

# Chapter 2



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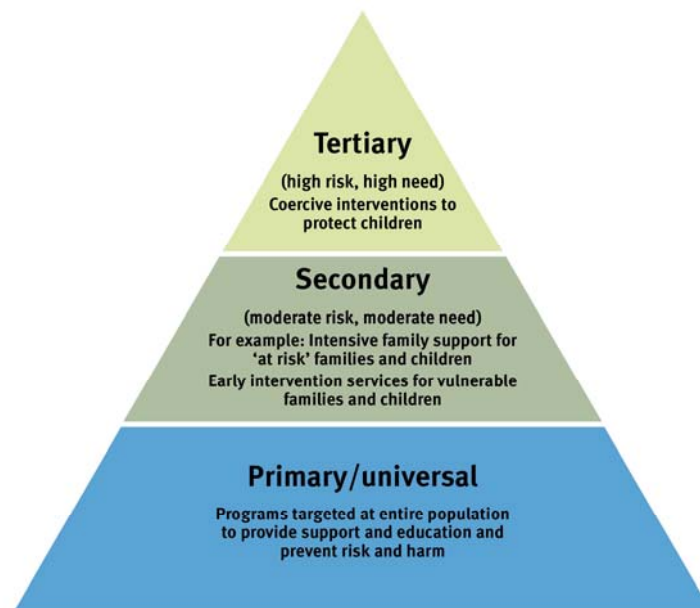
# The child protection system in Queensland

This chapter describes the current child protection system in Queensland. It begins by outlining the public health model, which has become increasingly used by academics, policy makers and practitioners as a way of describing the full continuum of pre-emptive to reactionary child protection services. The chapter then describes the *Child Protection Act 1999*, which provides the statutory framework guiding the child protection system in Queensland.

### 2.1 The public health model as a depiction of child maltreatment prevention

In 2009, the Council of Australian Governments agreed to use the public health model as part of its endorsement of the *Protecting children is everyone's business: national framework for protecting Australia's children 2009–2020* (Hunter 2011). The model encompasses primary, secondary and tertiary strategies (Scott 2006) and is often illustrated using a pyramid (see Figure 1).

**Figure 1: A service delivery system for protecting children**



The primary, secondary and tertiary levels differentiate between prevention services targeted at different parts of the population based on the level of need, risk and harm. All services (except coercive state intervention, which must be authorised by statute) could potentially have a statutory or a non-statutory basis. Primary or universal prevention services, at the base of the pyramid, are available to all children and families in the community. These include the Triple P parenting program and maternal and child health services. Enhancing access for vulnerable children to high quality early education and care services is also viewed as a positive way to prevent child abuse and neglect.<sup>1</sup>

Secondary prevention services comprise programs, including intensive family support services and early intervention services, for vulnerable families and children who have additional needs and may be *at risk* of requiring a tertiary child protection response in the future. Intensive family support services work with families who have complex needs that, if unmet, are likely to lead to harm and a requirement for tertiary intervention (Council of Australian Governments 2009). In Queensland these services are targeted at families that have been reported to Child Safety, usually multiple times, and aim to work with families on a range of problems, often in their homes. Programs administered by Child Safety that aim to fulfil this function include Helping Out Families and Referral for Active Intervention (Chapter 4 provides a detailed description of these). Secondary prevention also includes early intervention to provide general family support, including parenting programs, anger management programs, youth services, child and family counselling and other specialist services. Programs that deliver family violence services, and drug and alcohol services, are also available to families within this part of the system.

At the apex, the tertiary prevention response is the service system's intervention with

families where harm has *already* occurred (Hunter 2011), or where there is unacceptable risk of harm occurring, and aims to prevent future harm to children. Queensland's statutory service operates primarily at the tertiary level, providing for investigation and assessment of abuse and neglect, court processes, case management and the out-of-home care system.

A robust service system that is integrated across the child protection continuum enables children and families to easily traverse both the primary and secondary, or the secondary and tertiary, levels of intervention (composite prevention services) (Hunter 2011). The ACT for Kids safe houses are an example of composite prevention services; two of the safe house communities, for example, provide both short-term accommodation for children and young people during departmental investigations (tertiary and/or secondary intervention), and early childhood education and care services for community members (secondary and/or primary intervention).<sup>2</sup>

Government and non-government organisations are progressively recognising the benefits of providing both composite prevention (Bromfield & Holzer 2008) and early intervention services (Hunter 2011). The *National framework for protecting Australia's children 2009–2020* is based on the premise that a more comprehensive and coordinated approach to delivering child protection services, with a focus on early intervention, would reduce child abuse and neglect and ultimately enhance long-term family outcomes (Council of Australian Governments 2009; Bromfield & Holzer 2008).

Submissions to the Commission also reflect strong support for the public health model for child protection. For example, Anglicare Southern Queensland states: 'A continuum of service delivery and care of this type would enable families to access the right service, at the right time, before escalation to crisis point, and without the stigma associated with contact with the statutory system.'<sup>3</sup>

## 2.2 The Child Protection Act 1999

The Child Protection Act outlines the tertiary system for responding to children in need of ongoing protection, including the system of case management that directs work with children and young people in the care system. The Act, along with the *Family Services Act 1987*, also outlines the system of secondary service provision that aims to work intensively with families at risk of being subject to state intervention.

The Child Protection Act recognises that the family has the primary moral and legal responsibility for child protection (s 5B(b)), which it discharges informally and usually in private. The role of the state in child protection is governed by the Act and is strictly limited, mainly providing for a range of protective services, funding arrangements and multiple oversight mechanisms.

A series of principles guide the administration of the Act (ss 5B to 6), all of which are subject to the paramount principle laid down in section 5A, 'that the safety, wellbeing and best interests of a child are paramount' (s 5A).

The threshold for statutory intervention, as set out in the Act, is that the chief executive has a reasonable suspicion that a child is 'in need of protection' (s 14). The test for whether a child is in need of protection has two limbs, namely that 'a child (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm,' and '(b) does not have a parent able and willing to protect [her or him] from the harm.' Both criteria need to be met for a family to reach the legislative threshold. Harm itself is defined under s 9(1) of the Act as 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing,' and is understood to have unlimited causes, including '(3)(a) physical, psychological or emotional abuse or neglect,' and '(b) sexual abuse or exploitation.'

The Act is jointly administered by the Minister for Communities, Child Safety and Disability Services and the Attorney-General and Minister for Justice. The Director-General of the Department of Communities, Child Safety and Disability Services is the chief executive under the Child Protection Act and the Family Services Act.

'Help' or 'intervention' (s 51ZA) under the Child Protection Act is provided at two levels: prevention (including family support) and protection (including interim, temporary or ongoing care).

Protection services (or tertiary prevention) include intake and screening, forensic investigation (including court-approved medical examination) and assessment, crisis or interim care, casework, custody and short-term (up to two years) or long-term (up to 18 years) guardianship, out-of-home placement, reunification, permanency planning and support for transition to independence. These services collectively comprise what is commonly called the statutory system. The system of out-of-home care is not specifically prescribed in the Act, but is set out in administrative policy documents underpinning the Act.

Services provided at the primary and secondary prevention level are essentially precautionary or pre-emptive: that is, they target current risk to prevent future harm. They are:

- primary or universal – services available to the general population such as health, education or welfare support
- secondary – provided more selectively to discrete populations or households identified as having one or more co-existent risk factors commonly linked with child abuse or neglect.

The aim of these services is to prevent harm from occurring in the first place by removing or reducing causes or contributing factors such as poverty, welfare dependence, social alienation, parental substance abuse, lack of support for young single-parent families, a history of mental health problems, inadequate housing and overcrowding, relationship conflict, domestic violence and parents with a criminal record.

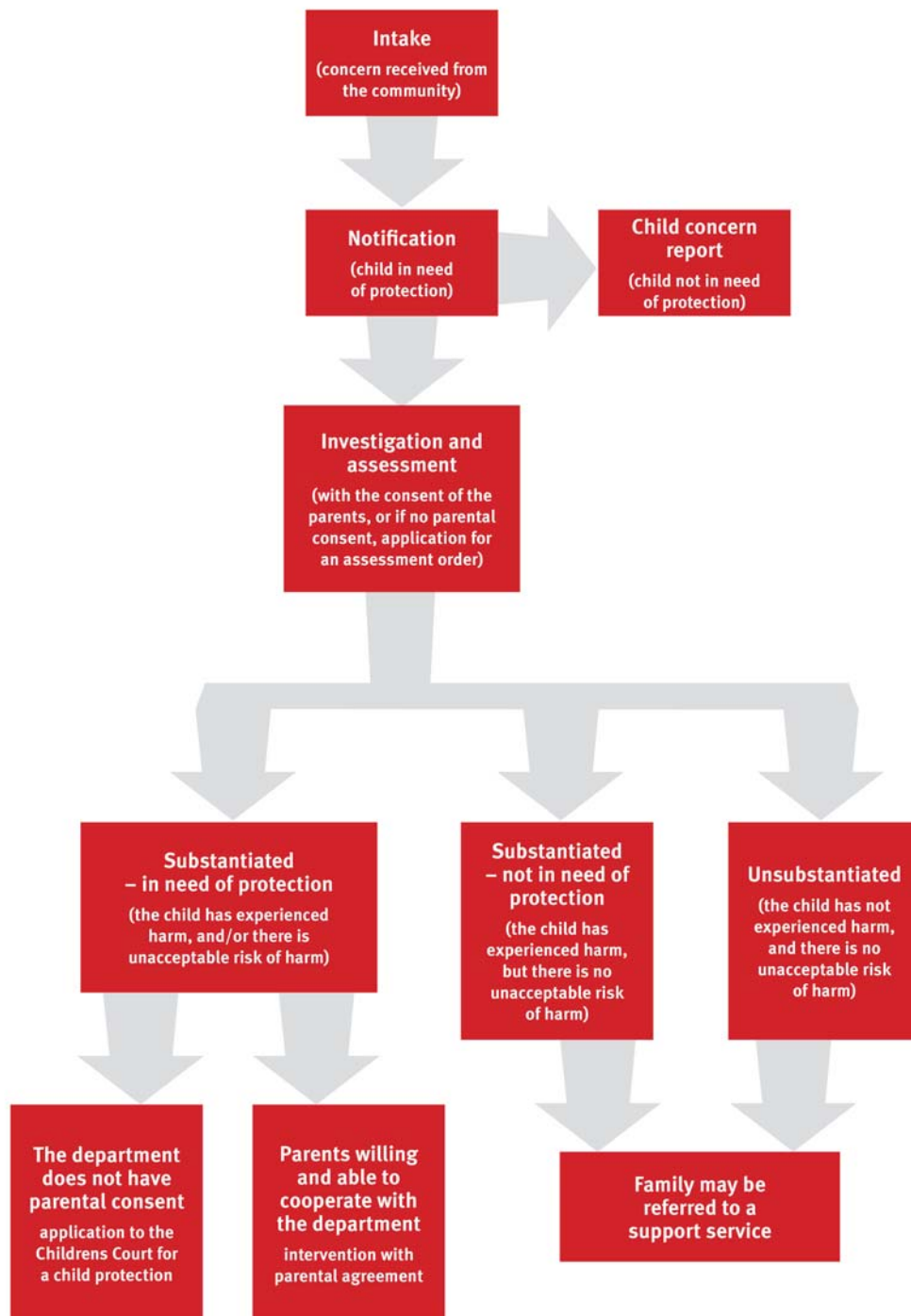
In theory, effective early intervention decreases demand for long-term guardianship orders and care placements by creating or maintaining a safe living environment within the family home. A major drawback, however, is that this assistance is largely optional or voluntary, and often parents most in need do not access it when it is available.

The chief executive has overall responsibility for the functioning and operation of the system and the corresponding duty to ensure that the system does what it is intended to do. The chief executive has the powers, authority, functions and ultimate responsibility for ensuring that the system delivers the right mix of secondary and tertiary services to children and families to promote, achieve and protect their overall wellbeing.

### **2.3 The statutory child protection system**

The statutory system, depicted in Figure 2, provides for three key phases to the process – intake, investigation and assessment, and intervention.

Figure 2: The statutory child protection system



### 2.3.1 The intake phase

Reports to the Department of Communities, Child Safety and Disability Services of harm or risk of harm to a child are processed in the intake phase. Reports to Child Safety come from a range of sources, including members of the general public, family

members themselves and organisations. The largest group of reporters to Child Safety are workers in public sector positions who are required by legislation to report suspected physical, sexual or other abuse and neglect. These include:

- child safety officers (Child Protection Act s 148)
- doctors and registered nurses (*Public Health Act 2005* s 191)
- the Children’s Commissioner (Commission for Children and Young People and Child Guardian Act 2000 s 25)
- teachers, required to report suspected child sexual abuse to their school principal, who in turn must report to police (*Education (General Provisions) Act 2006* ss 365-366).

Police officers are subject to operational policies about the reporting of harm to Child Safety. In particular, officers attending any incidents of domestic violence where children normally reside are required to make a report on the police database detailing relevant particulars of the incident and children involved. This information is then referred to the Department of Communities, Child Safety Services.

Once a report to Child Safety has been made, a set of screening criteria is used to assist staff to determine whether the report indicates the child is in need of protection (refer to a description of the Structured Decision Making tools in section 2.3.2). A notification is recorded where the department has a reasonable suspicion that a child may be in need of protection, in which case an investigation must be conducted or other appropriate action taken (s 14(1)(b)). A child concern report is recorded when the information received does not suggest a child is in need of protection. Possible responses to a child concern report include:

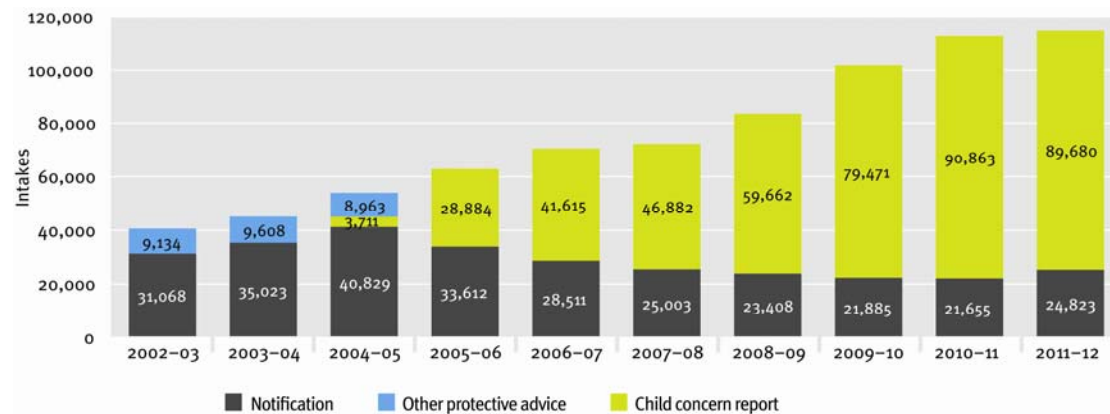
- providing information and advice to the person reporting the concern
- making a referral to another agency
- providing information to the police or another state authority
- no further action.

## Reports of child harm or risk of harm

Figure 3 shows the levels of intakes and outcomes as recorded by the department over the last decade. Total intakes increased from 40,202 in 2002–03 to 114,503 in 2011–12. Counter-intuitively, the large increase in intakes over the period has not corresponded with an increase in notifications. The number of intakes recorded as notifications has generally decreased since 2004–05. The increase in intakes has largely resulted in an increase in child concern reports, which were introduced in 2005. In 2011–12, 24,823 notifications were recorded, representing only 21.7 per cent of intakes. This means there is a significant and ongoing increase in reports to Child Safety, but the increase is due overwhelmingly to reporting of incidents which do not raise issues serious enough to require an investigation.



**Figure 3: Child protection intakes by outcome type, Queensland, 2002–03 to 2011–12**



**Source:** Department of Communities, Child Safety and Disability Services, *Our Performance*, Table SS.2

**Notes:** If an intake report relates to more than one child, an intake is counted for each child. If a child was subject to more than one report during the period, an intake is counted for each instance. Recording of child concern reports commenced in 2005. Previously, protective advice responses were recorded as a notification or as other protective advice. The source also lists a number of other changes in legislation, policy, practice and recording information over the period.

When a report to Child Safety is deemed to be a notification, it will usually be subject to an investigation and assessment. The Child Protection Act requires the chief executive to either investigate allegations of harm or risk of harm concerning a child suspected of being in need of protection, or take other appropriate action, for example referral to a support service.

In 2011, provision for a temporary custody order was introduced to enable a child to be taken into custody and protected from immediate harm until Child Safety decides what further statutory intervention is required.<sup>4</sup> The temporary custody order is available when it has been assessed that the child is in need of protection and forensic investigation is not required. For example, Child Safety may apply for a temporary custody order when the child or their parent is already known to the department, either because a sibling is already in the department’s care or the family is the subject of voluntary departmental intervention, but the situation has escalated to the point where coercive intervention is necessary (s 51 AB(2)). An order lasts for up to three business days and does not require an assessment to be undertaken.

As at 30 June 2012, 1,078 temporary custody orders had been granted.<sup>5</sup>

### 2.3.2 The investigation and assessment phase

The investigative powers conferred on authorised officers and police include powers to:

- interview children at educational facilities (s 17)
- have contact with children at immediate risk (s 16)
- consult with the recognised entity when the investigation relates to an Aboriginal or

Torres Strait Islander child (s 6)

- take children at immediate risk into the custody of the chief executive (s 18)
- move children to a safe place (s 21)
- investigate allegations relating to unborn children (s 21A)
- make applications for temporary assessment orders and court assessment orders (ss 23–51)
- use care agreements (ss 51ZD–51ZI)
- obtain a person’s criminal history (s 95)
- carry out medical examinations or treatment (s 97).

The underlying purposes of the investigation are to:

- determine whether the child is safe
- investigate allegations of harm and risk of harm
- undertake a holistic assessment of the child and family in their home
- determine if the child is in need of protection
- decide whether there are supports that Child Safety or other agencies can provide to the child and family (Department of Communities, Child Safety and Disability Services 2012c).

The decision-making framework used by Child Safety includes the Structured Decision Making tools. The *Child safety practice manual* nominates multiple points across the child protection continuum, from intake to reunification or permanent out-of-home care, for the mandatory use of Structured Decision Making tools.

The eight Structured Decision Making tools implemented in Queensland are:

- screening criteria
- response priority assessment
- safety assessment
- family risk evaluation for abuse/neglect
- parental strengths and needs assessment/re-assessment
- child strengths and needs assessment/re-assessment
- family risk re-evaluation for in-home cases
- family reunification assessment (Wisconsin Children’s Research Center 2009).

The tools, which are predictive rather than forensic, are based on the actuarial risk assessment model. More detail about the Structured Decision Making tools and about the decision-making process more generally is provided in Chapter 4.

## Agreements and orders for assessment and investigation

### *Care assessment agreement*

An assessment is preferably undertaken with the consent of parents and can occur with the assistance of a care assessment agreement where the department suspects a child is in need of protection and considers an investigation is necessary to assess that fact. The care assessment agreement operates where the department is satisfied that it is necessary to provide interim protection for the child while the investigation is being completed. By entering into an agreement, the parent agrees to:

- have the child placed by the department with an approved carer, Licensed Care Service, or another entity
- authorise the department to act in all day-to-day matters including decisions about urgent medical attention
- have contact with the child at such times and in such a manner as is mutually acceptable to themselves, the carer and the department.

A care assessment agreement operates for a maximum of 30 days and cannot be extended.

### *Temporary assessment and court assessment orders*

The Child Protection Act also provides that where a parent does not consent, Child Safety can apply to the court for a temporary assessment order (maximum of 3 business days) and/or a court assessment order (up to 28 days), to allow an investigation to be undertaken.

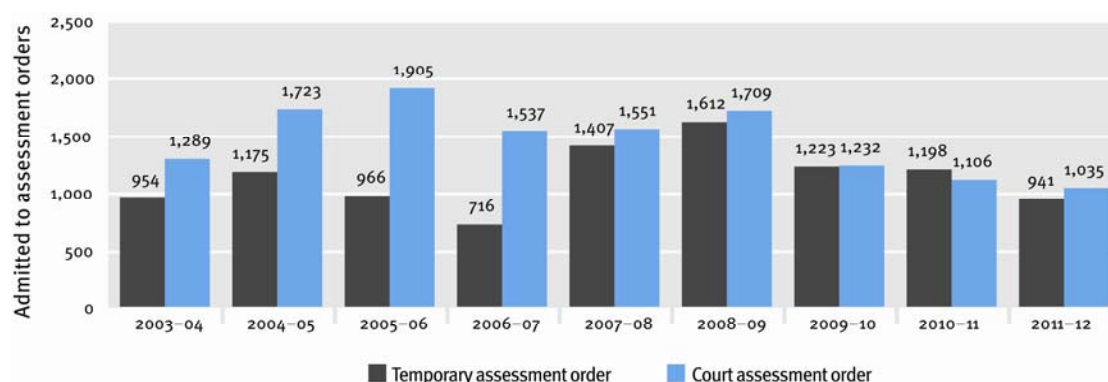
In deciding an application for a temporary assessment order, a magistrate must be satisfied that reasonable steps have been taken to obtain parental consent or it is not practicable to take steps to obtain the consent.

When making a temporary assessment order, a magistrate has the power to:

- direct an authorised officer or a police officer to have contact with a child
- direct restricted contact between the parent and the child
- grant custody if necessary to provide interim protection for the child while the investigation is carried out
- require a medical examination of the child
- authorise an officer or a police officer to enter and search a place to find a child.

Figure 4 shows that just under 1,000 temporary assessment orders were granted in 2011–12.

**Figure 4: Admissions to assessment orders by type of order, Queensland, 2003–04 to 2011–12**



**Source:** Department of Communities, Child Safety and Disability Services, *Our Performance*

**Notes:** Where a child is the subject of more than one admission to an assessment order during the period, an admission is counted for each instance.

If more than three business days are required to complete an investigation and assessment, a court assessment order (s 44) may be sought. The order can last up to 28 days and provides for the same arrangements as a temporary assessment order. A court assessment order can be extended for a further 28 days if required. Figure 4 above shows that just over 1,000 court assessment orders were granted in 2011–12.

### Investigation outcomes

Forensic investigation of child abuse and neglect allegations is undertaken by local teams based in Child Safety service centres.

In Queensland, investigation outcomes comprise three key assessments: risk, harm and need for protection. Conclusions are reached through the analysis of risk and protective factors in the family, and evidence of harm having actually occurred to a child (for example, broken bones or significant bruising). The following definitions are used in this process:

- Cumulative harm is defined (in the *Child safety practice manual*) as harm experienced by a child as a result of a series or pattern of harmful events and experiences that may have occurred in the past or are ongoing. There is a strong possibility that there will be multiple interrelated risk factors over critical developmental periods. The effects of cumulative harm can diminish a child’s sense of safety, stability and wellbeing (Department of Communities 2010a).
- For unacceptable risk of harm, the Child Protection Act (s 10) refers to harm which has not yet occurred but is likely to in the future, if existing risk factors are not reduced or removed. A child may be assessed as in need of protection if the level of assessed future risk is probable as opposed to merely possible, if the identified likely harm will have a significant detrimental effect on the child’s wellbeing if it

does occur, and if there is not a parent able and willing to protect the child from future harm (Department of Communities 2010a).

- A child in need of protection is defined as one who has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect the child from harm (Child Protection Act s 10) (Department of Communities 2010a).

There are six possible assessment outcomes, described below.

### ***Unsubstantiated***

This outcome is recorded when it is assessed that:

- no actual harm has occurred, the child is not at an unacceptable risk of harm and the child has a parent willing and able to protect them, or
- an unborn child will not be at an unacceptable risk of harm after birth (Department of Communities, Child Safety and Disability Services 2012c).

### ***Substantiated – child not in need of protection***

This outcome is recorded when it is assessed that a child has suffered significant harm as defined in the Child Protection Act, but the child is not at an unacceptable risk of future harm because they have a parent who is willing and able to protect them (Department of Communities, Child Safety and Disability Services 2012c).

### ***Substantiated – child in need of protection***

This outcome is recorded when it is assessed that:

- a child has experienced significant harm and there is an unacceptable risk of future harm to the child because they do not have a parent willing and able to protect them, or
- a child is at an unacceptable risk of harm because the child does not have a parent willing and able to protect them, although no actual harm has occurred, or
- an unborn baby will be at an unacceptable risk of harm after birth (Department of Communities, Child Safety and Disability Services 2012c).

### ***No investigation and assessment outcome***

This outcome is recorded in any of the following situations:

- the investigation and assessment has not commenced because the child and family could not be located
- the investigation and assessment has commenced, but is not able to be completed, as there is insufficient information to decide on an outcome, and the

family cannot be located

- a child has died before the completion of an investigation and assessment and there is insufficient information to decide on an outcome
- a woman believed to be pregnant advises that she is no longer pregnant and this is confirmed with her medical practitioner (or reasonable attempts have been made to do so)
- the pregnant woman has not been located and two months have passed since the estimated date of delivery (Department of Communities, Child Safety and Disability Services 2012c).

### ***Unsubstantiated – ongoing intervention continues***

This outcome is recorded when a child is already subject to ongoing intervention at the time of the investigation but no actual harm has occurred and an unacceptable risk of harm has not been identified during the current investigation. Ongoing intervention is a generic practice term that encompasses support service cases,<sup>6</sup> intervention with parental agreement cases, supervision orders, directive orders and child protection orders granting custody and guardianship to the chief executive or another person. This outcome can also be recorded for an unborn baby where it is assessed they will not be subject to unacceptable risk of harm after birth (Department of Communities, Child Safety and Disability Services 2012c).

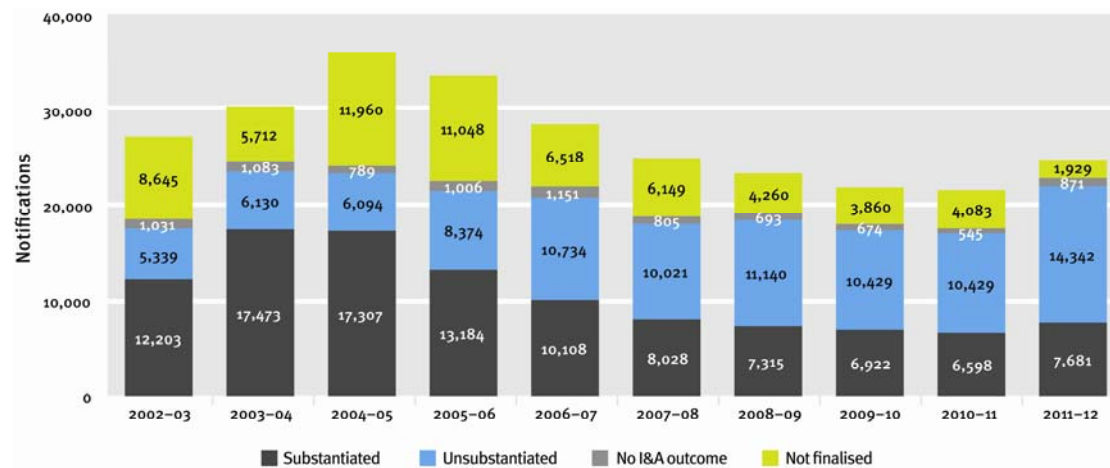
### ***Substantiated – ongoing intervention continues***

This outcome is recorded when a child is already subject to ongoing intervention at the time of the investigation and:

- the child has suffered actual harm but no unacceptable risk has been identified as part of the current investigation, or
- the child has not suffered actual harm but an unacceptable risk of harm is present, because the child does not have a parent willing and able to protect them, or
- the child has suffered actual harm and an unacceptable risk of harm is present, because the child does not have a parent willing and able to protect them, or
- an unborn child will be at unacceptable risk of harm after its birth (Department of Communities, Child Safety and Disability Services 2012c).

In 2011–12, 24,823 notifications were recorded of which 7,681 were substantiated (30.9 per cent) and 14,342 were unsubstantiated (57.8 per cent). An investigation was not able to be progressed for 871 notifications (3.5 per cent) and a further 1,929 investigations were not finalised (7.8 per cent) at the time of data extraction. Figure 5 shows that both notifications and substantiations peaked in 2004–05 (after the Crime and Misconduct Commission Inquiry), with a downward trend following that, although a slight increase has been experienced in 2011–12.

**Figure 5: Notifications requiring investigation by outcome, Queensland, 2002–03 to 2011–12**



**Source:** Department of Communities, Child Safety and Disability Services, *Our Performance*

**Notes:** *No I&A outcome* is recorded where it is determined that the investigation was unable to be commenced or completed due to insufficient information or inability to locate a child or family. *Not finalised* is recorded for investigations which are not finalised by the cut-off date for national data collection (31 August).

## The role of SCAN

The Child Protection Act requires the chief executive to establish a SCAN (Suspected Child Abuse and Neglect) system to enable a coordinated, multi-agency response to children for whom statutory intervention is required to assess and meet their protection needs. This is achieved by:

- timely information sharing between SCAN team core members
- planning and coordination of actions to assess and respond to the protection needs of children who have experienced harm or risk of harm
- holistic and culturally responsive assessment of children’s protection needs (Department of Communities, Child Safety and Disability Services 2012i).

The SCAN team system comprises representatives of core member agencies:

- Department of Communities, Child Safety and Disability Services
- Queensland Health
- Department of Education and Training
- Queensland Police Service
- the local recognised entity.

The SCAN process is described in more detail in Chapter 4.

### 2.3.3 The response phase

#### Types of interventions for children in need of protection in Queensland

The Child Protection Act outlines the range of interventions (defined as actions to help meet needs, s 51ZA) for children where actual past harm is proved, or the risk of future harm is assessed as being at an unacceptable level (having regard to the likelihood of its occurrence) and no parent is willing and able to protect the child. These include:

- intervention with parental agreement (child protection care agreements)
- child protection orders (comprising directive orders, supervision orders, custody orders, short-term or long-term guardianship orders).

These are described below in order of increasing levels of coercion and intrusiveness, along with any available data outlining the numbers of each order type.

#### *Voluntary arrangements*

##### *Intervention with parental agreement*

The chief executive is required to give consideration to undertaking intervention with parental agreement (s 51ZB). The *Child safety practice manual* states that an intervention with parental agreement is a short-term (maximum of 12 months) intervention aimed at building the capacity of the family to meet the protective needs of the child, typically while the child remains in the family home. It further states that all of the following factors must be present to open an intervention with parental agreement:

- the child is in need of protection
- the parents are able and willing to work actively with Child Safety to reduce the level of risk in the home
- a child protection order is not appropriate
- it is assessed that the child is safe to remain at home for all or most of the intervention
- it is likely that the parents will be able to meet the protection and care needs of the child once the intervention is complete (Department of Communities, Child Safety and Disability Services 2012c, Chapter 6).

During an intervention with parental agreement, a child may be placed temporarily in out-of-home care using a child protection care agreement if this is deemed necessary to ensure their care and protection needs are met, or if the provision of respite for the caregiver is agreed during case planning (case planning and management is described in more detail below).



### *Child protection care agreement*

Under an intervention with parental agreement the relevant parties have the power to enter into a 'voluntary' child protection care agreement. The agreement is signed by a parent and allows a child to be placed away from home with an approved carer. The agreement can only be entered into if the child has been deemed to be in need of protection and there is no child protection order in force. Unlike the assessment care agreement, the department retains custody of the child under a child protection care agreement (s 51ZG). This agreement can last for a period of 30 days and can be extended (for periods of 30 days), however such agreements cannot be in force for more than six months in a 12 month period.

### *Court orders*

The Childrens Court has jurisdiction to determine applications for assessment and child protection orders. The majority of these applications are heard by a magistrate with an avenue of appeal to a District Court judge (refer to Chapter 10).

The Childrens Court can make one of several child protection orders. These are directive orders, supervisory orders, custody orders, short-term guardianship orders and long-term guardianship orders (s 61).

The court can only make an order if it is satisfied that:

- the child is in need of protection and the order is appropriate and desirable for the child's protection
- there is a case plan for the child that has been developed or revised and that is appropriate for meeting the child's assessed protection and care needs
- in a contested case, a conference has been held or a reasonable attempt has been made to hold one
- the child's wishes or views, if ascertainable, have been made known to the court
- protection is unlikely to be achieved by less intrusive means.

Additional requirements apply to the making of custody or guardianship orders (see s 59(5)–(8)).

### *Directive orders*

Directive orders comprise two types of order. The first type directs a parent to do or refrain from doing something directly related to the child's protection (s 61(a)). The second type places restrictions on parental contact with the child, either by directing that no contact occur, or by directing that it occur only in the presence of a specific person or category of person, such as a child safety officer (s 61(b)). A directive order may be applied for in conjunction with a supervision order or other child protection

order and can be in place during an intervention with parental agreement, in limited circumstances (Department of Communities, Child Safety and Disability Services 2012c).

The *Child safety practice manual* states that a directive order may be applied for when all of the following circumstances are present:

- the parents will not take the action required on a voluntary basis
- the child can safely remain at home, as long as the parents take certain actions
- the action is able to be clearly defined, and what is required of parents is easily understood by them
- a specific order is able to be made by the court
- failure on the parents' part to comply with the order will not place the child at unacceptable risk of harm
- the parents are likely to adhere to the recommended order (Department of Communities, Child Safety and Disability Services 2012c, Chapter 3).

The *Child safety practice manual* states that a directive order placing conditions on parental contact with a child (contact order) may be applied for when in one of the following circumstances:

- the child could remain at home with a protective parent if the other parent who may be at risk of harming the child was subject to restricted or no contact
- a protective parent consents to the child being cared for by another person (for example, a relative), and the parent to whom the child protection concerns apply was subject to restricted or no contact
- there is a Family Court of Australia parenting order that needs to be overridden for child protection reasons, allowing the protective parent to apply for variation of the Family Court of Australia order
- there is a need to prevent a parent from harassing the child in a significantly harmful way (for example, by making telephone threats), and prosecution may be required to enforce the contact order – in this case, the order may be made in conjunction with any other child protection order
- the child's safety could be secured through the supervision of the parent to whom the child protection concerns apply, and there is a person assessed as able and willing to provide the supervision (Department of Communities, Child Safety and Disability Services 2012c, Chapter 3).

### *Supervision orders*

A supervision order requires the chief executive to supervise a child's protection in relation to the matters stated in the order (s 61(c)).

The *Child safety practice manual* states that a supervision order may be applied for when all of the following circumstances are present:

- the child is in need of protection, but supervision and direction by Child Safety will enable:
  - the child to safely remain at home
  - Child Safety to monitor the situation to ensure that the matters specified in the order are addressed by the parents
- it is possible to specify the areas relating to the child's care that are to be supervised by Child Safety
- failure on the parents' part to comply with Child Safety requirements will not place the child at immediate risk of harm
- the intervention needed, with the child residing in the home, will not be accepted by the parents on a voluntary basis
- it is appropriate for the parents to retain their custody and guardianship rights and responsibilities (Department of Communities, Child Safety and Disability Services 2012c, Chapter 3).

As with intervention with parental agreement, a child or young person may be placed in out-of-home care using a child protection care agreement while the child's parents are subject to a supervision order.

### *Custody orders*

A custody order can be granted to a suitable person who is a member of the child's family, or to the chief executive (s 61(d)).

The *Child safety practice manual* outlines strict conditions relating to an application for a custody order. Preference is given to the granting of a custody order to a member of the child's family. This is granted where:

- the child cannot remain at home under a less intrusive order
- Child Safety is working towards the reunification of the child and family
- there is an appropriate relative able and willing to assume short-term custody for the purpose of protecting the child and is also willing to work with Child Safety in planning for the child to return to the care of the parents
- there is no significant conflict between the parents and the relative, and the relative will facilitate appropriate family contact between the child and the parents
- it is not necessary to impose a 'no contact' decision on a parent
- the member of the child's family is able and willing to assume full financial responsibility for the care of the child.

If there is uncertainty about one of the above factors, it may be appropriate to seek an order granting custody to the chief executive while still placing the child with the relative.

If it is necessary to restrict a parent from all contact with the child, or to actively remove guardianship from a parent due to the very serious nature of the harm, an order granting short-term guardianship to the chief executive will be sought.

### *Guardianship orders*

A short-term guardianship order can only be granted to the chief executive (s 61(e)) and only for up to two years.

The *Child safety practice manual* instructs staff that it is preferable to allow parents to retain guardianship unless there are reasons why this is not in the child's best interests. The manual goes on to say that an application for a short-term guardianship order to the chief executive should be made when:

- the child cannot be safely left at home using a lesser order
- Child Safety is working towards the reunification of the child with the family, and one of the following circumstances apply:
  - there is no available parent to exercise guardianship and be involved in case planning
  - it is necessary to actively remove guardianship from the parents, due to the very serious nature of the harm, or because they are incapable of exercising guardianship
  - it is assessed that the parent will fail to make appropriate guardianship decisions, such as schooling and health care, and therefore it is in the child's best interests for guardianship to be vested in the chief executive.

A long-term guardianship order can be granted to the chief executive or to someone other than the chief executive (s 61(f)), up until the child turns 18 years. The court must not grant long-term guardianship to the chief executive if it can grant such guardianship to some other suitable person (s 59(7)). The Child Protection Act provides that before making a long-term guardianship order, the court must be satisfied that

- There is no parent able and willing to protect the child within the foreseeable future, or
- The child's need for emotional security will be best met in the long term by making the order (s 59(6)).

The Explanatory Notes to the Child Protection Bill 1998 provide an example of circumstances which might meet the child's need for emotional security:

If an older child in care has been with the same care provider family for many years, it may best meet the child's emotional needs in the long term to remain with the care

providers, even though the child may now have a parent able to provide adequate care. To move the child now may cause lasting emotional damage to the child.

The *Child safety practice manual* outlines that a long-term guardianship order is sought only after a period of case planning has been undertaken, and family reunification has been attempted but has failed:

Once a decision is made to pursue an alternative long-term stable living arrangement, it is not appropriate for a child to remain on a short-term custody or short-term guardianship order (Department of Communities, Child Safety and Disability Services 2012c).

In practice, long-term guardianship orders are sought if:

- efforts have been made to locate both parents
- significant work has been undertaken to assist the family to care for the child
- the department's assessment is that a long-term stable living arrangement should be pursued, and that the child's need for emotional security and stability will be best met in the long-term by the order (Department of Communities 2011b).

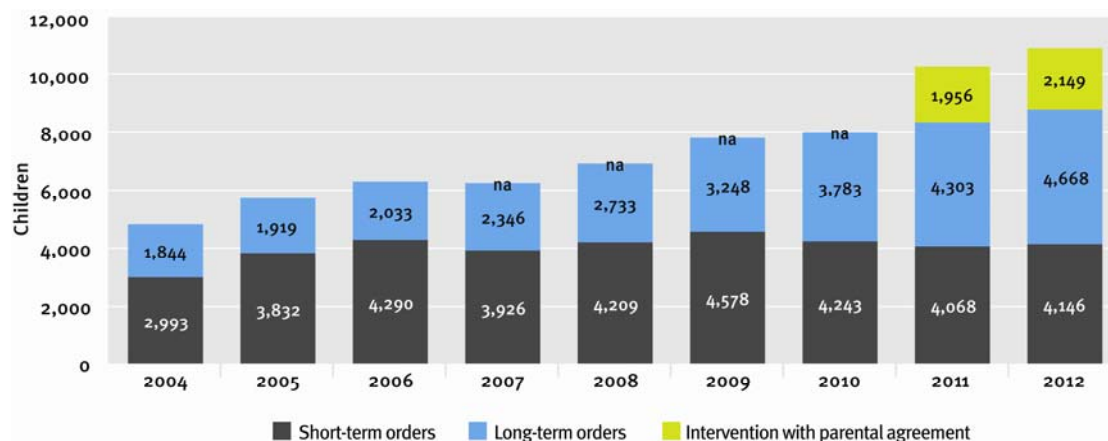
The *Child safety practice manual* establishes that a long-term guardianship order granted to a person other than the department's chief executive gives that person:

- the right to care for the child on a daily basis
- the right and responsibility to make decisions about the child's daily care
- all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, welfare and development of the child (Department of Communities, Child Safety and Disability Services 2012c).

The long-term guardian is legally obliged to inform the child's parents where the child is living and provide opportunity for contact between the child and the parents. The long-term guardian must also notify the department immediately should the child no longer reside in their direct care (Department of Communities, Child Safety and Disability Services 2012c).

Figure 6 shows that the number of children on child protection orders in Queensland has been steadily growing, with 8,814 children on child protection orders in June 2012. Voluntary arrangements for children in need of protection have been used to a much lower extent, with only 2,149 children on interventions with parental agreement in June 2012.

**Figure 6: Children in ongoing interventions by type of intervention at 30 June, Queensland, 2004 to 2012**



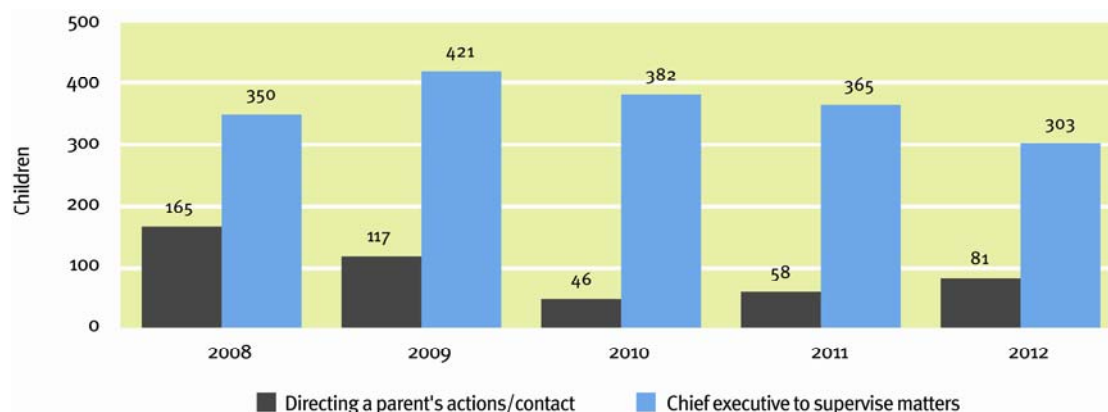
**Source:** Department of Communities, Child Safety and Disability Services, *Our Performance*; Department of Child Safety 2008, *Child Protection Queensland 2007–08 Performance Report*

**Notes:** Different types of child protection orders can be granted by the Childrens Court – *short-term* child protection orders (directive, supervision and short-term custody or guardianship to the chief executive or a suitable person who is a member of the child's family) and *long-term* child protection orders (guardianship to the chief executive, a relative of the child or 'another suitable person'). An *Intervention with parental agreement* (IPA) is opened following an assessment that the parents are able and willing to work actively with Child Safety Services. Comparable data on IPAs prior to 2011 are not available.

Child protection orders are most likely to be used for children subject to ongoing intervention. Intervention with parental agreements accounted for 20 per cent of cases in June 2012, whereas 80 per cent of children were on child protection orders (Department of Communities, Child Safety and Disability Services 2012n).

The Commission is not aware of the reasons for the limited use of intervention with parental agreement. However, it would appear that the less coercive orders are generally decreasing across the board. Directive orders and supervision orders both decreased in 2010 (Figure 7). Between 2010 and 2012, supervision orders continued to decrease from 382 cases to 303 cases, while there was some increase in the relatively small number of children on directive orders, from 46 to 81 at 30 June 2012 (see further discussion in Chapter 5).

**Figure 7: Children subject to directive or supervisory short-term orders by order purpose at 30 June, Queensland, 2008 to 2012**

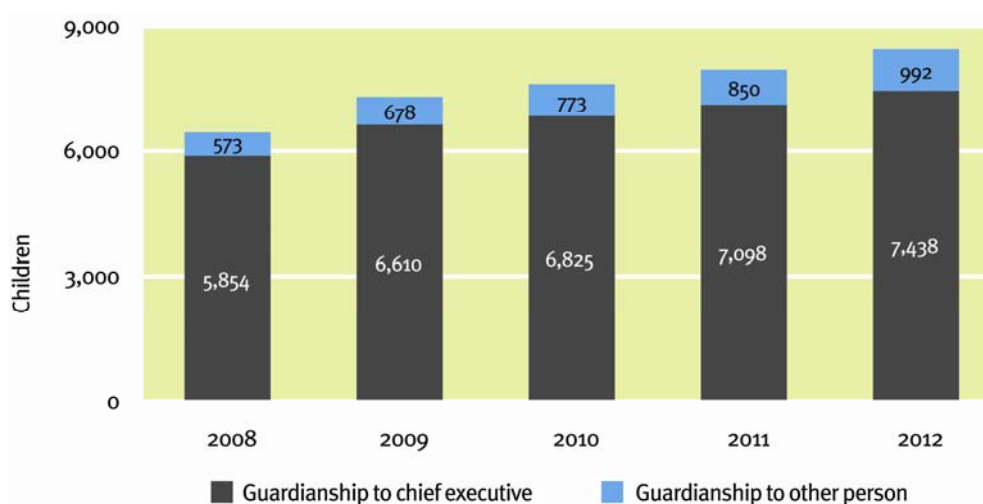


**Source:** Department of Communities, Child Safety & Disability Services, *Our performance*, Table CPO.4.

**Notes:** If a child is subject to more than one type of order they are counted once according to their most serious order/directive.

Figure 8 shows the steady increase in the use of custody and guardianship child protection orders (Department of Communities, Child Safety and Disability Services 2012h, Table CPO.4). This is in the context of a declining use of assessment orders,<sup>7</sup> which peaked in 2008–09 at 3,321 orders and fell to 2,304 in 2010–11 (Department of Communities, Child Safety and Disability Services 2012h, Tables Ao.1 and Ao.2). This means that the percentage of investigation cases resulting in custody or guardianship orders is steadily increasing.

**Figure 8: Children subject to short and long-term orders granting guardianship/custody by guardian at 30 June, Queensland, 2008 to 2012**



**Source:** Department of Communities, Child Safety & Disability Services, *Our performance*, Table CPO.4.

**Notes:** If a child is subject to more than one type of order, they are counted once according to their most serious order/directive.

## *Case planning and management*

When a child has been deemed to be in need of protection, and Child Safety will be providing ongoing assistance, the Child Protection Act requires the child to have a case plan.

A case plan may include (s 51B):

- a goal or goals to be achieved by the plan
- arrangements about where the child will live
- services to be provided to meet the child's care and protection needs and to promote the child's wellbeing
- those matters for which the chief executive will be responsible, including any support services, and those matters for which the parent or carer will be responsible
- the contact arrangements with the child's family or any other person with whom the child is connected
- arrangements for maintaining the child's ethnic and cultural identity
- a proposed review date for the plan.

A case plan, under s 51D of the Act, is intended to facilitate timely decision-making and the participation of the child, their parents, other members of the child's family, and Aboriginal or Torres Strait Islander agencies and people (where relevant). It provides an opportunity to involve other appropriate organisations in the care and protection of the child, and aims to give priority to the child's need for stable care and continuity of relationships. It is a requirement that the case plan can be understood by those subject to it.

Family group meetings must be convened by the chief executive to develop the case plan and to ensure its review (s 51H). For children where there is no long-term guardian, the case plan must be reviewed 'regularly' (s 51V), but in any case at least every 12 months. A child who has a long-term guardian may request the case plan to be reviewed at any time (although the chief executive is not obliged to undertake a review on request), but the chief executive must contact the child every 12 months to give them an opportunity to seek a review (s 51VA). Family group meetings are described in more detail in Chapter 10.

Case management responsibilities for all ongoing intervention types are allocated to a child safety officer. Case management is defined by the *Child safety practice manual* as 'a way of working with the child, family and other agencies to ensure that the services provided are coordinated, integrated and targeted to meet the goals of the case plan' (Department of Communities, Child Safety and Disability Services 2012c, Chapter 3).



The *Child safety practice manual* further states that, during ongoing intervention, the allocated child safety officer is responsible for facilitating actions to implement the case plan, and supporting and monitoring progress toward the case plan goal and outcomes. This is to be carried out with the support of the child safety support officer, team leader, other Child Safety staff and service providers (for a description of these roles see Chapter 8).

### ***The out-of-home care system***

Out-of-home care is used for children and young people who cannot safely remain in their family home, either during the investigation and assessment phase, or following formal intervention by the department as part of a child protection order.

Once a child is taken into long-term care, the Child Protection Act emphasises the importance of stability and security as central considerations when deciding on their living arrangements. The Act is administered according to the principle that ‘if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care’ (s 5B(g)). The Act also recognises that ‘a child should have stable living arrangements’, which includes arrangements that provide for ‘a stable connection with the child’s family and community’ and ‘for the child’s developmental, educational, emotional, health, intellectual and physical needs to be met’ (s 5B(k)). The child’s need for emotional security can be a factor for consideration by a court when deciding whether or not to make a long-term guardianship order (s 59(6)). Furthermore, ‘a delay in making a decision in relation to a child should be avoided, unless appropriate for the child’ (s 5B(n)).

Queensland’s *Child safety practice manual* requires that a long-term out-of-home care placement be pursued for a child under three years of age when the child has been in an out-of-home placement for 18 of the past 24 months and:

- the risk level has remained ‘high’ for 12 consecutive months
- the contact has been rated as ‘fair’, ‘poor’ or ‘none’ for 12 consecutive months
- the household has been deemed ‘unsafe’ for 12 consecutive months.

For a child over the age of three, a long-term out-of-home care placement must be pursued when the child has been in an out-of-home placement for 24 of the past 30 months and:

- the risk level has remained ‘high’ for 18 consecutive months
- the contact has been rated as ‘fair’, ‘poor’ or ‘none’ for 18 consecutive months
- the household has been deemed ‘unsafe’ for 18 consecutive months.

A long-term out-of home care plan may involve:

- arranging for the child to live with a member of the child’s family or another suitable person under a child protection order granting long-term guardianship of

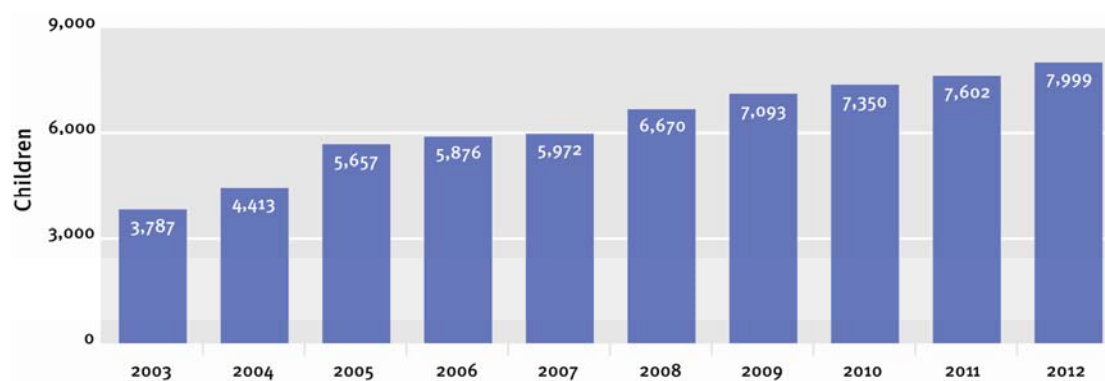
the child to the chief executive or to another

- arranging for the child's adoption under the *Adoption Act 2009*
- arranging for the child's transition to independent living (for a child aged 15 years or over).

The Child Protection Act also recognises the importance of the role of the family and the need to preserve it, by facilitating reunification after protective removal, where possible and in a child's best interests. The Act assumes that the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family (s 5B(c)), and if a child is removed from his or her family, support should be given to the child and the family for the purpose of allowing the child to return to his or her family, if the return is in the child's best interests (s 5B(f)).

Figure 9 shows that, as with the number of child protection orders, the number of children in out-of-home care has been steadily increasing since 2003, with 7,999 children in out-of-home care in 2012.

**Figure 9: Children in out-of-home care at 30 June, Queensland, 2003 to 2012**



**Source:** Department of Communities, Child Safety and Disability Services, *Our Performance*; Steering Committee for the Review of Government Service Provision 2012

**Notes:** Data prior to 2004 on children in out-of-home care include the following categories of children even if they do not meet the definition of 'out-of-home care': wards, children under a guardianship order, protected persons (including overseas adoptees) and pre-adoption placements. The scope for out-of-home care was expanded in 2007–08 to include children in care where a financial payment was offered but was declined by the carer.

### ***Transition from care***

The Child Protection Act provides for planning and assistance to be given to a child who is or who has been in care to transition to independence. The Act does not specify an age limit on the provision of assistance or the time period over which assistance can be provided. Relevant provisions include:

- the chief executive providing, or helping to provide, services that encourage children in their development into responsible adulthood (s 7(1)(e))

- a child protection order ends when the child turns 18 (s 62(4))
- the framework for case planning and management up to age 18 (s 51A-Y)
- a charter of rights for a child in care that includes the right to receive appropriate help with the transition to independence – including, for example, help with housing, access to income support, and training and education (s 74, sch 1K)
- a requirement for the department to provide help in the transition to independence (s 75)
- a requirement for the department to provide financial assistance to support the transition to independence (s 159(2)).

The *Child safety practice manual* provides for child safety officers to start planning for transition from care with a young person from 15 years of age.

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<sup>1</sup> Submission of Queensland Council of Social Services, 28 September 2012 [p4].

<sup>2</sup> Submission of ACT for Kids, 'Keeping Indigenous children and young people connected to community, culture and country', September 2012 [p4; p6].

<sup>3</sup> Submission of Anglicare Southern Queensland, November 2012 [p4].

<sup>4</sup> If the chief executive becomes aware (whether because of a report made to the chief executive or otherwise) of alleged harm or risk of harm to a child and reasonably suspects that the child is in need of protection, the chief executive must immediately:

- have an authorised officer investigate the allegation and assess the child's need of protection; or
- take other action the chief executive considers appropriate (*Child Protection Act 1999* (Qld) s 14(1)).

<sup>5</sup> Statement of Brad Swan, 26 October 2012.

<sup>6</sup> A support service case is a type of voluntary intervention offered to families by Child Safety aimed at reducing the likelihood of future harm to a child, or an unborn child after birth, or to provide ongoing support and assistance to a young person who is transitioning from care, after their 18th birthday. A support service case can be opened following assessment where it is decided the child is not in need of protection, but the level of risk in the family is 'high.' Support service cases are also opened after investigations where it is assessed that an unborn child will be in need of protection after its birth (Department of Communities, Child Safety and Disability Services 2012c).

<sup>7</sup> An assessment order is a short-term order that is granted by either a magistrate or the court, under the Child Protection Act, to allow a range of activities to occur to complete an investigation and assessment, when a parent refuses to give consent for certain parts of an investigation to occur.