parties be legally represented in QCAT proceedings and why?

[Comment]

Q48. What role, if any, can non-legal advocates play in the QCAT process?

[Comment]

Q49. Do you undertake or have you undertaken legally aid child protection work in the past 3 years?

[Yes; No; If no, why not?]

Q50. Grants of legal aid for child protection work are:

[Adequate; Inadequate; Don't know/Not applicable]

Q51. What changes, if any, should be made to legal aid funding guidelines in child protection matters?

[Comment]

Q52. Is sufficient child protection specialised training available to a lawyer practising in child protection?

[Yes; No; Don't know]

Q53. How well does the training available for lawyers working in child protection equip you to:

Communicate effectively with children and young people

Communicate effectively (including being culturally aware) with Aboriginal and Torres Strait Islander clients

Communicate effectively (including being culturally aware) with CALD clients

Communicate effectively with clients who have a cognitive or other intellectual impairment

[Very poorly; Poorly; Moderately; Well; Very well; Don't know]

Q54. What, if any, improvements would you make to the available training in this area?

[Comment]

Q55. Would lawyers benefit from joint training with other stakeholders in the child protection area?

[Yes; No; Don't know; If yes, what other stakeholders would you like to see involved?]

Q56. The Commission's Terms of Reference require it to review Queensland's legislation about the protection of children, including the Child Protection Act 1999 and relevant parts of the Commission for Children and Young People and Child Guardian Act 2000. Do you have any amendments that you would like to see to these Acts?

[Comment]

Q57. Please provide any other comment you wish to make on the effectiveness of Queensland's child protection system especially in relation to the statutory intervention process and the associated court and tribunal processes.

[Comment]