Parliamentary Committees

Child Protection and Other Legislation Amendment Bill 2020

Report No. 3, 57th Parliament
Community Support and Services Committee
February 2021

Community Support and Services Committee

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All web address references are current at the time of publishing.

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Abbreviations

AASW	Australian Association of Social Workers
Adoption Act	*Adoption Act 2009*
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principles
ATSIWLSNQ	Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc
BAQ	Bar Association of Queensland
the Bill	Child Protection and Other Legislation Amendment Bill
the committee	Community Support and Services Committee
CP Act	*Child Protection Act 1999*
DCPL	Director of Child Protection Litigation
the department	Department of Children, Youth Justice and Multicultural Affairs
FLP	Fundamental legislative principles
HRA	*Human Rights Act 2019*
LACSC	Legal Affairs and Community Safety Committee
LSA	*Legislative Standards Act 1992*
PCO	Permanent Care Order
QCOSS	Queensland Council of Social Services
QFCC	Queensland Family and Child Commission
QFCC led joint submission	The joint submission made by the Queensland Family and Child Commission, Australian Human Rights Commission, Queensland Human Rights Commission, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, SNAICC, PeakCare Queensland, Queensland Council of Social Services and the Office of the Public Guardian
QLS	Queensland Law Society
UNCRC	United Nations Convention on the Rights of the Child
YAC	Youth Advocacy Centre Inc.

Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Child Protection and Other Legislation Amendment Bill 2020.

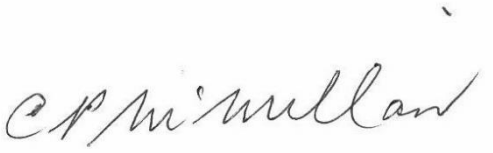
The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Child Protection and Other Legislation Amendment Bill 2020 was examined previously by the former Legal Affairs and Community Safety Committee (56th Parliament) who tabled its report on 28 August 2020.

Given that the Bill is the same as the one which was examined comprehensively by the Legal Affairs and Community Safety Committee, the committee agreed to include the former committee's report as part of its report.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank the Department of Children, Youth Justice and Multicultural Affairs and our Parliamentary Service staff.

I commend this report to the House.



Ms Corrine McMillan MP

Chair

Recommendations

Recommendation 1 **3**
The committee recommends the Child Protection and Other Legislation Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Community Support and Services Committee (committee) is a portfolio committee of the Legislative Assembly, established on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's areas of portfolio responsibility are:

- Communities, Housing, Digital Economy and the Arts
- Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, and
- Children, Youth Justice and Multicultural Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*, and
- for subordinate legislation – its lawfulness.[2]

The Child Protection and Other Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 3 December 2020. The committee was required to report to the Legislative Assembly by 12 February 2021.

1.2 Inquiry process

The Child Protection and Other Legislation Amendment Bill 2020, was originally referred to the Legal Affairs and Community Safety Committee (LACSC) in the 56th Parliament. The LACSC received 39 submissions on the Bill, held a departmental public briefing and held public and private hearings, at which it heard from stakeholders and submitters.

The LACSC tabled its report on that Bill on 28 August 2020, however, the Bill lapsed before it was debated in the Parliament when the 56th Parliament was dissolved on 6 October 2020. The LACSC recommended, in its report, that the Bill be passed.

Given that the Bill before the committee is the same as the Bill examined by the LACSC, the committee considered the evidence provided to the LACSC as part of its inquiry, including submissions and the hearing transcripts. The committee decided to include the LACSC report as part of its report – see **Appendix B**.

On 7 December 2020, the committee invited stakeholders and subscribers to make further written submissions on the Bill. Fifteen further submissions were received. See **Appendix A** for a list of submitters.

The committee requested a written brief from the Department of Children, Youth Justice and Multicultural Affairs (the department) on the Bill and received written advice from the department in response to matters raised in submissions.

The submissions and correspondence from the department are available on the committee's webpage.

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93 and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

1.3 Policy objectives of the Bill

The explanatory notes state that the objectives of the Bill are to:

- enhance the approach to permanency under the *Child Protection Act 1999* (CP Act)
- clarify that adoption is an option for achieving permanency for children in care, as part of the suite of alternative long-term care options available, and
- clarify the importance of and promote alternative permanency options for children under a long-term guardianship order to the chief executive.[3]

The Bill responds to recommendation 6(b) of the findings of the Deputy State Coroner, delivered on 2 June 2020, following the inquest into the death of Mason Jet Lee. Recommendation 6(b) recommended that:

> The Government consider whether the *Adoption Act 2009* (Qld) should similarly reflect the 2018 amendments to the *Adoption Act 2000* (NSW), expecting children to be permanently placed through out of home adoptions within 24 months of entering the department's care.[4]

The Deputy State Coroner's recommendation followed the Queensland Child Protection Commission of Inquiry's recommendation that the then Department of Communities, Child Safety and Disability Services should routinely consider and pursue adoption (particularly for children aged under three years) in cases where reunification is no longer a feasible case-plan goal.[5]

In accepting recommendation 6, the Queensland Government noted that it had, in 2018, introduced significant reforms to improve permanency outcomes for children involved in the child protection system by way of amendments to the CP Act. The Queensland Government acknowledged, however, that '… more needs to be done to improve permanency outcomes and stability for children in care'.[6]

The Bill also includes a technical amendment to the *Adoption Act 2009* (Adoption Act) to allow the chief executive of the department to apply for final adoption orders for a small number of children from overseas.[7]

1.4 Government consultation on the Bill

The explanatory notes state that targeted consultation was undertaken by the former Department for Child Safety, Youth and Women on the proposed amendments to the CP Act with 'key child protection, adoption, Aboriginal and Torres Strait Islander organisations and legal stakeholders regarding the policy proposals'.[8]

In relation to the amendments to the Adoption Act, the explanatory notes state that consultation was not undertaken outside of the government 'given the limited application and technical nature of the amendment'. The explanatory notes stated that consultation was undertaken with the Australian Government in relation to the placement issue, which informed the need for the amendments.[9]

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3 Explanatory notes, p 2.

4 Deputy State Coroner, 'Inquest into the death of Mason Jet Lee', *Coroners Court of Queensland*, 2 June 2020, p 110.

5 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013, Recommendation 7.4, p 229.

6 Statement of compatibility, p 1.

7 Explanatory notes, p 2.

8 Explanatory notes, p 6.

9 Explanatory notes, p 6.

The Youth Advocacy Centre Inc. (YAC) and the Queensland Law Society (QLS) raised concerns as to whether the government undertook sufficient consultation on the Bill with Aboriginal and Torres Strait Islander stakeholders.[10]

In response, the department advised that 'Targeted consultation was undertaken with key Aboriginal and Torres Strait Islander stakeholders to inform the development of the Bill'. The department stated that Aboriginal and Torres Strait Islander stakeholders expressed strong views opposing consideration of adoption of Aboriginal and Torres Strait Islander children from care. The submitters noted the 'significant and lifelong trauma associated with severing a child's legal ties with their family and the risk of disconnection from family, culture and kin'.[11]

The department advised that following consultation on the Bill, the proposal was:

> … refined to better align with section 7 of the Adoption Act, which states that because adoption is not a part of Aboriginal and Torres Strait Islander culture, adoption of an Aboriginal and Torres Strait Islander children is to be considered as a way of meeting the child's need for long-term stable care only if there is no better available option.[12]

The department stated that 'The Bill intends to make it clear that adoption is the least preferred option to achieve permanency for an Aboriginal or Torres Strait Islander child'.[13]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by the department, submitters and the findings of the LACSC inquiry, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Child Protection and Other Legislation Amendment Bill 2020 be passed.

10 Submissions 3 and 13.

11 Department, correspondence, 22 January 2021, p 5.

12 Department, correspondence, 22 January 2021, pp 5-6.

13 Department, correspondence, 22 January 2021, p 6.

2 Examination of the Bill

Given the comprehensive inquiry conducted on the Bill by the LACSC in the 56th Parliament, the committee only considered new matters raised during its examination of the Bill. This section provides a summary of the issues raised with the committee as part of its inquiry.

2.1 Proposed amendments to the *Child Protection Act 1999*

The Bill proposes to amend the CP Act to:

- clarify that adoption may be considered as a mechanism for achieving permanency for children in care, by explicitly including adoption as the third preference in the permanency hierarchy for children, other than Aboriginal and Torres Strait Islander children, and the last preference for Aboriginal and Torres Strait Islander children, and
- require the chief executive to review the case plan for a child subject to a child protection order granting long-term guardianship to the chief executive within six months of the order reaching two years, to consider whether an alternative arrangement would best achieve permanency for the child.[14]

2.1.1 Hierarchy of preferences for achieving permanency for a child under a child protection order – clause 8

The Adoption Act provides that adoption is currently an option for achieving permanency for a child, subject to a child protection order, who requires long-term care.[15]

This position is recognised in the existing permanency principles at section 5BA(2) of the CP Act, which include an adoption order as an example of a legal arrangement for providing permanency for a child, along with a suite of other options, including reunifying a child with their biological family, long-term guardianship orders and Permanent Care Orders (PCOs).[16]

The Bill seeks to enhance the approach to permanency and clarify that adoption is an option for achieving permanency for children in care. The Bill aims to achieve this by amending section 5BA(4) of the CP Act to provide that for deciding whether an action or order best achieves permanency for a child, the following principles apply, in order of priority:

- the first preference is for the child to be cared for by the child's family
- the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person (including a child protection order granting long-term guardianship or PCO)
- if the child is not an Aboriginal or Torres Strait Islander child – the next preference is for the child to be adopted under the Adoption Act
- the next preference is for the child to be cared for under the guardianship of the chief executive, and
- if the child is an Aboriginal or Torres Strait Islander child – the last preference is for the child to be adopted under the Adoption Act.[17]

[14] Explanatory notes, pp 2-3.

[15] Explanatory notes, p 2.

[16] Department, correspondence, 17 December 2020, p 2.

[17] Clause 8 and explanatory notes, p 2.

2.1.1.1 Submitters' views and department's response

The committee notes that while some submissions to the LACSC inquiry expressed support for clause 8 of the Bill, a significant majority of submissions opposed the proposed amendment.[18]

The submitters who opposed the Bill did so for a variety of reasons, including their opposition to adoption, in principle, concerns about the potential adverse impact on adopted children, in particular Aboriginal and Torres Strait Islander children, a view that existing permanency principles were sufficient, human rights implications and concerns about the adequacy of support services, safeguards and oversight of adoption decisions.

The majority of submissions received by the committee opposed the proposed amendment for similar reasons as those expressed to the LACSC inquiry. The Bar Association of Queensland (BAQ), however, stated that it did not take issue with the express inclusion of adoption at clause 8, as adoption is already one option for giving permanency to children in care.[19]

A summary of the views expressed in submissions and the department's response are outlined below.

Adoption should be last resort and is not in the best interest of the child

A number of submissions, including from individuals with personal experience of adoption and organisations such as the Australian Association of Social Workers (AASW), Association for Adoptees and Adoptee Rights Australia, stated that adoption should be the last resort, and only considered after all other options for achieving the safety of a child had been sufficiently explored.[20]

These submitters considered that adoption may have lifelong, adverse impacts on a child, including an increased incidence of suicide, entrenchment in the youth justice system, homelessness, substance abuse and mental health issues.

Other submitters noted that adoption does not always lead to better outcomes and create stability and safety for a child. Submitters also considered that adoption deletes a person's identity and severs their family relationships and connections. Certain submitters called for the Queensland Government to apologise for past adoption practices.[21]

In addition, submitters recommended that the Queensland Government should undertake a comprehensive review of the approaches taken in other jurisdictions, prior to proposing further amendments in the area of adoption.[22]

In response, the department stated that it recognises and acknowledges the significant trauma experienced by many people with lived experience of former forced adoption policy and practice in Queensland. The department stated that:

> On 27 November 2012, the Parliament of Queensland made an historic apology for past forced adoption policies and practices. The apology reflected a recommendation made by the Australian Government Senate Committee Inquiry on the Commonwealth Contribution to Former Forced Adoption Policies and Practices.[23]

The department advised that:

> The Adoption Act came into effect in 2009 and is the result of significant reform including broad community engagement and consultation of Queensland's adoption laws over a number of years. It

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18 Legal Affairs and Community Safety Committee, Report No. 71, 56th Parliament – *Child Protection and Other Legislation Amendment Bill 2020*.

19 Submission 15, p 2.

20 Submissions 1, 4, 5, 6, 9, 10, 11 and 12.

21 Submissions 3, 4 and 9.

22 Submissions 1, 3, 4 and 11.

23 Department, correspondence, 22 January 2021, p 22.

> reflects a contemporary, evidence based legislative framework and is subject to five-yearly statutory reviews of its operation.[24]

The department advised that adoption is an option for achieving permanency for a child who requires long-term care. The department noted that there are existing safeguards in both the CP Act and the Adoption Act to ensure that adoption is pursued only when it is appropriate for an individual child.

The department highlighted that, under section 5A of the CP Act, the main principle for administering the CP Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount (the *paramount principle*).

In addition, the department stated that the Adoption Act is administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount. The Act is also administered under the principle that an adopted child should be cared for in a way that ensures a safe, stable and nurturing family and home life; promotes openness and honesty about the child's adoption; and promotes the development of the child's emotional, mental, physical and social wellbeing.

The department stated that it regularly considers best practice research regarding adoption and adoption outcomes as it becomes available.[25]

Deputy State Coroner's recommendation

The QLS and Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc (ATSIWLSNQ) raised concerns that the proposed amendments are over reliant on the Deputy State Coroner's findings in relation to the inquest into the death of Mason Jet Lee.

The QLS noted that Aboriginal and Torres Strait Islander children are over-represented in the child protection system, and while the inquest into Mason Jet Lee's death recommended adoption, Mason Jet Lee was never placed in out-of-home care and was not an Aboriginal or Torres Strait Islander child. The QLS noted that the rationale for the Deputy State Coroner's recommendation was to take children out of care. However, the QLS stated that this rationale requires further consideration and a more appropriate strategy would be to address the systemic issues surrounding the placement of children in out-of-home care.[26]

Similarly, ATSIWLSNQ considered that there was a risk that adopting the Deputy State Coroner's recommendations as a mandate to legislate adoption within the hierarchy of out-of-home care is premature and inconsistent with the paramount principle of the CP Act.[27]

Proposed amendments are unnecessary, as there are alternative models for achieving permanency

Submitters, including St Vincent de Paul Society Queensland and the QLS, considered that the proposed amendments were unnecessary, as there are already alternative models to achieving permanency, which do not sever a child's connection with their birth family.

The QLS considered that PCOs provide a scheme setting out the legal arrangements for a child's care that provide a sense of permanence and long-term stability, whilst retaining connectedness with family, community and culture, identity and language. In contrast, the QLS considered that adoption severs the legal relationship between the child and the child's birth parents and creates a new identity for the child. The QLS also noted that adoption orders do not expire when the young person turns

[24] Department, correspondence, 22 January 2021, p 22.

[25] Department, correspondence, 22 January 2021, pp 22-23.

[26] Submission 13, p 5.

[27] Submission 14, p 5.

eighteen. As PCOs are a relatively recent reform, the QLS considered that it would be prudent to invest more time to assess their uptake and efficacy, prior to proposing further amendments.[28]

Similarly, the BAQ suggested that PCOs should be preferenced before adoption, as they are '… somewhere on the continuum between a long-term guardianship order and adoption'. The BAQ stated that only in the event that a PCO is not appropriate should adoption be considered.[29]

In response, the department stated that:

> The Bill clarifies that adoption is an option for achieving permanency for children who require long-term care, as part of the suite of alternative options that should also be considered.
>
> The best option for an individual child must be based on their individual circumstances and needs. Under section 5A, the main principle for administering the CP Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.[30]

The department advised that the Bill proposes to amend the CP Act to explicitly reference adoption as the third preference for achieving permanency of a child.[31]

Concerns that focus will change from the best interests of the child to the process and system

Submitters considered that the most suitable permanency option for each child should be determined based on the child's needs and circumstances, and not a hierarchy of options.[32]

The St Vincent de Paul Society Queensland noted that there is currently a suite of options for permanency in Queensland and that adoption is already offered and well understood as a means to achieve permanency under the CP Act. The St Vincent de Paul Society Queensland considered that:

> … the most suitable permanency option for each individual child's needs and circumstances is not determined by a hierarchy of options, nor an ideologically directed priority placed on adoption as a solution, but should be determined by the most suitable permanency option for each individual child's needs and circumstances.[33]

The YAC raised similar concerns that making decisions by a list of permanency preferences may undermine the principle that children should be dealt with as individuals, including their specific needs and circumstances.[34]

The Queensland Family and Child Commission (QFCC), Australian Human Rights Commission, Queensland Human Rights Commission, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, SNAICC, PeakCare Queensland, Queensland Council of Social Services (QCOSS) and the Office of the Public Guardian, in their joint submission (QFCC led joint submission), stated that the concept of permanency is multidimensional and must always balance physical, relational and legal elements.

The submitters raised concerns that if legal permanency becomes the predominant consideration, decisions are more likely to be influenced by the priorities of the system, rather than the individual needs of children and young people. The QFCC led joint submission stated that:

> The focus must remain on achieving this [reducing the number of children in contact with the child protection system] through the provision of requisite, high quality support to enable children to grow up safe and well, within their family structures. Where this is not possible, the system must intervene in a

28 Submission 13, p 2.

29 Submission 15, p 2.

30 Department, correspondence, 22 January 2021, p 17.

31 Department, correspondence, 22 January 2021, p 25.

32 Submissions 2, 3 and 7.

33 Submission 2, p 1.

34 Submission 3, p 4.

> manner that pursues permanency in the context of an individual child's best interests, not merely as a legal means to an end.[35]

The St Vincent de Paul Society Queensland and YAC considered that it was critical that children and young people had the opportunity to have their views heard in relation to any permanency decisions.[36]

The department agreed that the 'best option for achieving permanency for an individual must be based on their individual circumstances and needs'. The department stated that the proposed new section 5BA(4) of the CP Act includes a priority for deciding whether an action or order best achieves permanency for a child.[37]

The department advised that 'These considerations are subject to the main principle for administering the CP Act that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount (section 5A)'.[38]

The department stated the CP Act establishes a framework for children and young people to participate in decision making. The department stated that the CP Act:

> … sets out general principles that should be followed when the department is exercising powers and making decisions, including that the views of a child or young person 'should be sought and taken into account before a decision is made'.[39]

The department advised that the Childrens Court may only make a child protection order, under section 59 of the CP Act, once satisfied that that the child's wishes or views, if able to be ascertained, have been made known to the court.[40]

In addition, the department stated that tools have been made available to department staff to assist them to elicit children's views. Further options for legislative reform to strengthen children's voices have also been included in the department's consultation discussion paper, *Rethinking rights and regulations: towards a stronger framework for protecting children and supporting families*.[41]

Impact on human rights

Submitters, including QCOSS, Adoptee Rights Australia, QLS and ATSIWLSNQ, were concerned that the proposed amendments will result in unjustifiable limitations on the human rights of children and families.[42]

The QLS considered that the amendments at clause 8 are contrary to several of the rights protected under the *Human Rights Act 2019* (HRA), including the right to privacy and reputation, family and cultural rights. The QLS considered that the limitations imposed by the proposed amendments were not justifiable, as PCOs offered a less restrictive and reasonable way to achieve permanency and stability for children in the child protection system, without severing relationships with family and community.[43]

The QLS and ATSIWLSNQ considered that the proposed amendments are incompatible with the United Nations Declaration on the Rights of Indigenous People, including the right to self-determination, and

35 Submission 7, p 1.

36 Submissions 2 and 3.

37 Department, correspondence, 22 January 2021, p 17.

38 Department, correspondence, 22 January 2021, p 4.

39 Department, correspondence, 22 January 2021, p 26.

40 Department, correspondence, 22 January 2021, p 26.

41 Department, correspondence, 22 January 2021, p 26.

42 Submissions 8, 10, 13 and 14.

43 Submission 13, pp 4-5.

United Nations Convention on the Rights of the Child (UNCRC), including the importance of a child's identity and family relationships and a child's right to enjoy their own culture, practice their own religion and use their own language.[44]

The St Vincent de Paul Society Queensland and the QLS also raised concerns about the treatment of parents engaged with the child protection system who live with a disability (particularly an intellectual, cognitive or psychosocial disability) in circumstances where their disability is cited as evidence of their inability to care for their child. The St Vincent de Paul Society Queensland stated that depriving parents with a disability of ongoing assistance to fulfil their valued role as a parent may breach their human rights. The QLS also raised concerns about how parents with a disability or impairment will be supported to participate in the adoption process.[45]

In response, the department referred to the Human Rights Statement of Compatibility, which accompanied the Bill, and stated that the Adoption Act and the CP Act are underpinned by a human rights framework, including the UNCRC. The department advised that:

> Decisions made by the department and the Children's Court under the CP Act and the Adoption Act must be compatible with the *Human Rights Act 2019*. The main principle for the administration of the CP Act is that the safety, wellbeing and best interests of the child are paramount.
>
> Although being cared for by a child's family is the first preference for achieving permanency, some children require long-term care. The Bill does not fetter the discretion of decision making in an individual case or restrict or limit the requirement for the individual circumstances of a particular child being considered.
>
> The Bill intends to clarify that adoption is an option to be considered, among other options to achieve permanency for a child who requires long-term care.[46]

In relation to concerns about the potential impact on the human rights of parents who live with a disability, the department stated that the CP Act provides that parents have the primary responsibility for a child's upbringing, protection and development. The department advised that its involvement in a family's care for their child is only justified when there is a reasonable suspicion that the child is in need of protection. In addition, the department advised that a Childrens Court must be satisfied of the matters in section 59 of the CP Act before a child protection order can be made for a child.

The department stated that the *Child Safety Practice Manual* contains a practice kit on working with parents with disability. The manual includes advice on human rights protections, as well as the stigma, bias and discrimination which may be experienced by parents with disability.[47]

In addition, the department stated that the Adoption Act includes safeguards about parents consenting to a child's adoption. These safeguards include placing obligations on the department to ensure information is given to each of the child's parents in a way that enables parents to understand and to arrange pre-consent counselling.[48]

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44 Submissions 13 and 14.

45 Submissions 2 and 13.

46 Department, correspondence, 22 January 2021, p 6.

47 Department, correspondence, 22 January 2021, p 7.

48 Department, correspondence, 22 January 2021, p 21.

Preventative measures and early support for families

Submitters, including the AASW, QLS and ATSIWLSNQ, considered that the Queensland Government should invest in prevention and early intervention measures to reduce the number of children experiencing harm and distress. Submitters also considered that the department should provide support to families to address child protection issues to enable a child to achieve safe and permanent arrangements with their birth family, before the option of adoption is considered.[49] The AASW stated that '… without appropriate investment and support we are destined to continue to see numbers of children entering out of home care'.[50]

The ATSIWLSNQ, and other submitters, argued that the main focus of child protection services has been, and is currently, on funding child protection departments after children have entered the child protection system, rather than recognising the contributing factors and providing services to keep children safe and prevent them from entering the system.

The ATSIWLSNQ quoted the *Family Matters Report 2020,* which reported that 84 per cent of child protection funding is channelled into services focused on the removal of children and only 16 per cent on support services.[51]

The AASW, St Vincent de Paul Society Queensland and QCOSS considered that the CP Act should be amended to provided that the Childrens Court must be satisfied that the department has undertaken appropriate efforts to support a child to remain with their family (including extended family and kin), prior to making any child protection order, including permanency orders such as adoption.[52]

In response, the department stated that the CP Act is clear that the preferred approach to meeting a child's needs is by supporting their family to care for them safely. The department stated that:

> Under the proposed amendments, section 5BA(4) will continue to provide that, for deciding whether an action or order best achieves permanency for a child, the first preference is for the child to be cared for by their family. The general principles for the administration of the CP Act in section 5B include that a child's family has the primary responsibility for the child's upbringing, protection and development, and the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family.[53]

The department stated that section 73 of the CP Act provides that if a child protection order is made for a child, other than an order granting long-term guardianship, the chief executive must take steps that are reasonable and practicable to help the child's family meet the child's protection and care needs.[54]

In addition, the department stated that:

> Section 59 [of the CP Act] includes matters a Childrens Court must be satisfied of before it can make a child protection order for a child. These include that the child is in need of protection and an order is appropriate and desirable, there is an appropriate case plan for the child, and the protection sought to be achieved through the order is unlikely to be achieved by an order on less intrusive terms.[55]

The department stated that evidence of the support provided to parents is included in material filed with the court to support an application for an order for a child.

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49 Submissions 1, 2, 5, 7, 13 and 14.

50 Submission 1, p 1.

51 Submission 14, p 3.

52 Submissions 1, 2 and 8.

53 Department, correspondence, 22 January 2021, p 3.

54 Department, correspondence, 22 January 2021, p 20.

55 Department, correspondence, 22 January 2021, p 3.

The department stated that the *Supporting Families, Changing Futures* reform program is focused on delivering the 'right services at the right time to support families and keep children safely at home'. The department advised that support for families has significantly increased through the roll out of the reform program, including Family and Child Connect Services, Intensive Family Support Services and Family Wellbeing Services for Aboriginal and Torres Strait Islander families.

The 2020-21 state budget invested $166.6 million to implement the *Supporting Families, Changing Futures* reform program. The department stated that:

> This forms part of the Government's total funding package of $517.5 million ($401.6 million new funding and $115.9 million reprioritised funding) over four years commencing in 2019-20 and $2.4 million per annum ongoing to continue Queensland's family support and child protection reforms.[56]

The department advised that the establishment of the Director of Child Protection Litigation (DCPL) in 2016 also improved the way the court is informed of support provided to a family to support an application for an order. The department considers that 'The DCPL provides accountability and oversight and ensures that child protection order applications are supported by good quality evidence'.[57]

Child protection workforce

The AASW considered that a well-resourced and appropriately qualified and experienced child protection workforce is essential. The AASW stated that the Queensland Government should improve staff resourcing to provide 'holistic and comprehensive case planning, and develop a knowledgeable, well trained, accredited, and supported child protection workforce'.[58]

The department advised that child safety officers must hold a relevant bachelor degree from an accredited Australian tertiary institution or a comparable overseas qualification. The department clarified that this requirement is not limited to social work. The department stated that:

> All newly appointed child safety officers must participate in training designed to develop specific knowledge and skills relevant to child protection practitioners. The program builds on the foundation knowledge, skills and practical experience gained in a bachelor degree. The program includes modules on the various specialities within the field of child protection. Training delivery is flexible, modular and uses various mediums including face to face and online training.[59]

Impact of adoption on Aboriginal and Torres Strait Islander children

The BAQ considered that providing that adoption is the last preference for Aboriginal and Torres Strait Islander children is consistent with section 7 of the Adoption Act. The BAQ noted that the proposed amendments to section 5BA must be applied together with the existing protections at section 5C of the CP Act (additional principles for Aboriginal and Torres Strait Islander children).[60]

The QLS and ATSIWLSNQ, however, opposed adoption being an option for Aboriginal and Torres Strait Islander children.[61] The ATSIWLSNQ noted that while clause 8 proposed that adoption would be the last resort for Aboriginal and Torres Strait Islander children, the:

> … legacy of the Stolen Generations under previous government policies, the ongoing pain, loss and inter-generational trauma suffered by those who were removed under past government policies … should

56 Department, correspondence, 22 January 2021, p 3.

57 Department, correspondence, 22 January 2021, p 10.

58 Submission 1, p 2.

59 Department, correspondence, 22 January 2021, p 30.

60 Submission 15, p 2.

61 Submissions 13 and 14.

> have alerted legislators as to the inappropriateness of proposing adoption as an option at all for Aboriginal and Torres Strait Islander children.[62]

The ATSIWLSNQ noted that Indigenous children are 9.7 times more likely to be in care, than non-Indigenous children. ATSIWLSNQ stated that the growing number of children in out-of-home care, particularly Aboriginal and Torres Strait Islander children, is indicative of a system that has failed Aboriginal and Torres Strait Islander children and their families.

The ATSIWLSNQ considered that the proposed amendment was poorly considered, as '… it fails to genuinely address the myriad impacts, including negative impacts on the child's self-esteem and identity if removed from their biological family and culture'.[63]

In addition, ATSIWLSNQ considered that the proposed amendments are founded on a narrow interpretation of a child's 'best interests' and fail to consider the differences between the non-Indigenous model and Aboriginal and Torres Strait Islander values and child rearing practices. The ATSIWLSNQ also stated that the Bill fails to respect, or understand, a child's kin relationship with family and extended family.[64]

The ATSIWLSNQ considered that the proposed amendments are aimed at reinforcing child removal permanently from families and are inconsistent with the Queensland Government's progressive child protection strategies since 2017, including *Our Way: A generational strategy for Aboriginal and Torres Strait Islander Children and Families 2017-2037* and *Changing Tracks – An action plan for Aboriginal and Torres Strait Islander children and families 2020-2022*.[65]

Similarly, the QLS considered that the proposed amendments do not accord with the guiding principle and additional principles concerning Aboriginal and Torres Strait Islander persons at sections 6 and 7 of the Adoption Act. Those provisions provide that as adoption is not part of Aboriginal tradition or Island custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's needs for long-term stable care only if there is no better available option. The QLS reiterated its view that a PCO would be a better option for achieving permanency and stability for a child. [66]

The QLS considered that the proposed amendment should require a different hierarchy of placement order for Aboriginal and Torres Strait Islander children where adoptions are expressed as a last resort, consistent with section 10A of the *Children and Young Persons (Care And Protection) Act 1998* (NSW).[67]

In response, the department stated that adoption is currently available as an option for all children and families, including children in care, with necessary safeguards and protections. The department stated that 'It may not be consistent with human rights to exclude adoption as an option for some children and families'.[68]

The department stated that the Bill proposes to amend the CP Act to make it clear that adoption is the last preference for deciding whether an action or order best achieves permanency for an Aboriginal or Torres Strait Islander child, which provides an additional safeguard for Aboriginal and Torres Strait Islander children.

The department noted that there are additional principles in section 5C of the CP Act for administering the Act in relation to Aboriginal or Torres Strait Islander children. These include that Aboriginal and

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62 Submission 14, pp 4-5.

63 Submission 14, p 7.

64 Submission 14, p 8.

65 Submission 14, pp 3-4.

66 Submission 13, p 2.

67 Submission 13, p 4.

68 Department, correspondence, 22 January 2021, p 18.

Torres Strait Islander people have the right to self-determination, and that the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.

The five elements of the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) also apply in relation to Aboriginal and Torres Strait Islander children. The five elements of the ATSICPP are:

- the prevention principle – a child has the right to be brought up within the child's own family and community
- the partnership principle – Aboriginal and Torres Strait Islander persons have the right to participate in significant decisions under the CP Act about Aboriginal and Torres Strait Islander children
- the placement principle – if a child is to be placed in care, the child has a right to be placed with a member of the child's family group
- the participation principle – a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child, and
- the connection principle – a child has the right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.[69]

The department considered that the proposed amendment is consistent with section 7 of the Adoption Act, which provides that because adoption is not part of Aboriginal tradition and Islander custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term care, only if there is no better available option.[70]

In response to the QLS' comment that there should be a different hierarchy of placement order for Aboriginal and Torres Strait Islander children where adoptions are expressed as a last resort, the department stated that 'The existing section provides principles that apply in an order of priority. The proposed amendment is expressed as the last preference to remain consistent with the existing nature of the section'.[71]

Consultation with, and advice from, Aboriginal and Torres Strait Islander people or entities

Submitters, including the QFCC led joint submission, QCOSS and QLS, stated that decisions about the long-term care of Aboriginal and Torres Strait Islander children must be subject to the provision of independent expert advice from an appropriate Aboriginal and/or Torres Strait Islander person or agency, both prior to, and following approval of a child protection order.[72]

The QFCC led joint submission considered that, at a minimum, before deciding the suitability of adoption for an Aboriginal or Torres Strait Islander child, the Director-General, department and the courts should receive advice from an independent Aboriginal and/or Torres Strait Islander entity, as to whether the ATSICPPP was applied to the standard of 'active efforts' throughout the child's interaction with the child protection system.[73]

69 *Child Protection Act 1999*, s 5C.

70 Department, correspondence, 22 January 2021, pp 18-19.

71 Department, correspondence, 22 January 2021, p 19.

72 Submissions 7, 8 and 13.

73 Submission 7, p 3.

The QLS considered that clause 8 dilutes the existing protections at section 5C of the CP Act and the five elements of the ATSICPP. The QLS stated that there is no mechanism for self-determination by Aboriginal and Torres Strait Islander organisations to consider the appropriateness of adoption for Aboriginal and Torres Strait Islander children. In the QLS' view:

> … simply moving the order of priorities for Aboriginal and Torres Strait Islander children in section 5BA of the *Child Protection Act 1999* is insufficient and risks re-imposing past traumas experienced by stolen generations.[74]

The department acknowledged that Aboriginal and Torres Strait Islander children and families, communities and organisations are the experts in their own culture. The department stated that:

> In recognition of this, provisions in the CP Act and Adoption Act facilitate the participation of Aboriginal and Torres Strait Islander children and families in the making of decisions that impact them.
>
> In 2018, the CP Act was amended to embed the ATSICPP, recognise the right of Aboriginal and Torres Strait Islander people to self-determination and introduce a new concept of an Independent Aboriginal or Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child. To support the self-determination principle and implementation of the ATSICPP, the Family Participation Program was developed to support Aboriginal and Torres Strait Islander families to participate in child protection decision making.
>
> Under section 51D of the CP Act, a case plan for an Aboriginal or Torres Strait Islander child must be carried out in a way that encourages and facilitates the participation of Aboriginal or Torres Strait Islander people and agencies.
>
> Further, if the court is exercising a power under the CP Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to Aboriginal tradition or Island custom and the ATSICPP in relation to the child. The court may also have regard to the views of an independent Aboriginal or Torres Strait Islander entity for the child or a member of the child's family.
>
> Section 7(2) of the Adoption Act provides that if the court is exercising a power in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to the views of an appropriate Aboriginal or Torres Strait Islander person about the child and about Aboriginal tradition or Island custom relating to the child.
>
> Section 178 of the Adoption Act also provides that if a child is in the custody or guardianship of the chief executive (child safety) or someone else under the CP Act, the court must not make an adoption order unless a document signed by the chief executive (child safety) is produced to the court stating that the chief executive considers the adoption is an appropriate way of meeting the child's need for long-term stable care.[75]

In addition, the department advised that information about compliance with the ATSICPP will be provided to the Childrens Court, if an application for the adoption of an Aboriginal or Torres Strait Islander child is made. The department stated that it will also encourage and facilitate an independent entity for the child providing evidence to the court.[76]

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74 Submission 13, p 5.

75 Department, correspondence, 22 January 2021, pp 13-14.

76 Department, correspondence, 22 January 2021, p 15.

Establish 'active efforts' as the standard of action in implementing ATSICPP

The QFCC led joint submission recommended that 'active efforts' should be the formally recognised standard of action when implementing the ATSICPP.

The submitters considered that active efforts would require all child protection staff to take affirmative, active, thorough and timely efforts to maintain or reunite a child with their family. Under this approach, statutory authorities would be required to clearly document their active efforts and provide these documents to the courts prior to an order being granted. The courts would only be able to make an order, if satisfied that active efforts had been undertaken to support the child to stay with family, especially for permanency decisions, such as adoption.

The QFCC led joint submission considered that active efforts would require the department to ensure:

> … the ATSICPP is fully and properly implemented at every point of contact with a child, from early intervention services through to tertiary intervention. Demonstration of active efforts must be required for all decisions, for all Aboriginal and Torres Strait Islander Children.[77]

The joint submission noted that the standard of active efforts is current Queensland Government policy, as per Action 3.3 of the *Changing Tracks: an action plan for Aboriginal and Torres Strait Islander children and families 2020-22.* The joint submission considered that adopting the standard of active efforts would also ensure that decision-making is compliant with the HRA and reduce the risk of adoption being used as a way to meet targets.[78]

In response, the department stated that the CP Act provides that the department must have regard to the ATSICPP when making a decision about Aboriginal and Torres Strait Islander children and requires that the Court must have regard to the ATSICPP when exercising a power in relation to Aboriginal and Torres Strait Islander children.

The department stated that it '… agrees that implementation of the ATSICPP to the standard of active efforts is important in ensuring good outcomes for Aboriginal and Torres Strait Islander children' and '… has embedded this approach in operational policy and procedural requirements'.

The department stated that it:

> … remains committed to working in partnership with stakeholders to further embed compliance with the ATSICPP in practice. The *Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2020-2022* includes Action 3.3: Embed active efforts to implement and give full effect to all five elements of the ATSICPP across the five system elements of the family support system (legislation, policy, programs, processes and practice).[79]

The department advised that the department's *Child Safety Practice Manual* reflects how active efforts to embed ATSICPP may look in daily practice and explicitly describes and promotes the expectation that 'all practitioners are expected to make active efforts that are purposeful, thorough and timely'.[80]

The department stated that it is working with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak and other Aboriginal and Torres Strait Islander community-controlled organisations to improve active efforts to comply with ATSICPP. [81]

The department advised that the implementation of the proposed amendments will be supported by changes to departmental practice and procedural guidelines. The guidance will describe the steps and

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77 Submission 7, p 2.

78 Submission 7, pp 2-3.

79 Department, correspondence, 22 January 2021, p 2.

80 Department, correspondence, 22 January 2021, p 8.

81 Department, correspondence, 22 January 2021, p 4.

requirements for staff to present evidence of the efforts undertaken to comply with the five elements of the ATSICPP.

The department stated that the Government is currently considering whether amendments to the CP Act to require the department to make affirmative, active, thorough and time efforts to apply the ATSICPP, as suggested by stakeholders during consultation in 2019, would legally strengthen the current requirements to have regard to the ATSICPP.[82]

Independent oversight of decisions relating to permanency

The QFCC led joint submission and submitters, such as QCOSS, QLS and ATSIWLSNQ, considered that decisions relating to permanency for a child should be subject to independent oversight to ensure that every child has full enjoyment of all their rights. Such submitters considered that an oversight mechanism should be established to consider and balance the rights of the child, the biological family and the adoptive family.[83]

The QLS considered that an independent review of the evidence should take place before decisions about reunification or adoption are made to ensure compliance with the *Charter of rights for a child in care* (Schedule 1 of the CP Act), the ATSICPP and model litigant provisions.[84]

The ATSIWLSNQ stated that the proposed amendment:

> … failed to give due consideration to either the impacts on Aboriginal and Torres Strait Islander children, both in the short term and the longer term impacts of grief and inter-generational trauma or the supports and oversight needed to support permanency planning.[85]

In response, the department stated that are several existing mechanisms for independent oversight of actions and orders to achieve permanency for a child. The department stated that it:

> … has a statutory obligation to take action considered necessary if a child is reasonably suspected of being in need of protection and has responsibility for case planning for children when ongoing intervention is required, including the goal for best achieving permanency.
>
> However, a Childrens Court must be satisfied that the action proposed is necessary and appropriate before making a child protection order. This also requires that the DCPL is satisfied there is sufficient justification for the application.[86]

The department stated that the DCPL '… provides accountability and oversight for child protection order applications and makes sure they are supported by good quality evidence, as well as promoting efficiency and evidence-based decision-making'. In addition, the department stated that the QFCC provides oversight of the child protection system. [87]

The department also referred to existing safeguards in the Adoption Act, which '… ensure accountability and protect the rights and interests of children and families in the consideration of adoption as an option for an Aboriginal or Torres Strait Islander child'.[88]

Under the Adoption Act and CP Act, the Childrens Court may appoint a person having a special knowledge or skill to help the court in a proceeding on an application for an order. In addition, if the court is exercising a power under the Adoption Act in relation to an Aboriginal and Torres Strait

82 Department, correspondence, 22 January 2021, p 9.

83 Submissions 7, 8, 13 and 14.

84 Submission 13, p 6.

85 Submission 14, p 8.

86 Department, correspondence, 22 January 2021, p 11.

87 Department, correspondence, 22 January 2021, p 2.

88 Department, correspondence, 22 January 2021, p 12.

Islander child, the court must have regard to the views of an appropriate Aboriginal or Torres Strait Islander person. [89]

The department stated that:

> … information about compliance with ATSICPP will be prepared and provided to the court as evidence supporting an application for adoption of an Aboriginal or Torres Strait Islander child.
>
> …
>
> For an Aboriginal or Torres Strait Islander child, the department will encourage and facilitate an independent Aboriginal and Torres Strait Islander entity for the child providing advice about compliance with the ATSICPP. This will better enable the Court to independently consider whether adoption of the child is the most suitable option. [90]

Special measures to ensure continuation of identity, culture, family and community for Aboriginal and Torres Strait Islander children

The ATSIWLSNQ considered that the Bill fails to appreciate the necessity of actively ensuring non-discrimination through the implementation of special measures, or enforceable mechanisms, to ensure cultural safety for Aboriginal and Torres Strait Islander children who have been adopted, including maintaining contact with family (including extended family), and their culture, community and traditions.[91]

The QLS stated that 'It is essential that whenever an Aboriginal or Torres Strait Islander child is removed from their biological parent or parents and placed in out-of-home care, that he or she maintain their connection to their culture of origin to the maximum extent possible'.[92]

In response, the department stated that the assessment of persons to be suitable adoptive parents is an extremely rigorous process involving personal history checks, health checks, character studies, assessment of capacity to be an adoptive parent, relationship stability, attitudes to children and parenting, and home study assessments.

The department advised that:

> The bases for deciding whether a person is suitable to be an adoptive parent are outlined in Part 6, Division 5 of the Adoption Act.
>
> In selecting prospective adoptive parents from the Suitable Adoptive Parents Register, the department considers such matters as:
>
> - the child's needs including the child's cultural needs
> - birth parent preferences such as the characteristics of the adoptive family and the degree of openness in the adoption relationship.

The department stated that the Adoption Act guides decision making about the placement of an Aboriginal or Torres Strait Islander child with suitable adoptive parents. Under section 163, in selecting a prospective adoptive parent/s for an Aboriginal or Torres Strait Islander child, the department must consult with an appropriate Aboriginal or Torres Strait Islander person and must consider the following people, in order of priority:

- a member of the child's community or language group
- another Aboriginal or Torres Strait Islander person who is compatible with the child's community or language group, and

89 Department, correspondence, 22 January 2021, p 2.

90 Department, correspondence, 22 January 2021, pp 12-13.

91 Submission 14, p 5.

92 Submission 13, p 3.

- another Aboriginal or Torres Strait Islander person.

Under section 118 of the Adoption Act, if a person is being assessed for suitability to be an adoptive parent of an Aboriginal or Torres Strait Islander child, the chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person about Aboriginal tradition or Island custom relating to the child and the person's suitability.

Section 165(c) of the Adoption Act requires that, if a child is an Aboriginal or Torres Strait Islander child and the prospective adoptive parents are not from the child's community or language group, an adoption plan must be agreed that addresses how the prospective adoptive parents will:

- help the child to maintain contact with the child's community or language group
- help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom, and
- preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

Under the Adoption Act, the Childrens Court may only make a final adoption order for a child if satisfied that while the child has been in the prospective adoptive parent/s custody, they have demonstrated their willingness and ability to:

- help the child maintain contact with the child's community or language group
- help the child to develop and maintain a connection with the child's ethnicity and culture, and
- preserve and enhance the child's sense of ethnic or cultural identity.[93]

The department further advised that adoption would only be considered the most suitable option, if the proposed adoptive parents for a child are able to comply with existing requirements and obligations in the Adoption Act.[94]

Post-adoption oversight and support for children and families

The QFCC led joint submission noted that the legal outcome of adoption does not diminish the impact of the child protection system on a child, nor the trauma or prior abuse they have experienced. Accordingly, the submitters stated that 'Adoption should not absolve the child protection system of responsibility to provide adequate support to address these impacts'.[95]

The QFCC led joint submission noted that 'Adoption is the most intrusive order, currently subject to the least oversight'. The joint submission suggested that continued oversight might be necessary following the approval of an adoption order to give full effect to the 'paramount principle'.[96]

The YAC considered that adopting families were not prepared for, or supported in managing, behavioural problems resulting from the trauma experienced by adopted children. The YAC noted that adopted children have additional needs and require support with behavioural, emotional and physical health problems, however access to services and financial support, for example foster care payments, are generally removed when adoption is finalised. The YAC considered that 'There must be a safety net of support for adopted children and adopting families'.[97]

The QFCC led joint submission stated that:

93 Department, correspondence, 22 January 2021, p 16.

94 Department, correspondence, 22 January 2021, pp 28-29.

95 Submission 7, p 3.

96 Submission 7, p 3.

97 Submission 3, p 2.

> Following adoption orders, children may need support to maintain and develop their cultural connections, ensure compliance with adoption plans, and access services. Continued oversight might therefore be necessary to give full effect to s.5A of the Act, the paramount principle that decisions should be made in favour of the 'safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life'.[98]

The QFCC led joint submission stated that children subject to adoption orders must not become invisible to the system and should continue to be counted in departmental child protection data and reporting.[99]

In response, the department stated that the statutory obligations to take action considered necessary when there is a reasonable suspicion that a child may be in need of protection apply to children who have been adopted. The department stated that if ongoing monitoring of a child's permanency arrangement is required, an alternative permanency option than adoption is likely to be considered appropriate.

The department advised that children subject to adoption orders are not counted in departmental data of children in the child protection system because they no longer meet the definition in the CP Act of a child in need of protection.

The department stated that it maintains data on the number of children adopted from the child protection system, which is available on the department's Our Performance website.

The department stated that:

> In the last seven years, 10 children have been adopted from the child protection system. Two of those children were adopted by their foster carers and the other eight children were adopted by people on the Suitable Adoptive Parents Register. In the last five years there have been six children adopted from the child protection system.[100]

In relation to post-adoption support, the department advised that it funds post-adoption support services in Queensland for people affected by adoption.

The department funds Jigsaw Queensland to provide information and support services to those affected by adoption and the Benevolent Society to support and bring together individuals impacted by adoption and/or members of their birth or adoptive family through individual work and counselling and therapeutic group work.[101]

2.1.1.2 Committee comment

The committee acknowledges the concerns raised by submitters in relation to the proposed amendments, including that adoption should be the option of last resort and is not in the best interest of a child, the lack of appropriate supports, safeguards and oversight and the potential adverse impacts adoption may have, in particular on Aboriginal and Torres Strait Islander children.

The committee notes that the number of children who require care and are, therefore, subject to long-term child protection orders continues to grow. The committee also notes that the CP Act and Adoption Act already provide that adoption is an option for providing permanency for children who require long-term care. As noted by the LACSC in its report:

98 Submission 7, p 3.

99 Submission 7, p 3.

100 Department, correspondence, 22 January 2021, p 26.

101 Department, correspondence, 22 January 2021, p 32.

> Based on submissions received by the committee, the lived experience of a number of submitters indicates that adoption is not a panacea for all. However, the research indicates it may be a suitable permanency option for some, depending on their personal circumstances.[102]

The committee notes that the Bill seeks to clarify that adoption is an option for achieving permanency for children in care. The Bill aims to achieve this by providing that adoption is the third preference, out of four, in the order of priority for deciding whether an action or order best achieves permanency for a child, except for an Aboriginal or Torres Strait Islander child.[103] The committee notes that, under the proposed amendment, the first priority will remain for a child to be cared for by the child's family, including with the provision of support and assistance to families.

The committee also notes the existing protections and safeguards in the CP Act and Adoption Act aimed at ensuring that permanency decisions, including adoption, are made in the best interest of a child and their individual circumstances. These safeguards include the paramount principle at section 5A of the CP Act and the guiding principle at section 6 of the Adoption Act that provide that in administering those Acts, the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.

The committee also notes that, unless the Childrens Court determines otherwise, the consent of a child's biological parents must be obtained prior to any adoption order being made by the Court.

The committee acknowledges submitters' concerns about the impact adoption may have on Aboriginal and Torres Strait Islander children, in particular the risk of significant and lifelong trauma associated with severing a child's ties with their family and disconnection from their family, culture, community and kin.

The committee notes that clause 8 of the Bill clarifies that adoption is the least preferred option for achieving permanency for Aboriginal and Torres Strait Islander children. The committee considers that this approach is consistent with section 7 of the Adoption Act, which provides that because adoption is not part of Aboriginal tradition or Island custom, adoption of such a child should be considered only if there is no better available option.

In addition, the committee notes that should the adoption of an Aboriginal or Torres Strait Islander child be considered, such an adoption would be subject to a range of restrictions and additional requirements, including:

- the principles, including the ATSCIPP, aimed at securing Aboriginal and Torres Strait Islander children's ongoing connection to culture and family (section 5C of the CP Act)
- the requirement for officers to consult Aboriginal and Torres Strait Islander entities when making significant decisions about Aboriginal and Torres Strait Islander children (section 6AA of the CP Act)
- the requirement for the Childrens Court to have regard to Aboriginal tradition and Torres Strait Islander custom (section 6AB of the CP Act)
- the system of 'prescribed delegates' to exercise functions and powers in relation to Aboriginal and Torres Strait Islander children (section 148BA to 148BI of the CP Act)
- the requirement that the chief executive must consider prospective adoptive parents' willingness to 'help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom' (section 131 of the Adoption Act)

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[102] Legal Affairs and Community Safety Committee, Report No. 71, 56th Parliament – *Child Protection and Other Legislation Amendment Bill 2020*, p 8.

[103] Explanatory notes, p 2.

- the requirement that the chief executive must consult 'with an appropriate Aboriginal or Torres Strait Islander person' on adoption selection decisions (section 163 of the Adoption Act)
- the requirement for an adoption plan to be agreed by adoptive parents to help an Aboriginal or Torres Strait Islander child to maintain a connection with their community and language group and preserve their sense of ethnic or cultural identity (section 165 of the Adoption Act), and
- that the Childrens Court may only make a final adoption order for an Aboriginal or Torres Strait Islander child if the prospective adoptive parents have demonstrated their willingness and ability to help the child to maintain a connection with their community and language group and preserve their sense of ethnic or cultural identity (section 189 of the Adoption Act).

The committee also notes the department's commitment to further embed the standard of 'active efforts' in relation to the implementation of the ATSICPP.

2.1.2 Review requirements for children under long-term guardianship of chief executive – clauses 9 and 10

The number and proportion of children in the child protection system subject to a long-term child protection order has increased substantially in recent years.

Between 30 June 2016 and 30 June 2020, the number of children subject to a long-term child protection order increased by 15 per cent (from 5,917 to 6,802). The committee notes that of the 11,164 children subject to child protection orders as at 30 June 2020, 6,802 were subject to long-term orders. For 1,657 (or 24.4 per cent) of these children, the guardian was a relative or other suitable person. The committee understands that the remainder of these children are subject to a long term-guardianship to the chief executive, which is the last priority for achieving permanency under the hierarchy at section 5BA(4) of the CP Act.[104]

The Bill aims to promote alternative permanency options for children subject to a child protection order granting long-term guardianship to the chief executive.

The Bill seeks to achieve this by inserting new section 51VAA into the CP Act to require the chief executive to review a case plan for a child, under the long-term guardianship of the chief executive, at least every two years after the long-term order was made. The review must consider whether permanency for the child would be best achieved by an alternative arrangement, as provided for in the permanency hierarchy at section 5BA(4) of the CP Act, for example reunify the child with their family, an alternative long-term order or adoption.[105]

The Bill also amends section 51X of the CP Act to provide that the report of the review must include the findings in relation to whether permanency for the child would be best achieved by the alternative arrangements at section 5BA(4) of the CP Act.[106]

2.1.2.1 Submitters' views

The AASW opposed the proposed amendment, and stated that the two-year timeframe for parents to resolve issues of concern, prior to a decision being made about permanency, was too short and should be a guide, rather than a fixed timeframe. The AASW considered that all children and their families, in particular Aboriginal and/or Torres Strait Islander children and families, should have sufficient time to

[104] Department, *Legal Permanency – Long-term child protection orders*, https://www.csyw.qld.gov.au/child-family/our-performance/ongoing-intervention-phase-permanency-planning/legal-permanency-long-term-child-protection-orders and explanatory notes, p 3.

[105] Clause 9 and explanatory notes, p 4.

[106] Clause 10.

receive the necessary support and access to services to prevent children being in care or remaining in care.[107]

The AASW raised concerns that parents had experienced difficulties in accessing support services, particularly during COVID-19 pandemic, due to limitations on contact visits, travel restrictions and inadequacies in staffing and appropriate casework and case planning.[108]

The QLS agreed that the two-year timeframe was too short to address issues of concern given the wide variety of factors that might impact on a parent's ability to address issues, for example inter-generational trauma, geographical disadvantage in remote areas and other difficulties in accessing appropriate services. The QLS also raised concerns about how the implementation of the provision would be funded given the increasing number of children subject to long-term protection orders.[109]

2.1.2.2 Department's response

The department advised that the Bill does not require that adoption be considered or expedited after a child has been subject to a child protection order for two years, or impose a two-year time limit on reunification of a child with their parents.

Rather, the Bill requires the chief executive to review the case plan for the child to consider whether there is a better way of achieving permanency for the child. If adoption was identified as an option for a child as part of the review, the Adoption Act, including all of the protections and safeguards for Aboriginal and Torres Strait Islander children would apply.[110]

The department stated that:

> The first priority for achieving permanency for a child in section 5BA(4) will continue to be for the child to be cared for by the child's family. Additional principles for Aboriginal and Torres Strait Islander children, including the prevention principle, will remain unchanged in section 5C.[111]

2.1.2.3 Committee comment

The committee acknowledges the concerns raised by submitters. The committee notes, however, that the proposed amendments do not impose a two-year time limit on the reunification of a child with their biological parents. The committee considers that the proposed amendments will help to ensure that a child's permanency arrangements are reviewed on a regular basis to ensure that those arrangements best achieve permanency and stability for the child, based on their individual circumstances and needs.

2.2 Proposed amendments to the *Adoption Act 2009* – clauses 4 to 6

The adoption of children, via an inter-country adoption program is governed by the relevant state or territory adoption legislation and the *Immigration (Guardianship of Children) Act 1946* (Cth).[112]

The Bill amends section 198(1) of the Adoption Act to provide that the chief executive may apply to the court for a final adoption order for a child from overseas, where the Minister responsible for administering the *Immigration (Guardianship of Children) Act 1946* (Cth) had placed the child in the custody of the prospective parents between 30 April 2018 and 1 July 2019.

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107 Submission 1, p 1.

108 Submission 1, p 3.

109 Submission 13, p 6.

110 Explanatory notes, p 4.

111 Department, correspondence, 22 January 2021, pp 21-22.

112 Statement of compatibility, p 2.

The department advised that the amendment corrects an issue preventing final adoption orders being made for a small number of children as a result of previous machinery of government changes.[113]

2.3 Practice reforms and implementation of Bill

The department advised that the proposed amendments to the CP Act will be accompanied by the following practice reforms:

- the development of an internal permanency strategy with quarterly progress reporting to the Director-General, including on the numbers of children on PCOs or long-term orders
- a review of the implementation of the 2018 permanency reforms to date, including implementation of the ATSICPP
- the establishment of a new Chief Practitioner role within the department (commenced on 28 September 2020), with responsibility for overseeing improved permanency outcomes across the department, and
- an audit of case plans for all children in care under three years old to assess whether another legal or placement option would better meet their permanent needs.

The department stated that the implementation of the Bill is intended to include updates to procedures, policies and practice resources, updates or development of training and guidance materials for Child Safety staff, regional engagement activities and development of communications material for children, young people, parents, carers and partners.[114]

[113] Department, correspondence, 12 December 2020, p 2.

[114] Department, correspondence, 12 December 2020, p 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee agrees with the LACSC's conclusions that while the Bill raises potential FLP issues, on balance, the proposed amendments have sufficient regard to the rights and liberties of individuals.

Given that this Bill is the same as the Bill examined by the LACSC, discussion about FLP issues raised by the Bill are included in the LACSC report (see Appendix B).

3.2 Explanatory Notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The committee considers that the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[115]

A Bill is compatible with human rights if the Bill:

- does not limit a human right, or
- limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).[116]

The HRA protects fundamental human rights drawn from international human rights law.[117] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee agrees with the LACSC's conclusions that the Bill is compatible with human rights and any limitations on human rights are reasonable and demonstrably justified.

Discussion in relation to the compatibility of the Bill with human rights are included in the LACSC report (see Appendix B).

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115 HRA, s 39.

116 HRA, s 8.

117 The human rights protected by the HRA are set out in ss 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

4.1 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA.

The committee considers that the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Australian Association of Social Workers
002	St Vincent de Paul Society Queensland
003	Youth Advocacy Centre Inc.
004	Darryl Nelson
005	Lesley Mitchell
006	Barbara Kluijtmans
007	Joint submission by the Queensland Family and Child Commission, Australian Human Rights Commission, Queensland Human Rights Commission, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, SNAICC, PeakCare Queensland, Queensland Council of Social Services and Office of the Public Guardian
008	Queensland Council of Social Services
009	Association for Adoptees
010	Adoptee Rights Australia Inc.
011	Kerri Saint
012	Confidential
013	Queensland Law Society
014	Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc.
015	Bar Association of Queensland

Appendix B – Legal Affairs and Community Safety Committee, Report No. 71, 56th Parliament, Child Protection and Other Legislation Amendment Bill

Parliamentary Committees

Child Protection and Other Legislation Amendment Bill 2020

Report No. 71, 56th Parliament
Legal Affairs and Community Safety Committee
August 2020

Legal Affairs and Community Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mr James Lister MP, Member for Southern Downs[1]
Members	Mr Stephen Andrew MP, Member for Mirani
	Mrs Laura Gerber MP, Member for Currumbin
	Mrs Melissa McMahon MP, Member for Macalister[2]
	Ms Corrine McMillan MP, Member for Mansfield

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Acknowledgements

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1 Mr Rob Molhoek MP, Member for Southport, was a substitute for the Deputy Chair, Mr James Lister MP, Member for Southern Downs, on 10 August 2020

2 Mr Chris Whiting MP, Member for Bancroft was a substitute for Mrs Melissa McMahon MP, Member for Macalister, on 27 July 2020.

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Abbreviations

AASW	Australian Association of Social Workers
Adoption Act	*Adoption Act 2009* (Qld)
AIHW	Australian Institute of Health and Welfare
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principle
ATSIWLSNQ	Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc
CE	chief executive
committee	Legal Affairs and Community Safety Committee
CP Act / CPA	*Child Protection Act 1999*
Cwlth	Commonwealth
Davis report	Megan Davis (chair), *Family Is Culture: Review Report*, Independent Review into Aboriginal Out-of-Home Care in NSW, 25 October 2019, https://www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf.
DCPL	Director of Child Protection Litigation
DCSYW/department	Department of Child Safety, Youth and Women
FIN, SEQ	Family Inclusion Network, South East Queensland
FIN Townsville	Family Inclusion Network Townsville
First family	a child's original, biological/psychological parents, grandparents, and wider family members
HRA	*Human Rights Act 2019* (Qld)
IGOC	*Immigration (Guardianship of Children) Act 1946* (Cwlth)
LSA	*Legislative Standards Act 1992* (Qld)
LTG	long-term guardian
NSW	New South Wales
OCFOS	Office of the Child and Family Official Solicitor
OOHC	out of home care
OPG	Office of the Public Guardian

PARC	Post Adoption Resource Centre
PCO	permanent care order
PeakCare	PeakCare Queensland Inc.
PTSD	Post-traumatic stress disorder
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
QCOSS	Queensland Council of Social Services
QFCC	Queensland Family and Child Commission
QFKC	Queensland Foster and Kinship Care Inc
QHRC	Queensland Human Rights Commission
QIFVLS	Queensland Indigenous Family Violence Legal Service
QLS	Queensland Law Society
SNAICC	Secretariat of National Aboriginal and Islander Child Care
TBS	The Benevolent Society
UK	United Kingdom
UNCRC	United Nations Convention on the Rights of the Child
USA	United States of America
VCAT	Victorian Civil and Administrative Tribunal
VANISH Inc	Victorian Adoption Network for Information and Self Help

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Child Protection and Other Legislation Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Child Safety Youth and Women.

I commend this report to the House.

Peter Russo MP

Chair

Recommendation

Recommendation **3**

The committee recommends that the Child Protection and Other Legislation Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[3]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services
- Aboriginal and Torres Strait Islander Partnerships.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[4]

The Child Protection and Other Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly on 14 July 2020 and referred to the committee on 16 July 2020. The committee is to report to the Legislative Assembly by 28 August 2020.

1.2 Inquiry process

On 20 July 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Thirty-nine submissions were received. See Appendix A for a list of submitters.

The committee received a public briefing about the Bill from the Department of Child Safety, Youth and Women (DCSYW) on 27 July 2020. A transcript is published on the committee's web page. See Appendix B for a list of officials.

The committee also received written advice from DCSYW in response to matters raised in submissions.

The committee held both a public and a private hearing on 10 August 2020. See Appendix C for a list of public hearing witnesses.

The submissions, correspondence from the department and transcripts of the public briefing and public hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- enhance the approach to permanency under the *Child Protection Act 1999* (CP Act)
- clarify that adoption is an option for achieving permanency for children in care, as part of the suite of alternative long-term care options available

[3] *Parliament of Queensland Act 2001*, s 88; and Standing Order 194.

[4] *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

- clarify the importance of, and promote alternative permanency options for, children under a long-term guardianship order to the chief executive.

The Bill also includes a technical amendment to the *Adoption Act 2009* (Adoption Act) to allow the chief executive of DCSYW to apply for final adoption orders for a small number of children from overseas.[5]

1.4 Government consultation on the Bill

As set out in the explanatory notes, 'targeted consultation was undertaken with key child protection, adoption, Aboriginal and Torres Strait Islander organisations and legal stakeholders regarding the policy proposals for amendments to respond to the *Child Protection Act 1999*'. According to the explanatory notes, the stakeholders consulted included:

- *Aboriginal and Torres Strait Islander organisations: Queensland Aboriginal and Torres Strait Islander Child Protection Peak [Ltd]; Aboriginal and Torres Strait Islander Community Health Service Inc.; Queensland Indigenous Family Violence Legal Service Aboriginal Corporation.; Kummara Association Inc.; Queensland First Children and Families Board; Palm Island Community Company; Kalwun Development Corporation Limited; Aboriginal and Torres Strait Islander Legal Services; Townsville Aboriginal and Islander Health Service; Kurbingui Youth Development Association; Queensland Aboriginal and Torres Strait Islander Health Council; Goolburri; Institute for Urban Indigenous Health; Mura Kosker Sorority Inc.; and Link Up.*
- *Child protection peak organisations: Queensland Family and Child Commission; Micah Projects; SNAICC; PeakCare Queensland; Queensland Foster and Kinship Care; and Act for Kids.*
- *Adoption stakeholders: Benevolent Society (Post Adoption Support Queensland); Association for Adoptees Inc.; Origins Queensland; Adopt Change/My Forever Family; and a local adoption support group.*
- *Legal stakeholders: Queensland Law Society; Bar Association of Queensland; Legal Aid Queensland; Aboriginal and Torres Strait Islander Legal Service; and the Queensland Human Rights Commission*.[6]

As advised by DCSYW on the results of the consultation:

> *It is fair to say that anything that has the word 'adoption' in it is a highly polarising debate, and we saw that through the targeted consultation that we did for these amendments. It would be fair to say that the vast majority of our stakeholders, those we work with on a day-to-day basis—funded NGOs, peaks and certainly the partners that we work with in the Aboriginal and Torres Strait Islander sectors—mostly had very strong views against adoption. When we did the targeted consultation we also did some consultation with adoption groups, as you would expect us to. Even within the adoption groups there were split views. The prospective adoptive parents were very much for the amendments that are being proposed. The adult adoptees who had experienced adoption as I described earlier through the 1950s and 1960s have very strong views about the appropriateness of adoption today.*
>
> *It is also fair to say that, as we worked our way through the intent of the bill and the safeguards and the place that we think adoption has in the suite of options, our stakeholders gave us positive feedback that it has a place. I think the worry is about how it is implemented and what it will*

5 Explanatory notes, p 2.

6 Explanatory notes, pp 5-6.

actually look like for children, parents, families, carers and communities. That is a very fair question for our stakeholders to ask us. There are very mixed views, in short.[7]

On consulting with Aboriginal and Torres Strait Islander stakeholders, DCSYW advised:

We consulted with a broad range of Aboriginal and Torres Strait Islander stakeholders, specifically the Queensland First Children and Families Board, so members of that board such as Mick Gooda and Boni Robertson. We also consulted with a range of our funded providers, so NGO partners. Minister Farmer has a regular stakeholder group that she and I have been convening through COVID. We started it weekly to work with our partners on the impact of COVID. There are a range of many stakeholders across different parts of our sector. Then we held one-on-one conversations with a couple of the key leaders in the sector, including QATSICPP and the Queensland First Children and Families, and a range of other government entities that are also important in this space.

…

I will just add that as part of that consultation process we also consulted with legal stakeholders—so we consulted not just with representatives from the child protection sector but also with representatives from the legal sector.[8]

In relation to the amendments to the *Adoption Act 2009*, consultation was not undertaken outside of the government 'given the limited application and technical nature of the amendment'. Consultation was undertaken with the Australian Government in relation to the placement issue, which informed the need for the amendments.[9]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends that the Child Protection and Other Legislation Amendment Bill 2020 be passed.

7 Public briefing transcript, Brisbane, 27 July 2020, p 5.

8 Public briefing transcript, Brisbane, 27 July 2020, p 6.

9 Explanatory notes, p 6.

2 Background to the Bill

2.1 Adoption as a means of providing permanency

2.1.1 Legislation in other jurisdictions

On 2 June 2020, the Deputy State Coroner released her report containing the findings of the inquest into the death of Mason Jet Lee. Six recommendations were made, including that:

> *The Government consider whether the* Adoption Act 2009 *(Qld) should similarly reflect the 2018 amendments to the* Adoption Act 2000 *(NSW), expecting children to be permanently placed through out of home adoptions within 24 months of entering the department's care.*[10]

In late 2014, the New South Wales (NSW) *Children and Young Persons (Care and Protection) Act 1998* was amended to emphasise the importance of permanency for children. The amended legislation aimed to strengthen permanency planning practice to ensure stable permanent homes for children who cannot be returned home safely to their parent/s.[11]

Within Australia, NSW has taken a unique stance on permanency, legislating to prioritise open adoption over long-term foster care for children permanently removed from their parents when restoration is not possible and suitable kin or guardians cannot be found (s 10A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).[12]

The reforms to the care and protection legislation in New South Wales now require the courts to give greater consideration to adoption as one option for children who cannot be restored to the care of their parents. This is in response to ongoing concerns about the lack of stability and security for children who experience multiple placements in out-of-home care.[13]

Under s 10A(3) of New South Wales' *Children and Young Persons (Care and Protection) Act 1998*, the permanent placement principles are as follows—

> *(a) if it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is for the child or young person to be restored to the care of his or her parent (within the meaning of section 83) or parents so as to preserve the family relationship,*
>
> *(b) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), the second preference for permanent placement of the child or young person is guardianship of a relative, kin or other suitable person,*
>
> *(c) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a) or (b), the next preference is (except in the case of an Aboriginal or Torres Strait Islander child or young person) for the child or young person to be adopted,*

---

[10] Coroners Court of Queensland, Inquest into the death of Mason Jet Lee, 2 June 2020, p 114, https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/651636/cif-lee-mj-20200602.pdf This follows the Queensland Child Protection Commission of Inquiry's recommendation that the then Department of Communities, Child Safety and Disability Services routinely consider and pursue adoption (particularly for children aged under 3 years) in cases where reunification is no longer a feasible case-plan goal.[10]

[11] Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

[12] Betty Luu, Amy Conley Wright and Judith Cashmore, 'Contact and Adoption Plans for Children Adopted from Out-of-Home Care in New South Wales', *Australian Social Work*, 23 June 2019, pp 404-418.

[13] Nicola Ross and Judy Cashmore, 'Adoption Reforms New South Wales Style: A comparative Look' *Australian Journal of Family Law* (2016) Vol 30(1) p 51.

(d) if it is not practicable or in the best interests of the child or young person to be placed in accordance with paragraph (a), (b) or (c), the last preference is for the child or young person to be placed under the parental responsibility of the Minister under this Act or any other law,

(e) if it is not practicable or in the best interests of an Aboriginal or Torres Strait Islander child or young person to be placed in accordance with paragraph (a), (b) or (d), the last preference is for the child or young person to be adopted.

In NSW the preferred placement of Aboriginal children is with kin, or Aboriginal carers. The NSW legislation allows for the adoption of Aboriginal children to be considered in particular circumstances; such as, if other placement options are exhausted, there is extensive and meaningful consultation with family, extended family and the Aboriginal and Torres Strait Islander community, and there is clear evidence that adoption is in the best interests of the children over other placement options.[14]

Under the new permanency planning regime, it is mandatory for a decision to be made about whether restoration to the parents is feasible within six months of entering care for children under two years of age and within 12 months of entering care for children aged two years and older. Once it is determined a child cannot safely go home, an application is to be made in the Supreme Court for an order to legally free them for open adoption by a new family.[15]

The other significant change introduced with the amendments was the distinct provision for long-term carers to adopt. The NSW *Adoption Act 2000* was amended to streamline the process for authorised carers to adopt a child or young person in out-of-home care.[16] The consent of parents to adoption can be dispensed with if it can be shown that there is an 'established stable relationship with those carers' and that the adoption 'by those carers will promote the child's welfare'.[17]

Since these legislative changes were enacted, adoptions from out-of-home care in NSW have risen, though they remain quite low compared to the number of children in care. While overall adoption numbers in Australia have declined, the rate of adoptions from out-of-home care has been increasing. In 2016-2017, there were a total of 315 adoptions finalised in Australia, 143 of these were adoption of children by their carers. Of these carer adoptions, 131 took place in NSW.[18]

In the United States of America (USA) and the United Kingdom (UK), adoption from foster care is considered an integral part of the child protection system. In the USA, adoption is preferred as the next option if restoration to birth parents is not possible. Adoption by relatives is encouraged. By contrast, the UK and NSW preference is legal guardianship to relatives as the second choice, reserving adoption to non-relatives as the third option.[19]

In the USA, the majority of adoptions from foster care tend to be done by the child's foster parents and only a minority are comprised of stranger or matched adoptions, while the reverse is true in the

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14 Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

15 *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 83; Jeremy Sammut, 'Breaking the adoption taboo in Australia', *Policy*, vol 31(4), Summer 2015-2016, pp 22-27.

16 Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

17 *Adoption Act 2000* (NSW), s 67.

18 Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

19 Amy Conley Wright, 'Investing in Adoption: Exploring Child Development Accounts for Children Adopted from Foster Care', *The Journal of Sociology & Social Welfare*, Vol 45(4), pp 131, 132.

UK.[20] Children in care in the UK may be fostered by one family but adopted by a different family. In the USA, adoptions may occur with specially recruited adoptive families, or through concurrent planning, when a child with a case plan for restoration may be placed with a family who will adopt the child if the restoration is not achieved.[21]

Compared to other countries such as the USA and UK, only a small fraction of Australian children in care are adopted: less than one per cent in NSW, whereas it is estimated to be six per cent in England and 13 per cent in the USA.[22] In Australia, adoptions from care are infrequent and mostly conducted in NSW, despite being legislated in other states.[23]

The nature of the cohort of children to be protected under the legislation can be very different from one jurisdiction to another and therefore it may not be appropriate to simply import provisions which apply elsewhere into Queensland.

2.1.2 Research on adoption as a means of providing permanency

Academic and research literature seems to support adoption as a means of providing permanency to children where reunification is not deemed to be in the best interests of the child.

A working paper conducted by the University of Sydney's Institute of Open Adoption Studies in 2014 concluded that 'early adoption brings about good outcomes for children' and that 'children under the age of five in out-of-home care represent a population who are very likely to benefit from adoption'. This study further concluded that current research strongly suggests that adoption is more beneficial for children than remaining in long-term foster care, in that it promotes a greater sense of security, stability, and belonging.[24] However this study also noted that:

> *Despite strong evidence for the benefits of adoption in promoting good outcomes for children, it remains important to note that it is very difficult to make completely satisfactory comparisons between adoption and long-term fostering. Nevertheless, three robust conclusions can be advanced based on current practices and available research:*
>
> - *While it is clear that early adoption engenders a deep sense of belonging and acceptance, which contributes profoundly to healthy identity formation, it is not clear that long-term fostering reliably engenders these same feelings*
> - *Fewer placements are better for children*
> - *Adoption is associated with fewer placements when compared to long-term fostering.*[25]

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20 Amy Conley Wright, 'Investing in Adoption: Exploring Child Development Accounts for Children Adopted from Foster Care', *The Journal of Sociology & Social Welfare*, Vol 45(4), pp 131, 132.

21 Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

22 Institute of Open Adoption Studies, 'Open Adoption of Children NSW Out-of-Home Care: Foster Carers' Perceptions about the Motivations and Barriers', Sydney School of Education and Social Work, Faculty of Arts and Social Sciences, June 2018.

23 Andrea del Pozo de Bolger, Debra Dunstand, and Melisa Kaltner, 'Open Adoptions of Children From Foster Care in New South Wales Australia: Adoption Process and Post-Adoption Contact', *Adoption Quarterly*, Apr-Jun 2018, Vol. 21(2), pp 82-101.

24 Marc de Rosnay, Betty Luu and Amy Conley Wright, 'Young Children's Identity Formation in the Context of Open Adoption in NSW: An Examination of Optimal Conditions for Child Wellbeing', Institute of Open Adoption Studies – The University of Sydney, Barnados Australia, May 2016, pp 2-3.

25 Marc de Rosnay, Betty Luu and Amy Conley Wright, 'Young Children's Identity Formation in the Context of Open Adoption in NSW: An Examination of Optimal Conditions for Child Wellbeing', Institute of Open Adoption Studies – The University of Sydney, Barnados Australia, May 2016, p 2.

For children who have been maltreated or for whom continuing to live with their birth families is not an option, a UK study in 2014 found that '[a]doption offers tremendous advantages for maltreated children and the adoption reform agenda has rightly encouraged the use of adoption for children who cannot return home'.[26] This study also found:

> *There is a strong evidence base for the benefits of adoption… Adoptive family life can help foster developmental recovery and many adopted children do make significant progress. However, for a minority of families, the adoption journey can at times be fraught with difficulty and in some instances, this results in the child moving out of their adoptive home prematurely (referred to as adoption disruption).*[27]

Findings from a different UK study also conducted in 2014 highlighted the 'importance of timely decisions for children, particularly where adoption is the plan'.[28] The study concluded that:

> *For the vast majority of children who were adopted, the placement endured; adoptive parents were committed and tenacious, despite experiencing difficulties during the children's teenage years. … Adoption is the most stable of the three orders for children without suitable friends or family placements. It offers the greatest opportunity for security irrespective of the child's age at placement or at the time of the order.*[29]

A 2020 article based on a recent UK study of children adopted from the foster care system in England referred to the need to avoid delay in permanency planning:

> *Once a child enters care it is important to avoid unnecessary delay in permanency planning and to reduce the number of pre-adoption foster homes, preferably to one or none (i.e. where the child is adopted by foster carers)*.[30]

In a study of foster care adoptions in New South Wales, it was found that:

> *…foster care is not inherently damaging or unable to offer positive experiences for children. In fact, studies show that some children benefit from enhanced parenting during temporary foster care (Ahmed, Windsor, & Scott, 2015) and reach adulthood with adequate levels of psychosocial functioning after long-term care (Dumaret, Donati, & Crost, 2011).*[31]

However, the study went on to find:

> *…the negative impacts of long-term foster care are sufficiently strong to have promoted a change in State legislation. These include the detrimental impacts on child development and attachment due to placement insecurity as articulated by Tarren-Sweeney (2016).*[32]

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[26] Julie Selwyn, Dinithi Wijedasa and Sarah Meakings - University of Bristol School for Policy Studies Hadley Centre for Adoption and Foster Care Studies, 'Beyond the Adoption Order: challenges, interventions and adoption disruption: Research brief', April 2014, p 3.

[27] Julie Selwyn, Dinithi Wijedasa and Sarah Meakings - University of Bristol School for Policy Studies Hadley Centre for Adoption and Foster Care Studies, 'Beyond the Adoption Order: challenges, interventions and adoption disruption: Research brief', April 2014, p 3.

[28] Julie Selwyn and Judith Masson, 'Adoption, special guardianship and residence orders: a comparison of disruption rates', *Family Law*, December 2014, p 1714.

[29] Julie Selwyn and Judith Masson, 'Adoption, special guardianship and residence orders: a comparison of disruption rates', *Family Law*, December 2014, p 1714.

[30] Elsbeth Neil, Marcello Morciano, Julie Young and Louise Hartley, 'Exploring links between early adversities and later outcomes for children adopted from care: Implications for planning post adoption support', *Developmental Child Welfare, 2020*, vol 2(1), p 64.

[31] Andrea del Pozo de Bolger, Debra Dunstan, and Melissa Kaltner, 'Descriptive Analysis of Foster Care Adoptions in New South Wales, Australia', *Australian Social Work*, Vol 70(4), p 479.

[32] Andrea del Pozo de Bolger, Debra Dunstan, and Melissa Kaltner, 'Descriptive Analysis of Foster Care Adoptions in New South Wales, Australia', *Australian Social Work*, Vol 70(4), p 479.

The above research focused on adoption as a means of providing permanency. Based on submissions received by the committee, the lived experience of a number of submitters indicates that adoption is not a panacea for all. However, the research indicates it may be a suitable permanency option for some, depending on their personal circumstances.

2.2 Queensland legislation

2.2.1 *Child Protection Act 1999*

The CP Act has, as its paramount principle for administering the Act, the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life.[33]

There are also general principles for ensuring how the paramount principle can be achieved for an individual child. These include principles such as: a child has a right to be protected from harm or risk of harm; a child's family has the primary responsibility for the child's upbringing, protection and development; and if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child.[34]

Additional principles apply for administering the CP Act in relation to Aboriginal or Torres Strait Islander children, which are that:

- Aboriginal and Torres Strait Islander people have the right to self-determination
- the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.

These additional principles also explicitly include all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle as individual principles for the administration of the CP Act, which include prevention, partnership, placement, participation and connection.[35]

The CP Act was comprehensively reviewed from 2015-2017 following the release of the Queensland Child Protection Commission of Inquiry's report *Taking Responsibility: A Road Map for Queensland Child Protection,* which made 121 recommendations to reform the child protection system.[36]

As a result of that review, reforms were made to the CP Act including amendments to improve permanency outcomes for children in care.[37] These included the introduction of permanency principles and permanent care orders, and a limit on the making of successive short-term child protection orders that extend beyond two years unless it is in the child's best interests.[38]

According to the Australian Institute of Health and Welfare (AIHW), by incorporating permanency goals into a child's case planning, jurisdictions can actively seek the most suitable immediate placement, while preparing for long-term care arrangements and better developmental outcomes.[39]

2.2.1.1 Permanency outcomes, principles and hierarchy of preferences

The aim of the permanency amendments to the CP Act were to:

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33 *Child Protection Act 1999*, s 5A.

34 *Child Protection Act 1999*, s 5B.

35 *Child Protection Act 1999*, s 5C.

36 Explanatory notes, p 1.

37 When children cannot be safely reunified with their families, other permanency arrangements are considered. This includes seeking a long-term child protection order and providing the child with a stable care environment until they turn 18 years.

38 Explanatory notes, p 1; A short-term protection (or guardianship) order is an order where guardianship rights and responsibilities in relation to the child, including matters associated with the child's daily care, are granted to the chief executive (for a period of up to two years).

39 Australian Institute of Health and Welfare, *Child protection Australia 2018–19*, 2020, Child welfare series no. 72. Cat. no. CWS 74. Canberra: AIHW.

…better provide for improved permanency, including a focus on achieving relational, physical and legal permanency for children in out-of-home care, early planning for permanency, and permanent care arrangements for children and young people unable to be reunified with their family.[40]

The amendments included a new s 5BA which provided principles for achieving permanency. These principles, designed to ensure the wellbeing and best interests of a child, state that the preferred action or order for a child to ensure these interests is the one that best ensures the child experiences or has:

(a) ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers; and

(b) stable living arrangements, with connections to the child's community, that meet the child's developmental, educational, emotional, health, intellectual and physical needs; and

(c) legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability, including, for example, a long-term guardianship order, a permanent care order or an adoption order for the child.[41]

Permanency for a child therefore means that a child experiences or has relational, physical and legal permanency.

A hierarchy of preferences for deciding if an action or order achieves permanency for a child was also included (s 5BA(4)). In order of priority, these preferences currently are:

(a) the first preference is for the child to be cared for by the child's family;

(b) the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person;

(c) the third preference is for the child to be cared for under the guardianship of the chief executive.[42]

Guardianship of a child means the person with guardianship has the powers, rights and responsibilities to attend to:

- a child's daily care
- make decisions that relate to day-to-day matters concerning the child's daily care
- make decisions about the long-term care, well-being and development of the child in the same way a person has parental responsibility under the *Family Law Act 1975.*[43]

2.2.1.2 Long-term guardianship, permanent care and adoption

As mentioned above, legal arrangements for a child's care that provide the child with a sense of permanence and long-term stability can include a long-term guardianship order, a permanent care order or an adoption order.

Long-term guardianship means guardianship until the child turns 18 years. While the chief executive can be granted long-term guardianship, they are not recognised as a long-term guardian. A long-term guardian is a person, other than the chief executive, who is granted long-term guardianship of the

40 Explanatory notes, Child Protection Reform Amendment Bill, 2017, p 2.

41 *Child Protection Act 1999*, s 5BA(2).

42 *Child Protection Act 1999*, s 5BA(4).

43 Glossary, Child Safety Practice Manual https://www.csyw.qld.gov.au/childsafety/child-safety-practice-manual/quicklinks/printable-version

child under a long-term guardianship order. The parents of the child may apply to vary or revoke a long-term guardianship order.[44]

The hierarchy of preferences is reflected in long-term guardianship child protection orders. A long-term guardianship order is a type of child protection order that grants long-term guardianship of the child to:

i. *a suitable person, other than a parent of the child, who is a member of the child's family; or*
ii. *another suitable person, other than a member of the child's family, nominated by the chief executive; or*
iii. *the chief executive*.[45]

For children who don't have a long-term guardian, their case plan must be reviewed at least every six months under s 51V of the CP Act. A case plan covers the intervention in the child's care and a description of how the goals of that intervention will best be met. Section 51V provides for what should be included in a case plan, including the requirement for a permanency goal.

A report must be prepared following the review of the case plan, and must include:

> *…the goal for best achieving permanency for the child, how that goal has been achieved or is yet to be achieved, and how the revised case plan gives priority to achieve permanency for the child. Section 51X also provides that for a child under a long-term guardianship order to the chief executive, the report must state the progress made in planning for alternative long-term arrangements for the child.*[46]

These alternative long-term arrangements can include long-term guardianship with a member of the child's family or another suitable person, a permanent care order or arrangements for the child's adoption under the Adoption Act. Children under a long-term guardianship order with the chief executive are covered by this provision.[47]

Permanent care orders were introduced during the reforms of the CP Act.[48] A permanent care order is defined 'as an order…granting long-term guardianship of the child to a suitable person, other than a parent of the child or the chief executive, nominated by the chief executive'.[49]

If making a permanent care order for Aboriginal and Torres Strait Islander children, the Childrens Court must have proper regard to Aboriginal tradition and Island custom relating to the child and the child placement principles in relation to the child.[50]

Once a permanent care order is made, the department has no further involvement with the child subject to the order unless the guardian or the child request a review of the case plan or a complaint is made. Only the Director Child Protection Litigation (DCPL) can apply to revoke or vary a permanent care order.

Adoption is also one of the options for providing permanence to a child under s 5BA(2) of the CP Act. An adoption order is an order by which the adoptive parents become the legal parents of the child and the child legally ceases to be a child of his or her existing parents.[51] The Childrens Court must not

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44 *Child Protection Act 1999*, s 61(f), Sch 3.

45 *Child Protection Act 1999*, s 61(f).

46 Explanatory notes, p 3.

47 *Child Protection Act 2009*, s 51X(4)(c).

48 Explanatory notes, p 1.

49 *Child Protection Act 1999*, s 61(g).

50 *Child Protection Act 1999*, s 59A.

51 *Adoption Act 2009*, s 171; Glossary, Child Safety Practice Manual https://www.csyw.qld.gov.au/childsafety/child-safety-practice-manual/quicklinks/printable-version

make an adoption order unless a document, signed by the chief executive (child safety), is produced to the court stating that the chief executive (child safety) considers the adoption is an appropriate way of meeting the child's need for long-term stable care.[52]

2.2.1.3 Children under child protection orders

According to the explanatory notes, the number and proportion of children in the child protection system subject to long-term guardianship child protection orders has increased substantially in recent years. This increase has largely been in orders granting long-term guardianship of a child to the chief executive, which under s 61(f) of CP Act, is the last priority for achieving permanency for a child in Queensland's existing permanency hierarchy.[53]

The following table shows the number of children in Queensland subject to child protection orders, by order purpose, in Queensland.

Table 1: Children subject to child protection orders, by order purpose, Queensland

Order purpose	**as at 30 June 2015**	**as at 30 June 2016**	**as at 30 June 2017**	**as at 30 June 2018**	**as at 30 June 2019**
Guardianship/ Custody to the Chief Executive	7,404	7,620	7,801	8,008	8,470
Guardianship/ Custody to a relative or other suitable person	1,546	1,646	1,646	1,630	1,605
Directing a parent's actions/contact	54	78	86	78	103
Chief Executive to supervise matters	212	177	94	122	118
Total	**9,216**	**9,521**	**9,627**	**9,838**	**10,296**

Source: https://www.csyw.qld.gov.au/child-family/our-performance/summary-statistics/child-protection-orders

The table shows that since 30 June 2015, the number of children subject to child protection orders increased by 11.7 per cent. The number of children subject to child protection orders increased by 4.7 per cent from 9,838 as at 30 June 2018 to 10,296 as at 30 June 2019. As a proportion of those subject to child protection orders, children under a guardianship order to the chief executive increased from 80.3 per cent to 82.3 per cent between 30 June 2015 and 30 June 2019.[54]

Of the 10,296 children subject to child protection orders as at 30 June 2019, 6,403 were subject to long-term orders. The number of children subject to a long-term child protection order increased over the past year, from 6,150 as at 30 June 2018 to 6,403 as at 30 June 2019 (an increase of 4.1 per cent), while between 30 June 2015 and 30 June 2019 the number of children subject to a long-term child protection order increased by 13.3 per cent (from 5,652 to 6,403).[55]

For 1,596 (or 24.9 per cent) of these 6,403 children on long-term orders as at 30 June 2019, the guardian was a relative or other suitable person. This means that the chief executive was a long-term guardian to 4,807 children, or 75.1 per cent of children on long-term orders.

In terms of the number of children adopted, the following table shows the adoption orders made, by category of adoption order, in Queensland.

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52 *Adoption Act 2009*, s 178.

53 Explanatory notes, p 3.

54 https://www.csyw.qld.gov.au/child-family/our-performance/summary-statistics/child-protection-orders

55 https://www.csyw.qld.gov.au/child-family/our-performance/ongoing-intervention-phase-permanency-planning/legal-permanency-long-term-child-protection-orders

Table 2: Adoption orders made, by category of adoption order, Queensland:

Category of adoption order	year ending 30 June 2015	year ending 30 June 2016	year ending 30 June 2017	year ending 30 June 2018	year ending 30 June 2019
Queensland	10	9	7 [(a)]	7	8
Step Parent	9	13	10	5	7
Intercountry	19	26	16	13	11
Total	**38**	**48**	**33**	**25**	**26**

Source: https://www.csyw.qld.gov.au/child-family/our-performance/adoptions

(a) The figure of seven (7) for Queensland adoptions for the year ending 30 June 2017 includes two (2) foster carer adoptions. A Queensland adoption order is an adoption order made in relation to a child in Queensland, other than a person's step-child, that is effected under the *Adoption Act 2009*.

These figures show the small number of children subject to adoption orders over the last five years.

Over the past seven years, 10 children have been adopted from the child protection system. Two of those children were adopted by their foster carers and the other eight children were adopted by people on the Suitable Adoptive Parents Register. In the last five years there have been six children adopted from the child protection system.[56]

2.2.2 *Adoption Act 2009*

Under s 199(1) of the Adoption Act, the chief executive, under various circumstances, may apply to the Children's Court for a final adoption order for the adoption of a child by the prospective adoptive parents, if the child has been in the custody of the prospective adoptive parents for at least one year. The circumstances under which the chief executive can do this include because the chief executive, as the child's guardian under a delegation from the responsible Minister under the *Immigration (Guardianship of Children) Act 1946* (Cwlth) (IGOC), placed the child in their custody.[57]

The instrument of delegation under the IGOC specifically referred to the previous Department of Communities, Child Safety and Disability Services. Following the 2017 Queensland election, machinery of government changes leading to the formation of the Department of Child Safety, Youth and Women, meant that the delegations conferred on Queensland under the IGOC were unable to be exercised until a new delegation had been approved by the Minister for Immigration.[58]

As a result, when the Department of Home Affairs placed a small number of children from overseas with their prospective adoptive parents in Queensland between 30 April 2018 and 1 July 2019, the chief executive could not apply for a final adoption order for these children because the chief executive did not place the child in the custody of the prospective adoptive parents in accordance with the Adoption Act (s 198(1)(c)).[59]

56 DCSYW, correspondence dated 29 July 2020, attachment, p 1.

57 Explanatory notes, p 3.

58 Explanatory notes, pp 3- 4.

59 Explanatory notes, p 4.

3 Examination of the Bill

The Bill responds to the Deputy Coroner's recommendation regarding potentially amending the Adoption Act so that children could be expected to be permanently placed through out of home adoptions within 24 months of entering the department's care. The Bill does not amend the Adoption Act, but instead proposes amendments to the CP Act. The explanatory notes state:

> *While the previous reforms to the* Child Protection Act 1999 *have had positive results, it is acknowledged that more needs to be done to improve permanency outcomes and stability for children in care.*[60]

The Bill also contains minor and technical amendments to the Adoption Act to rectify the chief executive not being able to apply for a final adoption order for children placed with prospective adoptive parents by the Department of Home Affairs between 30 April 2018 and 1 July 2019.

3.1 Proposed amendments to the *Child Protection Act 1999*

3.1.1 Change to hierarchy of preferences for achieving permanency for a child under a child protection order

While Queensland's Adoption Act allows an adoption order to be made for a child who is subject to a child protection order, and the permanency principles in the CP Act refer to the option of adoption orders in s 5BA(2), the Bill clarifies this position by amending the hierarchy of preferences for achieving permanency under the CP Act.

The amendment to the hierarchy of preferences for achieving permanency under s 5BA(4) proposes that:

> *…for a child who is not an Aboriginal or Torres Strait Islander child, the third preference for deciding if an action or order achieves permanency for a child is for the child to be adopted under the Adoption Act 2009.*[61]

The proposed amendment states:

> *For deciding whether an action or order best achieves permanency for a child, the following principles also apply, in order of priority—*
>
> *(a) the first preference is for the child to be cared for by the child's family;*
>
> *(b) the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person;*
>
> *(c) if the child is not an Aboriginal or Torres Strait Islander child—the next preference is for the child to be adopted under the* Adoption Act 2009*;*
>
> *(d) the next preference is for the child to be cared for under the guardianship of the chief executive;*
>
> *(e) if the child is an Aboriginal or Torres Strait Islander child—the last preference is for the child to be adopted under the* Adoption Act 2009.[62]

The first two preferences for the child to be cared for by the child's family, or to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person, remain unchanged. The last preference for a child who is not an Aboriginal

60 Explanatory notes, p 1.

61 Explanatory notes, p 2.

62 Child Protection and Other Legislation Amendment Bill 2020, cl 8.

or Torres Strait Islander child remains for the child to be cared for under the guardianship of the chief executive.[63]

Section 7 of the Adoption Act provides that because adoption (as provided for in that Act) is not part of Aboriginal tradition or Island custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term stable care only if there is no better available option.

The Bill purportedly aligns with this section by providing in proposed s 5BA that in the order of priority for achieving permanency, if the child is an Aboriginal or Torres Strait Islander child, the last preference is for the child to be adopted under the Adoption Act. This is also because adoption has the potential to infringe upon the unique cultural rights of Aboriginal and Torres Strait Islander peoples, including connection with families, communities and cultures.[64]

However, despite adoption being placed last on the hierarchy of preferences for Aboriginal and Torres Strait Islander children, representatives of the department have advised that the paramount principle is still the safety, wellbeing and best interests of the child. Ms Deidre Mulkerin, Director-General of the DCSYW, told the committee 'The references to the child placement principle really call out how we would work with Aboriginal and Torres Strait Islander children, families and communities and the extra protections...these do not override the paramount principle about safety'.[65]

Ms Mulkerin also advised the committee that while an application for the adoption of a child under the Adoption Act is usually made by the department on behalf of the chief executive:

> *Because the decision for the department to commence proceedings in the Childrens Court for an Aboriginal or Torres Strait Islander child in care is so significant, this decision will only be made by the chief executive. This is not a responsibility that I will delegate to anybody else. This practice change will be implemented operationally and does not require legislative change. In practice, this means that if there is an assessment made that an application for the adoption of an Aboriginal or Torres Strait Islander child who requires long-term care is the best option, all of the information gathered and the assessments made by our child safety officers will need to be reviewed and a final decision made by the chief executive. Of course, if the assessment is endorsed, an application will need to be made to the Childrens Court in the usual way under the Adoption Act.*[66]

To complement the amendments to the CP Act, Ms Deidre Mulkerin advised that the department has been working on a range of operational changes inside the department to support permanency in the delivery of child safety services. These operational changes include:

> *…a review of the implementation of the 2018 permanency reforms, including our implementation of the Aboriginal and Torres Strait Islander Child Placement Principle; the establishment of a new senior position in the department dedicated to overseeing improved permanency outcomes across the department; auditing the case plans for all children in care currently under the age of three to assess whether there is another legal or placement option that would better meet their permanency needs; targeted work with current foster and kinship carers who have had children in their care for more than two years to assess whether a permanent care order, such as a long-term care order to the carer, would improve stability for the child; and the establishment of quarterly reporting to the minister on the status of*

63 Explanatory notes, p 2.

64 Explanatory notes, p 3.

65 Public briefing transcript, Brisbane, 27 July 2020, p 3.

66 Public briefing transcript, Brisbane, 27 July 2020, p 3.

permanency planning for children in care, including specifically the number of children on permanent care orders or other long-term orders.[67]

3.1.2 Stakeholder views on the proposed change to the hierarchy of preferences

Stakeholders expressed both support for, and opposition to, the proposed amendments, along with views on how best to support a child in care, what form permanency should take and the support needed for all involved in adoption.

3.1.2.1 Support for the proposed changes

A number of submitters expressed support for the proposed amendments. Adopt Change expressed strong support for the proposed legislative changes, stating that the changes are critical to delivering more permanent outcomes for children in out-of-home care who are at risk:

By prioritising adoption over long-term guardianship by the chief executive officer, children will be offered legal stability within a family meaning that they have the opportunity to not only survive, but thrive, in a permanent family home rather than being legally parented by the government, typically with multiple moves from home to home, further exacerbating trauma.

The continuum of care hierarchy being outlined in the legislation will provide a clearer framework as a lever for decision making in determining which care option best suits each individual child in care.[68]

Ms Sarah Wilson, a kinship carer for two young children, expressed support for the inclusion of adoption in the hierarchy of preferences, stating:

We want to thank you from the bottom of our hearts for advocating that adoption be a viable option for children like our 2 year old and 4 year old. They deserve to feel safe and secure their whole lives.

We aren't trying to erase their past. We are trying to give stability and security to their future because we think this is what will give them their best chance at thriving.[69]

Hope For Our Children also supported the proposed priority of permanency, but objected to the exclusion of Aboriginal and Torres Strait Islander children from the proposed amendment. The group instead recommended that while respect for culture as an essential and influencing factor in placement decisions should be maintained, child welfare must take precedence over cultural considerations.[70] Adoption as an option for Aboriginal and Torres Strait Islander children is discussed later in the report.

Jigsaw Queensland Inc (Jigsaw Qld) advised that it welcomed the proposed amendments that clarify and prioritise the available child placement options, and supported the placing of adoption as a second to last option for children in need of permanent care, for children from non-Aboriginal and Torres Strait Islander backgrounds.[71]

However, Dr Trevor Jordan, President of Jigsaw Qld, placed caveats on this support, advising the committee that the organisation supports permanency to age 18 as an alternative to adoption, or supports simple adoption, where a person becomes part of two families rather than being severed legally and in relationships from their family. Dr Jordan also called for permanent guardianship or

67 Public briefing transcript, Brisbane, 27 July 2020, p 3.

68 Submission 2, p 2.

69 Submission 16, p 1.

70 Submission 7, p 5.

71 Submission 4, p 2.

simple adoption to be supported by carers who are knowledgeable and skilled in looking after children with adverse childhood experiences.[72]

Submitters also expressed support for maintaining the first and second preferences as parents, guardianship to family members (someone other than a parent) or another suitable person.

For example, Professor Tamara Walsh stated:

> *…there is no way of predicting how the placement will go, and whether the child (all things considered) would have been better off had they been left where they were. When a child is removed from their home, there is no legal requirement to show that the child is likely to be better off in the alternative home on offer (if any). The child's current living situation is not being pitted against a defined alternative. If the court makes a long-term guardianship order in favour of the chief executive, it will be up to the chief executive to determine where to place that child. Placements often do not succeed, and children often find themselves bounced from placement to placement. Many children end up in residential care, which is well-known to be associated with criminalisation.*[73]

Family Inclusion Network Townsville (FIN Townsville) went as far as to state that the rights of a child's original, biological/psychological parents, grandparents, and wider family members (i.e., their First family) should be regarded with the same recognition and respect as is now accepted should be accorded to First Nations' peoples.[74]

3.1.2.2 Opposition to the proposed changes

A substantial number of submissions opposed the proposed legislative changes. Submitters were opposed to:

- the specific inclusion of adoption in the hierarchy of preferences
- the insertion of adoption above long-term guardianship to the chief executive in the hierarchy of preferences, and/or
- adoption itself, particularly as it is currently implemented, due to the impacts of adoption on both the adoptees as well as the biological families.

The following outlines the reasons given for this opposition.

Specific inclusion of adoption in the hierarchy of preferences

Adoption is already an option in the existing legislative framework

Some submitters stated the amendment is unnecessary because the current child protection legislation already provides a sufficient legislative framework to facilitate permanency, including providing an option for adoption.[75]

Queensland Foster and Kinship Care Inc (QFKC) advised they do not believe that specifying adoption as a permanent care option in the principles of the CP Act will achieve physical and relational permanency for children and young people in care. QFKC noted that adoption is already an option under s 51X(4)(c) of the CP Act and still 75 per cent of children and young people under long-term guardianship orders are subject to long-term guardianship orders to the chief executive, despite this being the least preferred option in the CP Act.[76]

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72 Public hearing transcript, Brisbane, 10 August 2020, pp 1-2.

73 Submission 5, pp 2-3.

74 Submission 10, p 2.

75 Submissions 1, p 2; submission 11, p 4; submission 20, p 4; submission 23, p 9; submission 34, p 6.

76 Submission 1, p 2.

QFKC stated that it considers the current legislation and framework underpinning permanency for children and young people in care as appropriate and as having the ability, if practiced, to achieve permanency for many children and young people in care in its true sense.[77] QFKC stated that the departmental culture which sees 75% of long term orders being granted to the chief executive needs to change, and to achieve this cultural shift the following should occur:

- *Regionally based Permanency teams to be established*
- *These teams to audit all current children subject to LTG* [long-term guardianship] *to CE* [chief executive] *to determine cases where there is a potential suitable guardian*
- *Priority given to undertaking suitability assessments and recommendations to OCFOS* [Office of the Child and Family Official Solicitor] *and DCPL* [Director of Child Protection Litigation] *regarding variations of LTG to CE to LTG to kin or suitable other*
- *Child Safety to speak with DCPL about ensuring these applications for variations are not delayed through the Children's Court*
- *Any future applications for Long term orders to be referred to Regional Permanency team for them to map suitable guardian options in line with the Permanency Principles outlined in the Act and complete any associated assessments, recommendations and court documents*.[78]

The Queensland Human Rights Commission (QHRC) similarly stated:

> *Adoption is already offered as a means to achieve permanency in the* Child Protection Act 1999*. It is not clear how the current legislative framework for adoption has acted as a barrier to achieving permanency. It would be desirable for this to be investigated and understood in addition to any legislative change, as stronger policy and practice measures may be a better way to secure positive outcomes for children in out-of-home care*.[79]

In response to the claim that adoption is already an option and the proposed amendment is not necessary, the department advised:

> *The amendment clarifies when in the hierarchy of actions or orders for achieving permanency for a child that adoption may be considered as the preferred approach. The best option for an individual child will always be based on their individual circumstances and needs. Under section 5A, the main principle for administering the CP Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.*[80]

A number of stakeholders argued that permanent care orders and long-term guardianship are sufficient, with some calling for permanent care orders to be given time to be assessed as a permanency option.[81] For example, the Queensland Law Society (QLS) submitted that one of the reasons it does not support the proposed amendments is because the amendment is unnecessary, stating:

> *Permanent Care Orders ("PCO") are already available. PCOs are provided for in section 61 (g) of the* Child Protection Act 1999 *and were established to permit long-term guardianship of a child to a suitable person, other than a parent of the child or the chief executive. PCOs provide a scheme setting out the legal arrangements for a child's care that provide a sense of permanence and long-term stability.*

77 Submission 1, p 3.

78 Submission 1, p 4.

79 Submission 34, p 6.

80 DCSYW, correspondence dated 7 August 2020, attachment, p 4.

81 See, for example, submissions 3, 19, 27, 28, 32, 33.

…

PCOs provide permanence and stability for children and young people whilst retaining connectedness with family, community and culture, identity and language. In contrast, adoption severs the legal relationship between the child and the child's birth parents (unlike child protection orders) and creates a new identity for the child, including a changed birth certificate. Adoption orders do not expire when the young person turns eighteen.

The primary difference between PCOs and adoption orders are that with PCOs, children and young people have the ability to maintain a connection with their biological parent/s. Therefore, PCOs provide a more flexible approach to the long-term care of children and young people in the child protection system. In our view, the availability of adoption orders for children in the out-of-home care system within a two year period is a significant step and may be considered a disproportionate response.[82]

The QLS also submitted that given that PCOs are a more recent reform, it would be prudent for more time to be invested in assessing the uptake and efficacy of PCOs.[83]

The QHRC similarly submitted that, following a long period of reform, the further proposed changes to the CP Act are unnecessary, or at the least are premature, stating 'There is an insufficient evidence base to justify the changes, particularly as the impact of the changes that commenced in 2018 has yet to be evaluated in a meaningful way.[84]

Legal Aid Queensland stated 'Adoption is already available under section 5BA of the *Child Protection Act 1999* (CPA) Permanent care orders, which provide that children may be 'adopted' without having their relationships to their biological parents and siblings extinguished, have recently been legislated'.

Adoptee Rights Australia referred to research showing that:

The supposed 'good' outcomes from adoption cannot be separated out from that of long-term care, and this does not take into account the long-term impacts of adoption arising from the experience of the cascade of effects of a state assigned replacement identity and disconnection from kin for adoptees over their lifetimes and inter-generationally.

If the requirement of adoption is not necessary to achieving good outcomes from care, and the available research indicates this, as do many of the adoptees and adoptee run organisations who speak about the harm of adoption, then why expose a child-then-adult to these negative short and long-term effects when they can be cared for under long-term guardianship and Permanent Care Orders?[85]

The Association for Adoptees suggested that the 'key should be how we keep children safe without destroying their connection to family, identity and heritage', and in doing so expressed support for permanent care arrangements:

We feel children are better protected by the safety measures in permanent care arrangements where there is oversight and continued support for the child's life. This arrangement better protects vulnerable children from any further harm. Permanency care arrangements do not alter the child's birth certificate or separate them from their biological family for life and creates enhanced supports especially for children with disabilities. It does not severe them legally from siblings or grandparents whose continued relationship in their life is also integral to their emotional well-being. No child needs, nor wants their entire identity wiped, or their biological

82 Submission 32, p 2.

83 Submission 32, pp 2-3.

84 Submission 33, p 2.

85 Submission 19, p 13.

family and heritage stripped from them to create a safe, loving and permanent home. Permanency care, guardianship and kinship care does not strip a biological child from family belonging, inheritance rights or cultural and religious importance.[86]

Ms Janice Kashin supported guardianship over adoption, stating that guardianship has 'all the advantages of adoption, while not causing the child a severe identity crisis…'.[87] Ms Kashin also submitted:

Guardianship, or wardship, lessens the trauma for the child. The child does not have to deal with the artificial imposition of a new identity. Guardianship allows the child to think that "things will be different now" instead of "a new 'mum' and 'dad'! here comes more of the same!" As well, a child already traumatised cannot adjust to being called 'William" one week, and "James" the next.[88]

On the merits of long-term guardianship in relation to the biological parents, FIN Townsville stated:

Many parents with young children in care who are unable to change their lives around within the time frames specified by child protection law and child safety services, nonetheless go on to become responsible capable adults over a longer time frame. Thus, in time, they become able to provide love; a sense of belonging and connection to family, community, culture, and country; and ongoing positive relationships and support with their children as they grow into young adults. This is a powerful reason why Open long-term Guardianship is a preferable arrangement to adoption. In Family Inclusion Network Townsville there are several parents right now who, since they lost their children into care, have over some years managed, for example, to relinquish problematic substance use, overcome physical and/or mental health challenges, started to forge "new careers" for themselves through obtaining TAFE or University qualifications, gained well respected employment in business or the human services, and/or developed new healthy adult relationships. Each of these now more fulfilled adults is well able to play a part in their children's lives which, in turn, can be enriched by an expansion of supportive relationships. And a more stable First family in no way means children or young people have to give up relationships with their long-term guardians. They can have both.[89]

The department responded to the preference for permanent care orders and long term guardianship orders being maintained by stating:

The department agrees the preference for children who require long-term care will continue to be children being cared for by a guardian who is a member of their family or another suitable person. This will remain unchanged in section 5BA(4).

The Bill, if passed by Parliament, will amend the CP Act to explicitly reference adoption as the third preference for achieving permanency for children other than Aboriginal or Torres Strait Islander children. The first preference is for the child to be cared for by the child's family; and the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent, or another suitable person (a long-term guardianship order to a suitable person). A permanent care order is one type of a number of long-term care arrangements available.[90]

86 Submission 3, p 3.

87 Submission 29, p 2.

88 Submission 29, p 2.

89 Submission 10, pp 3-4.

90 DCSYW, correspondence dated 7 August 2020, attachment, p 8.

Insertion of adoption above long-term guardianship to the chief executive in the hierarchy of preferences

A number of submitters opposed placing adoption above long-term guardianship to the chief executive because they believe it should be a last resort, or not happen at all. Concerns were also raised that the child protection focus will shift to the process rather than what is in the best interests of the child, with some suggesting the proposed amendment is a way to reduce the number of children in care.

Adoption should be last resort/ Adoption is not in the best interests of the child.

Some submitters contended that adoption should be a last resort, or not considered at all. This contention was borne from the belief that adoption is rarely in the best interests of the child. For example, the Australia Association of Social Workers (AASW) submitted that the amendment 'can and will cause unintended damage on children and their families'.[91] The AASW recommended the Queensland government repeal the amendment of s 5BA so that adoption should only be considered as one of a suite of possible responses after all other options for achieving the child's safety are sufficiently explored.[92]

A number of submitters referred to adoption being an extreme or drastic option that should only be used in exceptional cases.[93] Professor Tamara Walsh submitted that considering adoption as the third possible option for non-Indigenous children, and the fourth possible option for Indigenous children, 'is an extremely drastic step. This is particularly so in view of the body of evidence which suggests that supporting children to stay at home, by enhancing the protective capacities of birth families, is the preferred option'.[94]

Mr Christopher Mundy referred to section 9 of the Convention of the Rights of a Child in relation to separating a child from his or her parents against their will, stating:

> *The convention supports our learnings from past adoption practices - that a child should not be separated from their mother and father unless extreme circumstances exist. The convention also supports the notion of a child maintaining a relationship with their parents even if separation occurs. Total and legal separation of a child from their parents through adoption is an extreme measure that should only occur in extreme circumstances. This already exists in Queensland Legislation.*[95]

The Victorian Adoption Network for Information and Self Help (VANISH Inc) also stated it considers adoption to be at the extreme end of the range of permanent care options potentially available to children deemed unable to be raised safely by their parents. VANISH Inc stated:

> *There are, we believe, less drastic permanent placement options that better support the child's identity and connections with their family of origin.*[96] *VANISH holds that, until such time as adoption is no longer available as an option, adoption should only be considered when all other placement options have been fully explored.*[97]

91 Submission 11, p 4.

92 Submission 11, pp 4, 5.

93 See, for example, submissions, 5, 8, 10, 28.

94 Submission 5, p 3.

95 Submission 8, p 2.

96 Submission 28, pp 1-2.

97 Submission 28, p 3.

The department provided the following response regarding statements that adoption should only be considered in extreme circumstances and as a last resort:

> *Section 51C of the CP Act requires that a case plan is developed for each child who is in need of protection and needs ongoing help under the Act. A case plan is a written plan for meeting the child's protection and care needs.*
>
> *Section 51B(2) requires that a case plan must include the goal for best achieving permanency for the child and the actions to be taken to achieve the goal.*
>
> *The goal for best achieving permanency for a child may be returning the child to the care of a parent, or applying to the Childrens Court for a child protection order for the child. Section 59 of the CP Act sets out the matters that a Childrens Court must be satisfied of before a child protection order can be made for a child. This includes additional specific things that the Court must be satisfied of before a long term child protection order can be made. Under section 59(6), before making a long term order for a child, 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.*
>
> *Adoption is one option that is considered for children who require long term care. The department may consider that adoption is not [an] appropriate option for a child where:*
>
> - *the child for whom adoption is being considered is able to form and express views about adoption, and he or she does not agree with the proposed adoption*
> - *the child has a sibling for whom adoption is not being considered, and the proposed adoption would sever the legal relationship between the siblings and this does not appear to be in the child's best interests* [or] *the child is an Aboriginal or Torres Strait Islander and a more appropriate option is available to meet the child's needs*
> - *the young person is more than 17 years of age and it is unlikely there will be sufficient time to complete the adoption process before the young person attains 18 years of age*.[98]

Some submitters argued that adoption should only be considered in exceptional circumstances, or not at all, because adoption is not in the best interests of the child.[99] Ms Theresa Hawken, an adoptee, stated 'The[y] talk of best interest of the child, but I know personally from the past adoption practice there has been no help for me'.[100]

Ms Janice Kashin, another adoptee, submitted:

> *Adoption cures nothing. It introduces a multitude of new problems with the annihilation of the child's history, the changing of the child's name, the severing of all early relationships, good or bad, and the demand on the already commodified human being, to play the "adoption game" of "pretend", when they may already be reeling from their life circumstances. This happens at a time when you should be considering the rehabilitation of the child. Adoption will add to the child's confusion and bewilderment. Expecting a young child to call strangers 'mum' and 'dad will compound the already traumatic outcomes that the child is already dealing with.*[101]

Legal Aid Queensland submitted that '[t]he proposed amendments to the CPA appear to contradict the legislated principles for the administration of the CPA'.[102]

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98 DCSYW, correspondence dated 7 August 2020, attachment, pp 6-7.

99 See, for example, submissions 6, 8, 29, 35.

100 Submission 6, p 1.

101 Submission 29, pp 1-2.

102 Submission 37, p 2.

In response to concerns that adoption may not be in the child's best interest, the department stated:

> *The best option for a child will always be based on their individual circumstances and needs.*
>
> *The CP Act is administered under the principle that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount. The Bill does not propose changing this.*
>
> *If the department assesses that adoption may be a suitable option for a child who requires long term care, the process under the* Adoption Act 2009 *(Adoption Act) must be followed. This includes obtaining the consent of the child's parents and proceedings being commenced for an adoption order in the Childrens Court.*[103]

Mr Scott McDougall, Queensland Human Rights Commissioner at the QHRC made the following recommendation:

> *We do not consider, except in exceptional cases, that there is sufficient evidence supporting the benefits as outweighing potential harms.*
>
> *…*
>
> *It is clear that further in-depth and meaningful consideration of the current adoption regime is required prior to elevating it in the hierarchy of placement options. We suggest that the appropriate time for this is in the review of the Adoption Act so that the government can properly evaluate whether the Adoption Act is responding to the needs of children and families and reflecting the present realities of adoption in Queensland before hastily elevating its role in the child protection system.*[104]

Concern that focus will change from the best interests of the child to the process

A number of stakeholders raised concerns that the proposed amendment would place a focus on the process and adherence to the hierarchy, to the detriment of considering the best interests of the child. For example, the Queensland Family and Child Commission (QFCC) suggested the amendment 'may have the unintended consequence of reducing the level of scrutiny required to make a fully informed decision in favour of adoption for a child' because:

> *The proposed list assumes adoption will be a preference for all children who come into the child protection system. This assumption could lead to situations in which adoption is recommended even when it is not in the best interests of a particular child.*[105]

At the public hearing Ms Cheryl Vardon, Principal Commissioner of the QFCC, told the committee:

> *In terms of the QFCC's submission on this particular bill, one of the challenges of the state—and I am talking about the state as the parent—is to never lose sight of the children. We are talking about vulnerable children in this case—very vulnerable children. Queensland as the parent needs to be aware that the children are more vulnerable than perhaps a range of other kids. Therefore the state must hesitate before it gives up its parenting powers, particularly in terms of these children. The QFCC is of the view that, while adoption will continue to be a consideration, alternatives are available including a more careful and nuanced, if you like, use of the powers under existing legislation*.[106]

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103 DCSYW, correspondence dated 7 August 2020, attachment, p 5.

104 Public hearing transcript, Brisbane, 10 August 2020, p 11.

105 Submission 34, p 12.

106 Public hearing transcript, Brisbane, 10 August 2020, p 18.

Ms Vardon also told the committee:

> *Pursuit or attainment of adoption or any other order is not and should never be considered the goal or the measure of success. Securing the long-term safety and wellbeing of children is and must always remain the goal. Orders are a means to an end. Prioritising or privileging particular orders, including adoption as facilitated by this bill, makes attainment of that order the goal. That compromises and undermines the application of the paramount principle.*[107]

The QFCC also submitted that elevating adoption as a preference should not mean legal stability is pursued without full consideration of a child's physical and relational stability needs as well.[108] The QFCC stated:

> *If legal permanency becomes the predominant consideration, decisions are more likely to be influenced by the needs and priorities of the system, prospective adoptive parents or existing carers rather than those of children and young people.*[109]
>
> *The provisions in the Bill elevate adoption as a discrete preferred option to secure permanency for a child. In practice each time a discrete option is added, it becomes less likely that a full consideration of a child's current and future needs, as per the paramount principle, will take place.*[110]
>
> *…*
>
> *While providing for legal stability, adoption must be considered in the context of a child's ongoing connections to the people and places that are significant to them. The impacts upon continuity of relationships and physical stability are critical considerations for the immediate and long-term safety and wellbeing of children.*
>
> *For example, an adoptive family may not wish or be able (at the time of adoption or subsequently) to support a child's relationships with siblings and extended family members, or connection with the child's community or culture.*
>
> *Adoption needs to be seen in the wider understanding of children's sense of stability and ongoing experiences. Its place in legislation should be considered in the context of meeting all three dimensions required to achieve a holistic positive outcome that protects a child's safety, wellbeing and best interests now, and for the duration of the child's life, not simply what suffices at a point in time.*[111]

The QFCC recommended safeguards to ensure adoption is not used to expedite removal of children from the system.[112]

PeakCare Queensland Inc (PeakCare) commented on experiences overseas, submitting:

> *Other research from the United Kingdom indicates that pursuing a strong preference for permanency via adoption also raises concerns about this choice being driven by the need to reduce state expenditure on the 'in care' population and may turn alternatives like third party guardianship, or foster and residential care, into second class options, although good quality placements of this kind may be the best choice for some children. In addition, the concentration on adoption may encourage a fragmentary approach to the child welfare field rather than*

[107] Public hearing transcript, Brisbane, 10 August 2020, p 19.

[108] Submission 34, p 3.

[109] Submission 34, p 4.

[110] Submission 34, p 4.

[111] Submission 34, pp 4-5.

[112] Submission 34, p 12.

> *embracing an integrated view of the available choices so that the best plan is made for each individual child.*[113]

PeakCare advised that the promotion of adoption by governments impacted on workers' abilities to take a 'situated ethical approach that reflected the complexities of individual children and their families' circumstances'.[114]

Similarly, The Benevolent Society (TBS) raised a number of concerns about the impact the amendments may have on considering the best interests of the child. These concerns included that the proposed hierarchy:

> *…may have the effect of prioritising the process over the best interests of the child. Through our work and relevant research we have learned that the lived experience of each child and those around them is unique; and that their best interests will not be served by a hierarchy that positions adoption as the ultimate solution.*[115]

TBS also raised the concern that the proposed hierarchy 'diminishes the ongoing discretionary power of the responsible authority to identify the care option that is in the best interests of each child'. TBS stated this is a concern because '[w]hile other forms of OOHC [out of home care] mandate a role for the state in oversight, support and review, this responsibility ends on the finalisation of an adoption process, despite its considerable long term consequences'.[116]

Lastly, TBS stated that the proposed changes in the Bill risk 'creating a perception and even expectation of adoption as the inevitable final step on the OOHC journey' rather than being another option for permanency.[117]

In response to the call for a focus on the best interests of the child rather than the process, the department advised:

> *Section 5A of the CP Act provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.*
>
> *This paramount principle applies to the exercise of powers and functions by the department, the Director of Child Protection Litigation, the Childrens Court and the Queensland Civil and Administrative Tribunal that are provided throughout the Act.*
>
> *The CP Act defines permanency as including these elements. How a decision maker weighs particular factors in an individual case is dependent on the available evidence and information about the circumstances of the case and the exercise of professional judgement and discretion*.[118]

Concerns were also raised by some submitters that the proposed amendment may lead to the introduction of targets, either official or unofficial, to show that adoption as a means of providing permanency was routinely being considered. For example, the QFCC submitted that if adoption is routinely pursued due to a belief that a lower reported number of children in care is a good outcome in itself, the child protection system may adopt official or unofficial targets for adoption that do not adequately consider each individual child's complex circumstances.[119]

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113 Submission 22, p 4.

114 Submission 22, p 5.

115 Submission 20, p 3.

116 Submission 20, p 5.

117 Submission 20, p 4.

118 DCSYW, correspondence dated 7 August 2020, attachment, p 21.

119 Submission 34, p 13.

The CREATE Foundation similarly raised concerns about a move towards creating targets, stating:

> *CREATE is concerned that the stipulation of a 24 month maximum period by which permanency decisions should be made may create undue emphasis and drive toward meeting targets, rather than addressing the needs and best interests of the child and/or family*.[120]

The CREATE Foundation therefore recommended that adoption only be considered when 'evidence indicates that it is highly unlikely that parents will be able to provide adequate parenting and on a case-by-case basis, guided by the needs and wishes of young people and not prioritised due to time frame or administrative pressures'.[121]

Ms Jane Sliwka, a social worker and adoptee, stated that the Coroner's Court of Queensland's recommendation that the department report to the Coroner's Court of Queensland the number of children adopted and the details of those matters every six months for the next 5 years:

> *… is a very concerning recommendation as it indicates the belief that adoption is a 'solution', rather than simply one permanency option which has its own consequences and harms. It also emphasizes 'numbers' (of adoptions) over qualitative information about the individual situations of children and families*.[122]

Some submitters suggested that an outcome of adoption following the 24 month period if there is strict adherence to the hierarchy of preferences may lead to a change in carer for the child, which may not be in their best interests. For example, the QFCC stated:

> *If Child Safety pursues adoption through a need to meet the priority preferences, this may risk the relationships and living arrangements a child has with their current carer. A situation may evolve where a long-term carer is prepared to provide continuing care for a child, however does not wish to seek an adoption or guardianship. In this circumstance a Child Safety Officer, following the proposed order of preference, may decide it is necessary to seek adoption to a new family rather than allow the child to remain in an existing stable placement.*[123]

VANISH Inc made a similar point in the context of a policy promoting adoptions from out-of-home care, stating:

> *…there is also pressure for prospective adoptive parents to transition (i.e. 'convert') from foster (including kinship) care arrangements to adoption. However, on the granting of an adoption order, the adoptive parents will lose access to support services and the relevant foster care allowance, which is usually significantly more than any allowance they may be eligible to receive as adoptive parents (or permanent carers).*[124]

The QFCC also pointed out that if a long-term carer wishes to adopt a child in their care, there will be no guarantee that carer will ultimately be selected as a child's adoptive parent. This is merely an option available under the Adoption Act.[125]

The AASW suggested that the amendment might convey a confusing message to foster parents that foster-caring has become a 'pathway to adoption':

> *Under a child protection order, there is still the requirement for family contact – an adoption means this is severed. Prospective adoptive parents might take on foster caring with the aim of adopting a child, which raises significant ethical issues. In particular, the extent to which genuine*

120 Submission 17, p 5.

121 Submission 17, p 5.

122 Submission 24, p 2.

123 Submission 34, p 11.

124 Submission 28, p 5.

125 Submission 34, p 11.

effort and work towards reunification can take place if foster carers are 'looking for a prospective child'. The unintended consequences of this require careful thought and consideration to avoid unnecessary placement breakdowns and lack of focus on working with the family towards reunification because a family has been identified.[126]

FIN Townsville also submitted that, with the possibility of greater opportunities for adoption, there may be:

increasing clamour from prospective adoptive families, with subtle pressure on Child Safety Services to remove more babies at birth or in early childhood, thereby heralding a new generation of forced adoptions. Children entering state care should not come to be seen as an avenue of supply for infertile couples and others looking to adopt.[127]

Ways to reduce numbers in care

Some stakeholders raised concerns that adoption will be used as an option to reduce the number of children in care and to save money by taking the child out of the child protection system, making them someone else's responsibility. [128] For example, the QFCC submitted:

Both the Inquest and the Carmody report recommended adoption be routinely considered for children in out-of-home care to provide for stability of placement and 'remove children from the system'. In practice, this may address issues with the existing system but to the detriment of a child. The safety and wellbeing of a child should be the primary consideration of any such amendment.[129]

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)[130] similarly referred to the inclusion of adoption as an approach to reducing the number of children in the child protection system, submitting:

Once children are placed in out of home care, our further concern is the adoption of children in OOHC would be used as a way of reducing the numbers of Aboriginal and Torres Strait Islander children in the system. This may not only lead to a false impression that the number of Aboriginal and Torres Strait Islander children in the system are decreasing, it also would mask the increasing numbers of children being placed in out of home care by a system that has not addressed the systemic factors leading to over-representation.

It is of significant concern that for adoption to not be appropriately utilised as an option it relies on vastly improved practice, training and policy implementation of current reforms available to the Department of Child Safety, Youth and Women.

Our evidence would suggest that this is already a struggle for the department and many of our families are experiencing a system that is not focused on upholding their rights. This has the

126 Submission 11, pp 5-6.

127 Submission 10, pp 4-5.

128 See, for example, submissions 10, 19, 22, 23, 26, 28, 29.

129 Submission 34, p 4.

130 The submission provided by the QATSICPP is a joint submission with Minister for Child Safety, Youth and Women's Aboriginal and Torres Strait Islander Stakeholder Group (Stakeholder Group) and the Secretariat of National Aboriginal and Islander Child Care (SNAICC). The Stakeholder Group includes the QATSICPP, Aboriginal and Torres Strait Islander Community Health Service Inc., Queensland Indigenous Family Violence Legal Service Aboriginal Corporation, Kummara Association Inc., Queensland First Children and Families Board, Palm Island Community Company, Kalwun Development Corporation Limited, Aboriginal and Torres Strait Islander Legal Services, Townsville Aboriginal and Islander Health Service, Kurbingui Youth Development Association, Queensland Aboriginal and Torres Strait Islander Health Council, Goolburri, Institute for Urban Indigenous Health, Mura Kosker Sorority Inc.

> *potential for overstretched case workers to utilise adoption as default option for permanence rather than working more substantively with families to create the conditions for reunification*.[131]

Some stakeholders advised that if the government was hoping to gain cost-savings via the proposed amendment, experience elsewhere shows that such an approach does not result in cost saving for a government. For example, VANISH Inc referred to incorrect assumptions about adoption leading to cost savings, submitting:

> *It is often mistakenly assumed that adoption is a budget-saving measure, compared with maintaining children in long-term foster care arrangements. This reflects a widespread lack of recognition of the significant hidden costs associated with adoption throughout the lifetime. The complexity of children's needs does not disappear on the granting of an adoption order – legal permanency does not automatically resolve the child's needs for relational and physical continuity, stability and security. There are ongoing needs for specialist support services to address the needs of children who have suffered trauma, and to facilitate the maintenance of contact between the child and their parents and extended family of origin members.*[132]

The Family Inclusion Network, South East Queensland (FIN, SEQ)/Micah Projects submission commented on the experience in the UK as well as NSW and Victoria, submitting:

> *In case the policy intent of the Amendment was to reduce the number of children in care: evidence from Vic, NSW and this year from the UK highlight that while pushing children out of care through options like adoption should reduce numbers – this is not in fact materialising. The thinking is this may be because of the focus on adoption (you get what you focus on), there is an encroaching 'child rescue' mindset – particularly in regard to unborn children/born into care. Geographic pockets of practice and culture that push for early removal (into adoption, for example) are also more likely to remove children at any age due to the scrutiny and risk averse mindsets. More worryingly, decades of language, models and research describing family support as "early intervention" has increasingly become conflated with the notion that state agencies should "intervene early" to remove children*.[133]

In response to concerns that the amendment is targeted at reducing the number of children in care, the department advised:

> *Adoption is an option for achieving permanency for a child who requires long term care.*
>
> *There are existing safeguards in both the CP Act and the Adoption Act to ensure that adoption is considered only when it is appropriate for the individual child.*
>
> *Any decisions made about permanency and adoption will also need to be compatible with the* Human Rights Act 2019*.*[134]

Impact on human rights

A number of stakeholders raised concerns that the proposed amendment limits certain human rights, and that this limitation is not reasonable or justifiable.

The statement of compatibility for the Bill identified the human rights of privacy and reputation, protection of families and children and cultural rights-generally as being limited by the Bill, but argued that the limitations are reasonable and justifiable. The statement of compatibility also advised that while the rights of recognition and equality before the law and the cultural rights of Aboriginal and

131 Submission 26, pp 10-11.

132 Submission 28, p 5.

133 Submission 23, p 16.

134 DCSYW, correspondence dated 7 August 2020, attachment, pp 30-31.

Torres Strait Islander peoples were considered, the Minister does not consider them to be limited by the Bill (section 5 of this report expands on the statement of compatibility and the committee's consideration of the impacts of the Bill on human rights under the *Human Rights Act 2019*).

Some stakeholders argued that the limitation of the rights identified in the statement of compatibility is not justifiable or reasonable, particularly because there are less restrictive and reasonably available ways to achieve the purpose.[135] For example, the Queensland Council of Social Services (QCOSS) stated that the 'Bill will result in unjustifiable limitations of the human rights of Queenslanders, in particular the rights of children and families', adding:

> *Our view is that limitations to the human rights of Queenslanders proposed in this Bill are not compatible with the Human Rights Act because:*
>
> - *The purpose of the Bill is not legitimate. It is difficult to see how the recommendations made by the Deputy State Coroner in the Inquest into the death of Mason Jet Lee would have addressed the complex social issues and systems failures that are detailed in the report.*
> - *The Bill is unnecessary. Adoption is already an available option for children who are subject to child protection orders.*
> - *There are less restrictive ways to achieve the objective of stability (or permanency) for children who are subject to child protection orders*.[136]

The QHRC stated:

> *Any limitation must be for an important purpose, rationally connected to the achievement of that purpose, and the least restrictive way of achieving that purpose...Insufficient evidence has been presented to demonstrate why these amendments are needed to achieve the stated purpose, particularly in view of the significant limitations adoption can impose on the rights of children and families…*[137]

The QLS similarly argued:

> *Due to the existence and use of PCOs as a mechanism to achieve permanency and stability for children in the child protection system without severing relationships with family and community, it is our submission that no change should be made to section 5BA of the* Child Protection Act 1999*.*[138]

Act for Kids stated that while the proposed amendment 'marginally enhances the promotion of adoption as a permanency option', it believes that 'in order to protect human rights, a less restrictive manner of achieving the aim of increasing permanency planning for children could be achieved without amending the *Child Protection Act 1999*'.[139]

Adoptee Rights Australia argued that due to the lack of an evidence base supporting the supposed long-term positive effects of adoption, any decision made to apply an adoption order is, by definition, an arbitrary decision, making the limitations on privacy and reputation and protection of families and children unreasonable and unjustifiable. This is in addition to the existence of an alternative option that does not have human rights limitations.[140]

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135 See, for example, submissions 19, 25, 32, 33.

136 Submission 25, p 1, 3.

137 Submission 33, pp 3-4.

138 Submission 32, pp 4-5.

139 Submission 9, p 2.

140 Submission 19, p 17.

Adoptee Rights Australia also argued that allowing cl 8 to limit the cultural rights of anyone except Aboriginal and Torres Strait Islander peoples:

> *…ignores the existence of cultural groups other than Aboriginal and Torres Strait Islander peoples, and in doing so, it discriminates against other potentially adoptable children then adults and denies them recognition and respect for their identity, and their right to be supported to develop and maintain a connection with their culture, traditions and language.*[141]

In response to concerns that the Bill is not compatible with human rights, the department advised the following:

> *Case work and decision making is based on the particular circumstances of each individual child. Under section 5A, the main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.*
>
> *In making decisions about the most appropriate option for a child, the department identifies the option that will maintain a child's links and legal relationship with the birth family to the extent that is in child's best interests and will provide a sufficient degree of permanence to promote the child's wellbeing and long-term security. This is consistent with the Charter of rights for a child in care under the Act, which provides that a child has a right to maintain relationships with the child's family and community.*[142]

The department also advised:

> *The Bill is accompanied by a Human Rights Statement of Compatibility as required by the* Human Rights Act 2019*. The Adoption Act is underpinned by a human rights framework, including the United Nations Convention on the Rights of the Child.*
>
> *Decisions made by the department and the Childrens Court under both the CP Act and the Adoption Act must be compatible with the* Human Rights Act 2019*.*[143]

Submitters also identified other human rights they believed the Bill limits in addition to privacy and reputation, protection of families and children and cultural rights as mentioned in the Bill's statement of compatibility. A number of stakeholders contended that the proposed amendment limits cultural rights specific to Aboriginal peoples and Torres Strait Islander peoples.[144]

Commenting on cultural rights specific to Aboriginal and Torres Strait Islander people, the QHRC submitted:

> *The cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected in the HR Act are engaged and potentially limited by the Bill, and in particular the right to enjoy, maintain, protect and develop kinship ties. These specific cultural rights are particularly significant because of the continuing disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system in Queensland, and the past forced adoption practices during the Stolen Generation.*[145]

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc (ATSIWLSNQ) also expressed the belief that the proposed amendments will limit the human rights relevant to Aboriginal and Torres Strait Islander Children. They submitted:

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141 Submission 19, p 20.

142 DCSYW, correspondence dated 7 August 2020, attachment, pp 10-11.

143 DCSYW, correspondence dated 7 August 2020, attachment, p 36.

144 See, for example, submissions 23, 25, 26, 31, 33, 38.

145 Submission 33, p 8.

> *The impact of the Bill will be to violate or limit the human rights of Aboriginal and Torres Strait Islander people as expressed in the UN Declaration on the Rights of Indigenous Peoples, in particular in relation to the right of self-determination and to potentially enforce assimilation or destruction of culture and removal from community.*
>
> *We do not support adoption for Aboriginal and Torres Strait Islander children at all. In addition to loss of cultural rights, we maintain that the severing of family ties is an unjustifiable limiting of the right to privacy and reputation with irreversible impacts on the child.*
>
> *Further, we agree with the submission of the Queensland Law Society in relation to the relevance of s.5C of the Act. Section 5C reinforces the right of Aboriginal and Torres Strait Islander people to self-determination and provides that, for Aboriginal and Torres Strait Islander children:*
>
> > *the long term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.*
>
> *It is submitted that the stated objectives of the Act do not provide sufficient justification for breaching human rights under the UN Declaration on the Rights of Indigenous Peoples or for undermining the principles in s.5C or for limiting sections 25 and 28 of the* Human Rights Act 2019 *in relation to culture and the right to privacy and reputation.*
>
> *While adoption and severing of a child's ties with his/her family is concerning for any child, the significance for Aboriginal and Torres Strait Islander children is enormous, given the loss of culture and identity that adoption may potentially inflict, the violation of their indigenous rights and the known legacy of trauma and intergenerational trauma still experienced by Stolen Generations people and their families.*[146]

The QLS pointed out that there is no mechanism for self-determination by Aboriginal and Torres Strait Islander organisations to consider the appropriateness of adoption for Aboriginal and Torres Strait Islander children that would be consistent with self-determination. The QLS stated 'In our view, simply moving the order of priorities for Aboriginal and Torres Strait Islander children in section 5BA of the *Child Protection Act 1999* is insufficient and risks re-imposing past traumas experienced by stolen generations'.[147]

On the limiting of the human rights of Aboriginal and Torres Strait Islander people, the department responded:

> *The department remains committed to working with Aboriginal and Torres Strait Islander children, families, kin and community to achieve the best possible outcomes for children who come into contact with the child protection system. The Bill does not change the additional principles for Aboriginal and Torres Strait Islander children that continue to apply in relation to all case work and decision-making for First Nations children.*
>
> *The Bill is accompanied by a Human Rights Statement of Compatibility as required by the* Human Rights Act 2019*. The Adoption Act is underpinned by a human rights framework, including the United Nations Convention on the Rights of the Child*.[148]

The following rights were also identified by submitters as being limited by the Bill:

- right to recognition and equality before the law[149]

[146] Submission 38, p 3.

[147] Submission 32, pp 4-5.

[148] DCSYW, correspondence dated 13 August 2020, attachment, p 5.

[149] Submissions 25, p 3; submission 33, p 3; submission 19, p 21.

- right of the child to special protection, in their best interests[150]
- right not to have one's family unlawfully or arbitrarily interfered with[151]
- the right to protection from torture and cruel, inhuman or degrading treatment[152]
- the right to freedom of expression[153]
- the right to peaceful assembly and freedom of association.[154]

In addition to the rights identified in the statement of compatibility, the QLS made reference to 'the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child'.[155] Adoptee Rights Australia similarly raised concerns that the Bill limits article 25 of the United Nations Convention on the Rights of the Child (UNCRC), stating:

> *As the requirements for welfare checks of children in care is not followed in practice, nor included in the* Adoption Act 2009 *(and 'care' includes adoption as per the definition at Article 20, part 3 of the UNCRC), the right to periodic review of treatment provided, and all other circumstances relevant to their placement under Article 25 of the UNCRC is potentially limited by Clause 8 of the Bill*.[156]

In addition, Adoptee Rights Australia argued there are breaches of the individual's liberties, the denial of natural justice, and disproportionate intervention in the adult lives of those subject to adoption.[157] Adoptee Rights Australia stated:

> *If similar child protection outcomes up to adolescence are achieved with long-term guardianship orders as are achieved with adoption, as the evidence shows, then the potential to breach an individual's rights and liberties that would occur if adoption is ordered over a guardianship order or PCO cannot be justified.*[158]

In terms of natural justice, Adoptee Rights Australia submitted:

> *The prioritising of adoption over Guardianship and PCOs is a denial of natural justice, when natural justice is interpreted as the rule against bias, and the right to a fair hearing. If adoption is accepted and prioritised based on the acceptance of the myth of the supposed outcomes of adoption, and there is no requirement to do research to provide an evidence base on which to make an informed decision, then natural justice is denied.*[159]

Adoptee Rights Australia referred to provisions in the Adoption Act that they believe contravene fundamental legislative principles which would come into play if more children were subject to adoption orders. Adoptee Rights Australia also pointed out that none of the restrictions to rights and liberties occur if the child-then-adult is placed under long-term guardianship or a PCO. These contraventions included:

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150 Submissions 25, p 3; submission 33, p 3; submission 19, p 21.

151 Submission 33, p 3.

152 Submissions 19, p 21; submission 33, p 3.

153 Submission 19, p 22.

154 Submission 19, p 22.

155 Submission 32, pp 4-5.

156 Submission 19, p 22.

157 Submission 19, p 4.

158 Submission 19, p 14.

159 Submission 19, p 16.

- clauses in the *Adoption Act 2009* devoted to the regulation of an *adult* adoptee's access to their file, adoption information, access to seeing their original, cancelled, birth certificate, and contact restrictions in relation to the family they are not related to after the adoption order is made[160]
- it being a criminal offence for someone adopted in Queensland to publicly identify themselves as an adopted person if that identifies or is likely to lead to the identification of a party or a relative of a party to an adoption[161]

Opposition to adoption

The views expressed in opposition to the specific inclusion of adoption in the hierarchy of preferences and above long-term guardianship to the chief executive were often based on an opposition to adoption as a practice. This was particularly so in relation to how adoption has been, and still is, practiced in Australia. The following sections outline why some submitters are opposed to the practice of adoption.

Impacts of adoption

Potential harm that comes from adoption

A number of stakeholders who opposed the practice of adoption referred to the harm that can come from adoption for the adoptee. For example, Mr Christopher Mundy, an adoptee, referred to the low number of adoptions in Australia, and stated that the caution shown is not a barrier but a considered approach considering the 'substantial history of past harmful adoption practices in Australia's history and subsequent national and state apologies for forced adoption practices'.[162] Mr Mundy submitted:

> *Decisions made by state departments, in the midst of complex issues of childhood neglect and trauma must acknowledge the failures of past adoption practices as clearly identified by the Forced Adoption Senate Inquiry, and he advised adoption has previously caused harm when:*
>
> 1. *Informed consent has not been provided*
> 2. *The deep bonds between a mother & child/father & child have not been recognised*
> 3. *Falsehoods about origins of an individual cause hurt and dislocation.*
> 4. *One's cultural, racial, familial, physical, social, psychological and generational identity is not validated.*
> 5. *Decisions are made about adoptions which affect entire families and community, including intergenerational effects*.[163]

TBS referred to the physiological and mental health impacts of adoption, stating:

> *Adoption is not an end point in a person's experience of Out of Home Care. The psychological, physical, social and emotional effects of an adoption may be felt long after an order is made and do not end upon entering adulthood; indeed, the effects are lifelong. The Australian Institute of Family Studies' 2012 research into the effects of past adoption experiences showed that adopted people have far higher rates of physiological distress and mental health issues than the general population.*[164]

Ms Lesley Mitchell also referred to the negative impacts of adoption, submitting:

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160 Submission 19, p 15.

161 Submission 19, p 16.

162 Submission 8, p 1.

163 Submission 8, p 1.

164 Submission 20, p 5.

It's common knowledge within adoptee communities, and indicated by the very few studies that exist, that adopted people are more likely to suffer high levels of emotional distress, mental health issues, drug and alcohol abuse, homelessness, imprisonment, loneliness and despair, and have a higher risk of suicide and attempted suicide than non-adoptees. Relinquishing mothers 'suffer chronic bereavement for the rest of their lives'.[165]

QATSICPP referred to the results of the National Research Study on the Service Response to Past Adoption Practices completed in 2012 by the Australian Institute of Family Studies, submitting:

Findings from this study highlighted the long-lasting effects on not only mothers and fathers separated from a child by adoption, but also on the now adult children who were adopted as babies. The most common impacts of forced adoption were found to be psychological and emotional, and included mood disorders, grief and loss, PTSD, identity and attachment disorders, and personality disorders.

The voices of children who had been adopted were most concerning with around 70 per cent of adopted individuals who participated in the study agreeing that being adopted had a negative effect on their health, behaviour and/or wellbeing while growing up, regardless of whether the experience with their adoptive families was positive or negative.[166]

QATSICPP also referred to a submission from Associate Professor Phillip Mendes to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into Barriers to Local Adoption 2018, in which he outlined that in his research experience:

"adoptive placements do not necessarily produce better outcomes than long-term foster care, and can just as easily break down given that children traumatized by abuse and neglect may exhibit difficult and challenging behaviour that places carers under enormous stress."

…

In conclusion the evidence base to support adoption for children in out of home care as a positive means to create safety, stability and permanence is poor. Most concerningly the voices of children who have previously been adopted continues to outline that whilst their stability needs were met the experience has had life-long costs on their physical and mental health.[167]

Impacts on the biological family

The impact that adoption has on the biological family was also raised by some who opposed adoption. For example, Professor Tamara Walsh stated that removing a child from his or her parents is 'one of the most intrusive forms of intervention the state can undertake', and that for many mothers, 'having their children removed is just as much of a threat to their liberty and wellbeing as being imprisoned'.[168]

Professor Tamara Walsh stated that keeping a child at home:

…prevents the trauma to the parents, which can also be lifelong, and can have the effect of sending the parent's life down a very bleak trajectory. Even for parents who have complex needs, the best model of care proposed in the literature is therapeutic foster care, where the foster carer and the parent care for the child in partnership, so that the parent's parenting capacities can be enhanced by having extensive contact with their child. If a parent is separated from a child, it will be difficult to demonstrate they have the capacity to care for them.[169]

[165] Submission 12, p 2.

[166] Submission 26, p 8.

[167] Submission 26, p 8.

[168] Submission 5, p 1.

[169] Submission 5, p 3.

Some submitters highlighted that not all parents who have their children removed are deliberately neglectful or abusive. Parents on a Mission, an organisation that represents parents in the child protection system, submitted that adoption should only be used when all other options have been exhausted, stating:

> *Parents on a Mission recognises that there are some Parents in our society that harm their children or knowingly put their children at risk of harm. Parents on a Mission also recognises that many Parents just need help. Parents who come into contact with the Child Protection system should not all be painted with the same brush. We have not all abused our children. There are many reasons children are removed from their Parents care, including domestic violence, neglect, drug abuse, mental illness etc.*
>
> *An increased focus on adoption is not what Parents want, in fact, we want the exact opposite - more children returned to their families.*[170]

FIN, SEQ/Micah Projects stated that their experience:

> *…does not reflect the common myth of a 'bad parent' who intentionally sets out to abuse their child, in fact many of the women as mothers have been exemplary in their attempts to be protective of their child or children in the face of significant domestic and family violence, and or in face of adversity, and unintended consequences arising from decisions they have made.*
>
> *The most commonly substantiated forms of abuse in Australia are emotional abuse and neglect:*
>
> - *Emotional abuse (59%) was the most common type of abuse or neglect, followed by neglect (17%).*
> - *(Physical abuse (15%), and sexual abuse (9%) (AIHW, 2017-18)*
>
> *Emotional abuse and neglect are both linked to social issues like poverty and family violence and are not caused solely by poor parenting or parental actions (Raissian and Bullinger, 2016)*
>
> *…*
>
> *Child removal does not address these issues – cannot address these issues. In fact, child removal, and even to a lesser extent any contact with the system, can leave parents and children worse off.*[171]

FIN Townsville stated their belief that adoption is more about meeting the needs of adults as adopting parents rather than being an 'appropriate way to meet the needs of children unable to grow up with their First parents'.[172] FIN Townsville submitted:

> *Many adults who were adopted, together with parents who had to place their child for adoption against their wishes, consider that adoption as a social institution is driven by adults who are either unable to have their own children (or more of their own children) and want to create or enlarge their own families; or are driven by a self-serving form of "altruism" to "save" or "rescue" disadvantaged children. Either way, it is argued that adoption as a social institution is driven and shaped more by the needs and interests of adults rather than the needs of young children, which more appropriately could be met by more truly child-centred long-term legal arrangements, which value (rather than trample on) a child's First family heritage.*[173]

[170] Submission 14, p 1.

[171] Submission 23, p 6.

[172] Submission 10, p 1.

[173] Submission 10, p 3.

Severance of all ties to the biological family and loss of identity

Another reason given for submitters opposing adoption in its current form was the severance of the child from his or her family and the subsequent impact on a child's identity.

Professor Tamara Walsh explained that adoption means that the legal ties are severed between the child and their birth family. Adoptive parents have 'all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility.' The child no longer has a right to have contact with their birth family and there is no right to have the order reviewed.[174]

The CREATE Foundation submitted that:

> *Whilst permanency options are important for the development and life outcomes of children and young people, government intervention to legally sever a child's ties with their family should be a response of last resort where there is no less extreme way that their care or permanency needs could be met. Adoption, whilst relevant in limited circumstances, establishes a new identity for a child and provides little ongoing protection or oversight for their care and wellbeing, especially in relation to contact with biological and extended family and current and future siblings.*[175]

The CREATE Foundation observed that under the proposed amendments, the governing department would have no legal duty of care to a child, which would leave a gap in oversight and support for maintaining family contact, risking loss of identity, culture, and lifetime connections with extended family including current and future siblings.[176]

TBS submitted that adoption, even when in a child's best interests, entails changing a child's identity and severing the legal rights of birth parents, which:

> *…is a traumatic process that can encompass grief, loss of identity, guilt, loss of control, difficulty in forming intimate relationships and a sense of rejection…These manifestations of adoption-related trauma can emerge and recur throughout the lifetime of all concerned.*[177]

VANISH Inc submitted that legally removing one set of parents and replacing them with another set of parents, with the child recognised in law 'as if born to' the new parents, compounds the child's loss of family by:

> *…violating their rights to preservation of name, heritage, identity, and often also family relationships, across the life cycle. These losses are inappropriate and unnecessary, and the severance of family relationships can and does occur even in 'open' adoptions. Research findings and personal testimonies over several decades demonstrate that these factors negatively impact the adopted person's identity development and well-being throughout their entire life, not just during childhood, and inter-generationally.*[178]

ARMS (Vic) argued that the need to remove a child from his or her family does not mean that the child should therefore be treated as if they were never born to them, either socially, emotionally or legally, submitting:

> *…except for a very small minority of parents, their children are precious to them and with enough of the right support, those parents may have been or would be able to raise their child. It is true that some family dynamics are so destructive to a child that, for their safety and well-being, they*

[174] Submission 5, p 4.

[175] Submission 17, p 3.

[176] Submission 17, p 7.

[177] Submission 20, p 3.

[178] Submission 28, p 2.

> *are removed from their parents…[Adoption] is a permanent and inter-generational legal severance of a child from their family and should not be tolerated now, nor continued into the future.*[179]

Ms Jane Sliwka referred to the definition of permanency in the CP Act, highlighting the experience of having:

> *…ongoing, positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers. However, adoption severs these legal relationships…*[180]

Ms Sliwka also referred to the UK's Commission for Social Care Inspection (2006) and the importance of maintaining connection with family, stating the report found:

> *…that after consultation with children whose names were on the Child Protection Register, these children revealed how important it was to them that their parents were given help and a fair chance to try to change. Even in cases where children cannot be safely returned to their parent's care and need to be cared for by others to the age of 18, the biological parent/s may still play an important role in their child's life in a different capacity that still honors their life-long relationship to their child. It is also very important to children and families to maintain important connections between a child and their extended family members such as siblings, grandparents, aunts, uncles and cousins.*[181]

Dr Trevor Jordan, President of Jigsaw Qld, referred to the need for permanency for children who already have substantial relationships with members of their families but need to be removed from some of those family arrangements, stating:

> *They need to stay in contact with siblings, grandparents and other people who support them in those communities. Any form of adoption into the future must take into account that we are adding families rather than subtracting from families, except in extreme cases where it may be necessary for any particular reason.*[182]

Mr Christopher Mundy questioned whether adoption, and a subsequent change of identity, is necessary:

> *Whilst adoption may be a viable option according to the proposed bill, one must question whether this legal change of identity is necessary to create permanency and stability for a child. Is adoption in children's best interest or would permanent guardianship and other forms of long term (or even short term) care sufficiently create stability for a child whilst retaining the child's identity closely tied to original family, culture, race and genealogical roots?*[183]

Mr Mundy also wrote of his personal experience with not knowing his biological family:

> *As an adopted person, there can be no doubt I was placed within a family that has given me permanency and stability. However there is a myriad of nuances and complexities that I was deprived of as a child (that has continued to adulthood) who was physically and legally separated from my first family. Adoption assumes that "nurture" trumps "nature" and that legally placing a child in a family will completely provide for all the essentials necessary for an upbringing. As an adopted child, I was deprived of a family that looked like me, had my mannerisms, my interests, my personality traits, my job interests and my talents. As a thin and*

179 Submission 27, p 1.

180 Submission 24, pp 1-2.

181 Submission 24, p 1.

182 Public hearing transcript, Brisbane, 10 August 2020, p 1.

183 Submission 8, pp 2-3.

> *sensitive child who resented the way I looked, I did not have access to biological family members that looked like me and could provide a frame of reference for my individual development. Later as a teenager, when I suggested to my adoptive parents that I wanted to become a counsellor this was actively discouraged. Had I been given access to my biological family, I would have learned of my long history of fore fathers who had been involved in caring professions. And as my children were born, instead of having question marks over what physical characteristics they inherited they too would have grown up in their early formative years with access to those who looked like them, acted like them and had comparisons to other family members.*[184]

Mr Peter John Moore's submission referred to being 'traumatised' that he has two birth certificates stating 'I cannot come to terms that any government would do that to me or any other child then adult'. He stated a birth certificate 'should be as best as possible a Factual & Trustworthy Document, a recorded snapshot at the time of birth', and he referred to the following experience:

> *I relied on that document my whole life, particularly when I had questions as a teen after a science class discovery that blood types did not match, being presented with my Birth Certificate allayed my fears for another 47 years that devastates me.*[185]

Ms Judy Glover advised that historically the change of name and identity was a means to solve the problem of illegitimacy for a child born out of wedlock as these children were subject to legal disabilities.[186] Ms Glover added:

> *It is commonplace in society today for members of a family group residing at the same address to have difference surnames. There is no stigma attached to blended families having different surnames.*
>
> *…*
>
> *From the perspective of a child requiring permanency of care, it is illogical that they should be subject to the significant lifelong and intergenerational legal name and identity changes that adoption imposes upon them in order to be provided with a permanent home, when permanency and stability can be achieved through a Permanent Care Order.*[187]

Ms Theresa Hawken also referred to families with children having different names to their parents, marriage not being compulsory to have children and blended families, and stated that the 'proposal of letting the adoptive child to keep their original birth name would reduce the chances and complications, with identity issues such as mine for the future'.[188]

VANISH Inc, Mr Mundy and Ms Glover referred to Articles 7 and 8 of the UNCRC, with Ms Glover stating the articles 'speak to the importance of a name and identity for a child. This includes the right to a name from birth and the right to preserve his or her identity.'[189]

Some stakeholders called for the issuing of new birth certificates to stop. Mr Mundy called for the identity of a child to be preserved,[190] while ARMS(Vic) stated it believes it is in the best interests of all children for them to know all of their origins and full parentage, as well as their extended family's

184 Submission 8, pp 2-3.

185 Submission 13, p 6.

186 Submission 18, p 1.

187 Submission 18, pp 1-2.

188 Submission 6, p 2.

189 Submissions 8, p 4; submission 18, p 1; submission 28, p 6.

190 Submission 8, p 4.

cultural heritage, and it is a child's right to an open and honest birth certificate from the birth of the child (i.e., not from when that child was adopted).[191]

Ms Lesley Mitchell similarly submitted '[c]hanging an adoptees name, issuing a "legal" lie of a new birth certificate saying that the adoptive mother birthed the child, denying biological family – all needs to stop. It is psychologically traumatising'.[192]

Adopt Change, an organisation which supports adoption and the proposed amendments also argued for changes to birth certificates, but for integrated birth certificates where both the biological and adoptive parents are recorded on the child's records, rather than the provision of a new birth certificate.[193]

In contrast, Mr Moore opposed integrated certificates stating they are another lie, or an extension of a lie.[194]

Adoption doesn't always equate to stability

Some submitters stressed that adoption doesn't always mean stability or permanence, and that adoptive families are still subject to the same issues as any other family.

The QFCC observed that children have complex needs for stability in their relationships, community and culture, stating 'There are no guarantees that 'removing' children from the child protection system through adoption will protect their safety, wellbeing or best interests'.[195]

The ATSIWLSNQ similarly questioned how adoption enhances the child's protection, as opposed to any other permanency option, if a permanency option is appropriate for the child. ATSIWLSNQ stated:

> *In this respect, the stated objectives contained in the Explanatory Notes do no more than state that adoption is an option for achieving permanency. This removes a child from the Child Protection system, but does not explain how it offers greater protection to the child, particularly for a child under 3 years old. Further, it imposes very serious consequences on the child, severing her or his connections with family and identity.*[196]

The AASW raised a concern that adoption is being seen as 'risk-free' and/or an 'ultimate' solution without considering the underlying risks within adoption. The AASW submitted that 'Adoption does not necessarily mean stability. In fact, permanent placements of all kinds are vulnerable to disruption or breakdowns. Poor parenting including child abuse can occur in first families, out-of-home care and adoptive families'.[197]

FIN Townsville submitted that many adults who were adopted in the 20th century were not 'totally happy' in their adoptive families because of the following reasons:

- some feeling a "lack of fit"
- some being pressured by expectations - resenting the drive of their adoptive parents to "own" them or mould them
- some being emotionally neglected or physically or sexually harmed.

191 Submission 27, p 1.

192 Submission 12, p 2.

193 Submission 2, p 3.

194 Submission 13, p7.

195 Submission 34, p 13.

196 Submission 38, p 2.

197 Submission 11, p 6.

- and many resenting the dishonesty of adoption and lack of transparency.[198]

Some submitters who are adoptees emphasised that adoptive families do not equate to stability for the child. For example, Ms Judy Glover stated in her submission:

> *Adoptive families are subject to all the same issues as any other family. Their circumstances can change greatly from one year to the next including divorce, major illnesses or injuries, addictions, death of one or both adoptive parents, unemployment, financial strain, or domestic and family violence.*[199]

Mr Christopher Mundy referred to the myth of permanency and stability, stating:

> *Whilst the evidence suggests that children thrive best with consistent parenting, it is a myth that any family can provide "permanency" or what is grossly referred to as a "forever family". All families experience unexpected events. While adoptive parents undergo a considerable screening process, they are not immune to family breakdown, mental illness onset, disease, grief and death. Ultimately adoptive families are no different from any other family in the community in terms of experiencing hardship and breakdown. The experience of adopted people concerning their upbringing is variable, from growing up in families with long term stability to experiencing abuse, divorce, suicide and domestic violence. As a post-adoption support worker, the two most traumatised demographics I worked with were mothers who have lost their children to adoption and adoptees who have suffered abuse at the hands of their adoptive parents. Adoptees who suffer abuse from their adoptive parents have considerable long term mental health issues, relationship problems, housing issues, financial and physical health problems. Arranging support for these individuals is extremely difficult due the prevalence of pro-adoption attitudes in some mental health and medical professionals, and a lack of education of adoption related mental health issues in the professional community.*[200]

Ms Theresa Hawken also wrote of her personal experience, telling the committee:

> *My adoptive mother had mental health issues which we suffered the continued effects off until her death 3 years ago. The choice of people who she chose to have relationships with and we had no where to go with that, and how that impacted on us. The behaviour of this woman and the trauma she caused emotionally physically and spiritually. I know from personal experience adoption is not happy ever after, and lying on all the school paperwork, parent, guardianship. I was brought up in the Catholic system and every time I had to lie about who my parents where, because I had to say my adoptive parents name, it was a lie.*[201]

Adoptee Rights Australia advised that adoption doesn't always lead to permanency for the adoptee, referring to special circumstances when an adopter can apply for a discharge of the adoption. Adoptee Rights Australia submitted:

> *…in Australia, discharges of adoption can also be obtained for other reasons and are even available to those who committed – as adults - to the supposedly permanent contract of adoption, the adopters themselves. Versions of 'special circumstances' discharges and who can apply vary arbitrarily between jurisdictions. In Queensland, a discharge can be ordered in "exceptional circumstances" and can be applied for by:*
>
> - *the adopted person, if he or she is an adult;*
> - *a birth parent of the adopted person;*

198 Submission 10, p 3.

199 Submission 18, p 3.

200 Submission 8, p 4.

201 Submission 6, p 2.

- *an adoptive parent of the adopted person;*
- *the chief executive.*

While shoring up the adoptive carer's rights to the child, the Adoption Acts ensure there is an escape clause for the adopter. The adoption is permanent for the child only if the adoptive carer wants it to be. So, the permanence of adoption is a myth.[202]

In response to Adoptee Rights Australia's statement about a discharge of adoption, the department advised '[a] final adoption order can be discharged by the Supreme Court in limited circumstances.

An adoption order does not expire when the young person turns 18, but continues throughout the person's life'.[203]

Absence of support and lack of safeguards once children are adopted

Another reason given for some submitters opposing adoption is the absence of support by the relevant government department responsible for child protection once a child is adopted. For example, Dr Trevor Jordan, President of Jigsaw Qld, told the committee 'there are challenges to looking after kids in care. Kids who have had adverse childhood experiences need people who are knowledgeable and skilled and supported financially and in terms of services...'.[204]

QFKC stated:

For the vast majority of children and young people in care, developmental stages will bring on different challenges for guardians and the children themselves as trauma manifests itself in different ways. The option of adoption will not allow guardians to seek support and assistance from Child Safety into the future when and if needed.[205]

The Association for Adoptees also expressed concern about the lack of support for adoptees, submitting that the government should not consider adoption above other forms of care for achieving permanency for children with long term care needs, because:

We do not believe it best suits children with long term care needs. We disagree with adoption within its current form where birth certificates are changed and a new one issued, and where children are permanently and legally separated from siblings, and other relatives. Adoption grief, loss and trauma is lifelong and generational and so far all governments have failed to provide adequate services for current victims to address the many problems adoptees face. Currently there is a chronic lack of services and very few adoption trauma trained counsellors available. Any move towards adoption regardless of the model, or the number of children placed for adoption would still require an urgent increase in funding for services and extra training and education implementation to meet current needs.[206]

The Association for Adoptees also raised concerns about a previous lack of adequate screening of adoptive parent and there being no checks and safety measures in place 12 months after a child is placed for adoption, leading to potential risks of further pain and trauma. They submitted 'We urge the government to put mechanisms in place to adequately respond to the whole spectrum of adoption over a life time, and not just to the front door of the adoptive parents home'.[207]

[202] Submission 19, p 11.

[203] DCSYW, correspondence dated 7 August 2020, attachment, pp 10-11.

[204] Public hearing transcript, Brisbane, 10 August 2020, p 2.

[205] Submission 1, p 3.

[206] Submission 3, p 2.

[207] Submission 3, p 2.

The Association for Adoptees stated that most adoptive family breakdowns occur in adulthood, well outside the scope of oversight, intervention and support.[208]

Ms Mandy Williamson, an adoptee, submitted that adoption is not an option because of the lack of support for adoptees and states 'There is so very much more that needs to take place from the government system now, before ever contemplating Adoption again'.[209]

Support for adoptees by organisations other than the department was also raised as an issue. For example, TBS raised concerns that any increase in adoption numbers as a result of the proposed amendment without provision in the Bill for post-adoption support 'also risks creating considerable demands for service for organisations like TBS that provide post adoption services, without adequate resources to meet this demand'.[210]

TBS stated that since the introduction of the hierarchy in New South Wales, with open adoption being the preferred means for adoption:

> *Our experience has been that this has led to new demands for our services by those experiencing new forms of emotional distress and trauma and resulted in a range of new emerging issues that need to be considered and addressed.*[211]
>
> *TBS' Post Adoption Resource Centre (PARC) in NSW reports an increased workload due to rising numbers of adoptions from OOHC. Parents accessing PARC's Therapeutic Parenting program report that it is their only opportunity to discuss the difficulties they are experiencing with their adopted children in terms of behaviour; and especially contact difficulties with birth families. PARC also reports increasing numbers of adolescent adopted people requesting counselling for problems around identity and managing contact with birth family, school issues, social issues including race.*[212]

Adopt Change also supported continued post adoption/permanency support by providing resources and information to support adoptees and their families, stating:

> *Arguably all children who have entered care have suffered trauma to some extent and this often means that children who have experienced time in the out of home care system will need additional supports so that they are both well supported and to avoid them re-entering the care system.*
>
> *These supports can include counselling and related services, financial supports, telephone helplines and connecting carers to services in their area.*[213]

The department responded to the call for greater post-adoption support by stating:

> *The department funds post-adoption support services in Queensland for people affected by adoption.*
>
> *The department funds Jigsaw Queensland to provide information and support services to those affected by adoption and the Benevolent Society to support and bring together individuals impacted by adoption and/or members of their birth or adoptive family through individual work and counselling and therapeutic group work.*

208 Submission 3, p 6.

209 Submission 21, p 1.

210 Submission 20, p 4.

211 Submission 20, p 5.

212 Submission 20, p 5.

213 Submission 2, p 3.

Further information about post-adoption support services can be found at: https://www.qld.gov.au/community/caring-child/adoption/contact-adoption-services.[214]

A lack of safeguards for children who are adopted was also raised an issue.[215] For example, the ATSIWLSNQ raised concerns that the risks to children in out of home care do not appear to have been given consideration:

Adoption involves not only a severing of family relationships but also a loss of any departmental scrutiny. This leaves children exposed to living with an adopted family without any departmental scrutiny. The risks of out of home placement are demonstrated in the tragic homicide of Tiahleigh Palmer. In the absence of any departmental scrutiny, there is even less likelihood of such tragedies being averted.[216]

Adoptee Rights Australia similarly submitted:

…adoption from care means transferring a vulnerable child from being under an Act that has specific requirements for their Standard of Care, and requires follow up checks on their welfare, and placing them under an Act that has no safeguards or protections recognising that they are not related to the people caring for them. Their ancestry and relationship rights are severed, and their rights to know or contact their natural families even as adults are radically restricted.[217]

The AASW also referred to the absence of oversight of a child once they have been adopted, submitting:

AASW members emphasise that the wellbeing of a child is not safeguarded once they are adopted out of the state care system. There is no current departmental oversight on the wellbeing of adopted children, compared to long-term protection orders. Current child protection long-term orders retain a level of oversight by the Department of Child Safety, youth, and Women (the Department) yet adoption does not. It is important to reflect on the lessons of the Forde Inquiry and Royal Commission into Institutional Abuse of Children where we have heard from adults saying that they were placed in settings where they were supposed to be safe and never heard from child protection workers again. The lack of ongoing support and an external set of eyes to monitor and ensure their safety resulted in significant abuse and neglect for many children. The lack of any oversight from the Department is of concern, given the lessons from the past that are still significantly affecting many people today.[218]

In response to the concern about a lack of departmental scrutiny once a child is adopted, the department advised:

Adoption transfers legal parentage of a child from their parents to their adoptive parents. Following an adoption, the child's adoptive parents have full legal responsibility for the child. For this reason, assessments of people to become eligible to adopt a child in accordance with the Adoption Act are very comprehensive and adoption orders can only be made by the Childrens Court.

An adopted child may be considered a 'child in need of protection' for the purposes of the CP Act if they have suffered significant harm, are suffering significant harm or are at risk of suffering significant harm and do not have a parent able and willing to protect them.[219]

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214 DCSYW, correspondence dated 7 August 2020, attachment, pp 37-38.

215 See, for example, submissions 5, 11, 12, 19, 38.

216 Submission 38, pp 2-3.

217 Submission 19, p 4.

218 Submission 11, p 5.

219 DCSYW, correspondence dated 13 August 2020, attachment, p 10.

Some submitters called for ongoing protection for children who are adopted. For example, Ms Glover called for ongoing protections of the child and requirements of adoptive parents through legislation, stating:

> *There are clear Standards of Care necessary by the child's carers under the Child Protection Act 1999, Chapter 4 Regulation of care, Part 1 Standards of care, 122 Statement of standards.*
>
> *The child is further protected by a Charter of Rights, Division 1 Chief executive's obligations under child protection orders and care agreements, 74 Charter of rights for a child in care.*
>
> *There are no such protections or requirements of adoptive parents under the Adoption Act 2009.*
>
> *I recommend that this disparity in the standard of care and the rights of the child that is legislated be addressed before the implementation of this Bill.*

Ms Glover also suggested that adoption be formally recognised as a form of out-of-home care to further protect adopted people given the adopted people who were sexually abused by their adoptive parents.[220]

The department responded to Ms Glover's suggestion, advising 'An adopted child may be considered a "child in need of protection" for the purposes of the CP Act if they have suffered significant harm, are suffering significant harm or are at risk of suffering significant harm and do not have a parent able and willing to protect them'.[221]

Impact of adoption on Aboriginal and Torres Strait Islander children

A number of submitters commented on adoption as an option for Aboriginal and Torres Strait Islander children. As mentioned earlier, Hope For Our Children opposed preferencing adoption last for Aboriginal and Torres Strait Islander children. Hope For Our Children referred to a 2016 UN Child Rights Progress Report identifying that Indigenous children are twice as likely to be developmentally vulnerable as non-indigenous children, due to the impact of intergenerational trauma and stated:

> *Research demonstrates the paramount importance of timely stability for maltreated children who cannot return home. Therefore, maintaining a default position of excluding Indigenous children from permanency options, including open adoption, is likely to perpetuate the disadvantage gap.*
>
> *…*
>
> *Children of indigenous heritage have the same right as all other children to be free from violence, ensuring their right to full development. The Australian Government do not allow other cultural practices to take precedence of a child's safety; children in Australia are rightfully protected from cultural norms such as child sacrifice, female genital circumcision, child marriages or gendercide. Keeping children safe in policy and procedure ceases to apply when that child is Indigenous. When we allow any culture to trump a child's safety is not just dangerous but willfully negligent.*[222]

Many stakeholders emphasised the importance of cultural ties and identity for Aboriginal and Torres Strait Islander children.[223] For example, the QATSICPP stated:

> *The Child Protection Act of 1999 outlines in section 5A that the paramount principle that governs the act is "that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount". For Aboriginal and Torres Strait Islander children*

[220] Submission 18, p 4.

[221] DCSYW, correspondence dated 7 August 2020, attachment, p 35.

[222] Submission 7, p 5.

[223] See, for example, submissions 5, 20, 22, 25, 26, 30, 31, 34, 38.

> *decisions therefore have to consider not their just their physical safety but their cultural safety including maintenance of their cultural identity and connection, recognising that decisions made in the present have long lasting impacts into the future.*[224]

Submitters' emphasis on the importance of cultural identity and connection resulted either in support for adoption being the last option for permanency, or a call for adoption to be removed as an option altogether. Some submitters expressed support for keeping the preference for long-term guardianship over adoption for Aboriginal and Torres Strait Islander children, and placing adoption last.[225] For example, TBS stated:

> *Special consideration for Aboriginal and Torres Strait Islander children is appropriate as guardianship outside family, kinship or community care is viewed by many Aboriginal people as a 'quasi-adoption' order that separates children from their communities and culture. Any action taken to dissolve Aboriginal and Torres Strait Islander children and young people's connection to family, community and culture, will lead to the continuation of intergenerational trauma as evidence by the Bringing them Home report. Clearly, the continued disproportionate over-representation of Aboriginal and Torres Strait Islander children in the child protection system requires the full resourcing of the child placement principles for Aboriginal and Torres Strait Islander children (*Child Protection Act 1999*, 5C).*[226]

The QHRC indicated it believes the Bill appropriately ensures that adoption remains the last resort for children of Aboriginal or Torres Strait Islander descent, and that it ensures consistency with existing provisions of the Adoption Act which recognise 'that adoption is generally inappropriate for Indigenous children and states that adoption should occur only when there is 'no better option''.[227]

In contrast to the argument made by Hope For Our Children regarding equal treatment regardless of cultural heritage, the QHRC submitted:

> *While a different hierarchy of placement order for Indigenous children may engage the right to equality before the law, the Commission suggests this would be a proportionate response to meet the legitimate purpose of preventing harm to Aboriginal and Torres Strait Islander families and children in the context of the inter-generational trauma caused by the Stolen Generation. The Commission submits that this would be a special measure under section 15(5) of the HR Act and a welfare measure for the purpose of the section 104 of the* Anti-Discrimination Act 1991*, and furthers human rights compatibility when compared with the alternative of the same placement hierarchy for both Indigenous and non-Indigenous children.*
>
> *Although for the reasons described above, the Commission does not support the amendments overall, it is acknowledged that this approach is preferable to the alternative of placing adoptions at third priority for Indigenous children.*[228]

A number of submitters advised they do not support adoption for Aboriginal and Torres Strait Islander children, except as it relates to supporting traditional Torres Strait Islander adoption practices.[229]

The department responded by advising:

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224 Submission 26, p 11.

225 See, for example, submissions 5, 20, 34.

226 Submission 20, pp 6-7.

227 Submission 33, p 8.

228 Submission 33, p 8.

229 See, for example, submissions 22, 25, 26, 30, 31, 38.

> *The Bill proposes to amend the CP Act to make it clear that if a child is an Aboriginal or Torres Strait Islander child, the last preference for achieving permanency for a the child is to be adopted under the* Adoption Act 1999*.*
>
> *There are also additional principles in section 5C of the CP Act that apply for the administration of the Act. These include that Aboriginal and Torres Strait Islander peoples have the right to self-determination and embed each of the five elements of the Aboriginal and Torres Strait Child Placement Principle in the Act.*
>
> *Section 7 of the* Adoption Act 2009 *provides that because adoption is not part of Aboriginal tradition and Islander custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long term care only if there is no better available option.*[230]

Submitters referred to the importance of upholding the Aboriginal and Torres Strait Islander Child Placement Principal (ATSICPP) when considering options for Aboriginal and Torres Strait Islander children. For example, the QATSICPP submitted:

> *The Aboriginal and Torres Strait Islander Child Placement Principle is embedded within the Child Protection legislation (section 5C). It was included in recognition of the need to ensure a focus on supporting and maintaining the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures as a priority. It was long overdue recognition of the incredibly harmful outcomes of past policies and was a means to enshrine the rights of Aboriginal and Torres Strait Islander children to their cultural identity and recognition that children's identity is strengthened and supported when their families and communities are strong. In line with this commitment in both legislation and policy to the maintenance of cultural and community connection, any form of permanent care arrangement, including adoption, that severs these connections is inappropriate and undermines the commitment by the Department to the full implementation of the Aboriginal and Torres Strait Islander child placement principle*.[231]

The ATSIWLSNQ raised its concerns about the application of the ATSICPP as a result of the proposed amendment, stating:

> *It is submitted that the Bill's proposed changes to s.5BA represent an undervaluing of Aboriginal and Torres Strait Islander cultures and a failure to invest in the futures of Aboriginal and Torres Strait Islander children in a meaningful way. The potential over-riding of section 5C undervalues the importance of maintaining principles of self-determination and of considering the impact on Aboriginal and Torres Strait Islander children of loss of family and community.*
>
> *The strengths of Aboriginal and Torres Strait Islander families' child-rearing practices have at times been misunderstood where they differ from typical non-indigenous child-rearing practices. In particular, Aboriginal and Torres Strait Islander collective child rearing and shared responsibilities for children are often misunderstood as instability, while they represent social cohesion and community protectiveness. This has contributed to the over-representation of Aboriginal and Torres Strait Islander children in the Child Protection systems in Australia.*
>
> *The risk of entrenched misunderstandings leading to children entering the child protection system and staying long enough to become eligible for adoption are concerning and place Aboriginal and Torres Strait Islander children disproportionately at risk of adoption under the proposed amendment to the Act*.[232]

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230 DCSYW, correspondence dated 7 August 2020, attachment, p 14.

231 Submission 26, pp 9-10.

232 Submission 38, p 4.

The legislation's focus on western theories of attachment was also raised by QATSICPP, who submitted:

> *Our communities have repeatedly outlined in evidence and research the importance of addressing intergenerational trauma, creating stronger families and communities and strengthening kinship care support and training to ensure our children and families can heal as the primary means to achieve this.*
>
> *However western theories of attachment and stability continue to underpin many permanency planning reforms. Much of this has focused on the strength of the relationship and bond between a child and a caregiver. Aboriginal and Torres Strait Islander people have challenged this focus on stability occurring through a singular connection between a child and a carer within one household.*
>
> *In the case of an Aboriginal and Torres Strait Islander child the best interests of the child include the need to maintain a connection to the lifestyle, culture and traditions of their people. As highlighted recently in the Final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, connecting an Aboriginal child or young person to the relationships with their land and kin is not just a 'factor' to be considered but intrinsic to their best interests.*
>
> *The trap is that considerations of the "best interests of the child" and the importance of connection to kin culture and country is being decided on "modern Anglo-European notions of social and family organisation".*[233]

Some stakeholders submitted that the higher number of Aboriginal and Torres Strait Islander children in child protection is a sign that the ATSICPP is not being complied with by the department, raising concerns about the option of adoption being available, despite it being last on the hierarchy of preferences. For example, PeakCare provided the following statistics on Aboriginal and Torres Strait Islander children adoptions and long-term guardianship:

> *Of the 126 Aboriginal and Torres Strait Islander child adoptions over the past 25 years, only 41% were by Aboriginal and Torres Strait Islander Australians. In 2018–19, 12 Aboriginal and Torres Strait Islander children had adoption orders finalised in Australia, the highest number of finalised adoptions of Aboriginal and Torres Strait Islander children in the past 25 years (equal to the number recorded in 1994–95) Of these children, one was adopted by Aboriginal and Torres Strait Islander Australians, and 11 were adopted by other Australians. All 12 Aboriginal and Torres Strait Islander children in 2018–19 were adopted by either their stepparent, another relative, or their carer. This data is not detailed further about the adopter's relationship to the child or on a state/territory basis.*
>
> *While the numbers nationally of Aboriginal and Torres Strait Islander children subject to third party guardianship orders has also continued to rise each year15 (578 in Queensland as at 30 June 2019) there is no data available about the Indigenous status of guardians or whether the guardians are relatives or carers*.[234]

As a result of these figures, PeakCare advised it does not have confidence that:

> *…the intended "safeguards" for Aboriginal and Torres Strait Islander children in the proposed Bill and accompanying operational and policy announcements are sufficient to protect Aboriginal and Torres Strait Islander children from the likely long term adverse impacts of adoption. Connection to family, community, culture and country cannot be assured once an adoption is finalised which presents a major risk for the positive development of identity,*

[233] Submission 26, pp 5-6.

[234] Submission 22, p 8.

connections, belonging and the long-term wellbeing of Aboriginal and Torres Strait Islander children.[235]

QATSICPP similarly submitted:

The substantive and continued removal of Aboriginal and Torres Strait Islander children in the child protection system persists in fracturing families and causing ongoing disruption to children's cultural continuity. Despite all policy changes, poor case work practice, an overburdened child protection system and under resourced Aboriginal and Torres Strait Islander early intervention system continue to see our children removed at 8.5 times the rate of non-Indigenous children.

It is our belief that if adoption was included as an option and utilised it would only serve to CREATE Further damage and trauma. Ultimately, we believe the cultural costs for our children would be too great.

Given the significant effect of even Long Term Guardianship orders on Aboriginal and Torres Strait Islander children when they are placed outside kin, community and culture the ramifications of further adoption orders (to people who, of necessity are not family) would be expected to be significant and even worse.

Adoption of Aboriginal or Torres Strait Islander children also overlooks the significant disadvantage that Aboriginal or Torres Strait Islander adoption, kinship and foster carer applicants may face due to statistical overrepresentation and increased contact with government systems such as Child Safety, intolerant education systems, and police and criminal justice systems, and their lack of trust of fairness from these systems. This significantly increases the chance that Aboriginal or Torres Strait Islander children in any form of care will be cared for by non-indigenous people.[236]

Concerns regarding the introduction of adoption as a permanent care option disproportionately affecting Aboriginal and Torres Strait Islander children, were responded to by the department:

The department remains committed to addressing the disproportionate representation of Aboriginal and Torres Strait Islander children who are involved in the child protection system. This includes ongoing commitment to the Our Way strategy and to delivering the actions in the Changing Tracks Action Plan.

The Respectfully Journey Together Aboriginal and Torres Strait Islander Cultural Capability Action Plan that is available on the department's website sets out the department's approach and commitment to growing our cultural capability and building our capacity to better support vulnerable Aboriginal and Torres Strait Islander peoples, partner more inclusively with key organisations and engage genuinely with communities.

The first preference for achieving permanency for a child will remain the child being cared for by their family.[237]

The QLS also raised concerns about the impact of the amendment on the protections afforded by s 5C of the CP Act which reflects the ATSICPP, submitting:

We understand that the Department does not in all circumstances adhere to this legislative requirement to locate suitable kin carers for children in care. In some of these situations, it appears that there has been inadequate consultation with family and community. As such, it is our view that the Department must undertake full and proper formal consultation with family

[235] Submission 22, pp 8-9

[236] Submission 26, p 9.

[237] DCSYW, correspondence dated 13 August 2020, attachment, pp 4-5.

and community leaders before determining that they are unable to locate suitable kin carers. The identification of suitable kin carers is crucial considering that clause 8 of the Bill would allow adoption orders to be made within a two year period, thus severing a child's connection to community. The Society does not support the dilution of this salient aspect of the legislation, the purpose of which is to provide for the protection of children.[238]

The QLS also submitted that the proposed provision does not accord with the guiding principles set out in s 7 of the Adoption Act concerning Aboriginal and Torres Strait Islander persons, stating:

This provision mandates that because adoption (as provided for in this Act) is not part of Aboriginal tradition or Island custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term stable care only if there is no better available option. In our view, the availability of PCOs and the flexibility to allow reunification must be retained.[239]

Some submitters called for additional safeguards to maintain the ATSICPP and ensure that adoption was only used as a last resort, or not at all. For example, QCOSS, who opposed adoption being maintained as a permanency option regardless of its place in the hierarchy of preferences, recommended safeguards be put in place to ensure the ATSICPP is adhered to, including through:

a. *an independent statutory authority should be tasked with reporting to the Queensland Parliament on the Department of Child Safety, Youth and Women's adherence to the ATSICPP and*

b. *independent Aboriginal and Torres Strait Islander advice must be used to inform permanency decisions regarding Aboriginal and Torres Strait Islander children*.[240]

The QFCC also sought further safeguards to ensure adoption is only considered for Aboriginal and Torres Strait Islander children in accordance with the ATSICPP, stating 'Any reforms to the *Child Placement Act 1999* introducing adoption as a preference of any kind for Aboriginal and Torres Strait Islander children should consider how the adoption process can be redesigned to give full and proper effect to the ATSICPP'.[241] The QFCC submitted:

Any provision to consider adoption as a preference, even if the last preference, to achieve permanency for an Aboriginal or Torres Strait Islander child, establishes the possibility the child protection system could consider adoption against the wishes of parents, the wider community and most importantly those of the child or young person. Such consideration may not give sufficient regard to the long-term impacts of this decision upon a child's identity, cultural continuity and connections to kin and country. This would also be at odds with the principle of self-determination and could further erode the trust Aboriginal and Torres Strait Islander communities have in the child protection system.

…

In practice, adoption outside of the child's kinship structure cannot guarantee a child's connection to family, community and culture.

Further, the court process for adoption does not provide for the participation of Aboriginal and Torres Strait Islander communities in decisions. Independent expert and cultural advice should be sought in such cases to ensure all decisions made reflect the active efforts principle and

238 Submission 32, p 3.

239 Submission 32, pp 3-4.

240 Submission 25, p 2.

241 Submission 34, p 8.

implement all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

The process must meaningfully engage Aboriginal and Torres Strait Islander communities and be designed in true partnership with community stakeholders to achieve self-determination.[242]

…

Ultimately, adoption of Aboriginal and Torres Strait Islander children should only be considered where the children's family and community support it, with free, prior and informed consent. This could include circumstances in which the adoptive parents are connected to that child's family and community and the adoption can take place in a culturally safe way.[243]

The QFCC also recommended that it be given oversight of the effectiveness of these safeguards.[244]

Kurbingui Youth and Family Development also called on government to uphold their commitment in legislation to implementing in full the ATSICPP by providing additional safeguards 'to ensure that any legislative and policy changes focused on improving stability and permanency for Aboriginal and Torres Strait Islander children, are primarily accountable to upholding their cultural rights and identity as a priority'.[245] Kurbingui Youth and Family Development submitted:

- *Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services, and to make decisions regarding the care and protection of children and young people in their own communities.*
- *That independent accountability measures should be introduced to ensure the Department of Child Safety, Youth and Women is responsible for active efforts in the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*.[246]

QATSICPP stated:

… that the fact that connection to family, community and culture cannot be assured once an adoption is finalised presents a major risk for the identity and ongoing development of Aboriginal and Torres Strait Islander children and is a transgression of human rights issues that cannot be mitigated. To further protect these rights, we recommend that the proposed section 5BA(4) (b) be redrafted to read as follows:

(b) the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family;

(c) the third preference is for the child to be cared for under the guardianship of another suitable person;[247]

In response to this proposal, the department advised:

The Bill includes a note in the new section 5BA(4) that references the additional principles for administering the CP Act in relation to Aboriginal and Torres Strait Islander children. This includes all five elements the Child Placement Principle under section 5C.

[242] Submission 34, p 8.

[243] Submission 34, p 9.

[244] Submission 34, p 7.

[245] Submission 31, p 1.

[246] Submission 31, p 1.

[247] Submission 26, p 11.

The prevention principle provides that a child has the right to brought up within the child's own family and community. The partnership principle provides that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under the CP Act about Aboriginal or Torres Strait islander children. The connection principle provides that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

Existing section 5BA(2)(a) also provides that for ensuring the wellbeing and best interests of a child, the action or order that should be preferred, having regard to the principles mentioned in sections 5B and 5C, is the action or order that best ensures the child experiences or has ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers.[248]

At the public hearing, Mr Garth Morgan, Interim CEO of QATSCIPP, stated '[w]e acknowledge references to the child placement principle as a protection, but the implementation of those protections is reliant on good practice',[249] advocating in their submission for greater application of the ATSICPP, stating:

Where the parents are not in a position to resume care of the children, we are aware of numerous instances where the department has claimed they are unable to locate suitable kin carers for the children where they do not appear to have consulted sufficiently with family and community.

Failure to properly identify suitable kin carers is then made irrevocable as adoption or other arrangements will result in severing or damaging the child's connections.

In our view, the department should not be able to determine that they are unable to locate suitable kin carers unless there has been full and proper formal consultation with the family and community leaders.

We note that in her presentation to the public hearing of the bill at the legal affairs and health services committee of the Queensland Parliament, the Director General Deidre Mulkerin outlined that there would have to be significant operational changes by the Department to support implementation of the amendments.[250]

…

There were no special provisions outlined for how Aboriginal and Torres Strait Islander leadership would be involved to ensure that a cultural lens is applied to these processes and data, and that the rights of our children are protected.

Thus, to ensure appropriate safeguards are implemented to protect against this we recommend:

a) A statutory report should be delivered by Queensland Family and Child Commission annually on departmental implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. This should include provision by the Department of Child Safety, Youth and Women for independent access to departmental data. To ensure objectivity and accountability this report should be presented to directly to the Parliamentary Speaker and tabled in parliament b) Independent Aboriginal and Torres Strait Islander advice be provided to both the Director General and the courts about any Aboriginal or Torres Strait Islander child that is recommended

[248] DCSYW, correspondence dated 7 August 2020, attachment, pp 12-13.

[249] Public hearing transcript, Brisbane, 10 August 2020, p 16.

[250] Submission 26, p 12.

for Adoption to ensure that the application of the child placement principle has occurred to the standard of active efforts.[251]

In response to submitters stating that the Government must uphold its commitment to properly implementing the ATSICPP, the department stated:

The department is committed to continuing to implement all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle and partnering with Aboriginal and Torres Strait Islander children, families, departmental staff and organisations to do so.

The Queensland Government in partnership with Family Matters Queensland and community organisations has committed to the Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037 to deliver the best possible outcomes for Aboriginal and Torres Strait Islander children.

The Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2020–2022 includes Action 3.3: Embed active efforts to implement and give full effect to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle across the five system elements of the family support system (legislation, policy, programs, processes and practice).

Implementation of the Our Way Strategy is overseen by the Queensland First Children and Families Board.[252]

In response to calls for additional safeguards, the department stated:

The Bill includes a note in the new section 5BA(4) that references the additional principles for administering the CP Act in relation to Aboriginal and Torres Strait Islander children. This includes all five elements the Child Placement Principle under section 5C.

The prevention principle provides that a child has the right to be brought up within the child's own family and community. The partnership principle provides that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under the CP Act about Aboriginal or Torres Strait islander children. The connection principle provides that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

Existing section 5BA(2)(a) also provides that for ensuring the wellbeing and best interests of a child, the action or order that should be preferred, having regard to the principles mentioned in sections 5B and 5C, is the action or order that best ensures the child experiences or has ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers.[253]

In response to suggestions for greater protections for community input and advice, the department advised:

Section 5C of the CP Act recognises that Aboriginal and Torres Strat Islander people have a right to self-determination. The Child Placement Principle, which applies to all decisions and Aboriginal and Torres Strait Islander children under the Act, includes the principle that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under the Act. The Child Placement Principle also includes the principle that a child and the child's parents

[251] Submission 26, p 13.

[252] DCSYW, correspondence dated 7 August 2020, attachment, p 28.

[253] DCSYW, correspondence dated 7 August 2020, attachment, pp 14-15.

and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child.

The principles about exercising powers and making decisions under the CP Act includes that to the extent it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made. A relevant person includes the child to whom the decision relates, a person who is a parent of sibling of the child and is affected by the decision and any long-term guardian of the child.

The CP Act also provides for an independent Aboriginal or Torres Strait Islander entity to facilitate participation of the child and child's family in the decision-making process.[254]

The QHRC referred to the advice given at the public briefing that all decisions recommending adoption be pursued as an option for an Aboriginal or Torres Strait Islander child in care will be personally reviewed by the Director-General and this responsibility will not be delegated. The QHRC raised concerns about this practice change, stating:

The Commission notes however, that this practice change is not reflected in the legislative amendments and as a mere policy position could be eroded in future. For this reason the Commission recommends that this practice change be embedded in legislation by way of amendment to section 320 of the Adoption Act to limit what decisions may be delegated by the Chief Executive.[255]

QATSICPP also identified as an issue the lack of inbuilt protections to ensure that the Aboriginal and Torres Strait Islander community can provide input to the final decision on adoption, with the decision instead resting with the CE. QATSICPP stated 'This is also only a policy position and not enshrined in legislation so leaves the Aboriginal and Torres Strait Islander community with no legal redress if they disagree with the decision that is being proposed'.[256]

The department responded by stating 'It is not considered necessary to embed this change in legislation, as the practice change can be effectively achieved through an Instrument of Delegation'.[257]

Concerns were also raised about the two year time frame, after which a child may be adopted, with ATSIWLSNQ submitting:

…also presents a particular obstacle for Aboriginal and Torres Strait Islander families to achieve reunification with their child or children. Factors that may impact on the family's capacity to achieve reunification include intergenerational trauma in addition to socio-economic factors that may be experienced by the family.

We agree with the submission of QATSICPP, that although a parent may not be ready to achieve reunification within 2 years this may be achieved within 3 or 4 years, particularly where the Department has supported the parent/s to access support services.[258]

Professor Tamara Walsh provided the following information:

In our research, many participants have commented that the Stolen Generations continue to some extent, and this perception is supported by the statistical data. The Australian Institute of Health and Welfare reports that 1 in 18 Indigenous children are in out of home care in Australia, and 1 in 6 come to the attention of child safety services each year.

[254] DCSYW, correspondence dated 7 August 2020, attachment, pp 14-39.

[255] Submission 33, pp 7-9.

[256] Submission 26, p 11.

[257] DCSYW, correspondence dated 7 August 2020, attachment, pp 14-25

[258] Submission 38, p 4.

> *In our research, we have observed high levels of concern amongst lawyers and social service providers that Indigenous families feel completely disempowered and defeated in the context of Child Safety – they understandably assume that once Child Safety becomes involved, the child will be removed, and little can be done about it. The sense of despair and hopelessness is overwhelming, and the ongoing legacy of child removal continues to thwart any attempt to meet reconciliation goals in a broader sense*.[259]

The department responded to the call for support services for Aboriginal and Torres Strait Islander families, advising:

> *Under Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2020–2022, the department is committed to grow its investment in community-controlled Aboriginal and Torres Strait Islander organisations to better reflect the proportion of Aboriginal and Torres Strait Islander people accessing these services and in recognition of the growing evidence of their effectiveness in providing quality services and support to Aboriginal and Torres Strait Islander families experiencing vulnerability*.[260]

3.1.2.3 Matters outside the scope of the Bill

Reforms needed to current model of adoption and the child protection system

Some submitters called for changes to be made to the current approach to child protection, permanency and adoption, including legislating for the child's view to be sought, providing additional support for adoptees, changing the nature of adoption, putting the onus on the department to prove they have supported the family, legal support for parents and early support for families.

Importance of seeking the child's views

Some stakeholders referred to the importance of seeking the child's views as part of their permanency planning. For example, Act for Kids stated:

> *Whilst it is positive that permanency options are promoted for children on long-term orders, the legislative amendment does not proactively promote or provide protection for the much-needed enhancement in the practice of seeking the child's views as part of permanency planning.*[261]

Professor Tamara Walsh similarly stated:

> *There is no mention of child's views and wishes in this Bill. There are a few provisions of the Child Protection Act 1999 (Qld) that direct that the views and wishes of the child be taken into account in decision-making (see for example, sections 51ZB(1)(a), 59(1)(d), 65B(2), 99N(3), 99P(4), 99Q(6)). Yet, research suggests that children's involvement in child protection decisions concerning them remains extremely limited, even in cases where the child is a teenager and would be considered Gillick competent. The CREATE Foundation consistently reports that older children do have views regarding where they are placed, who with, and for how long. Their views and wishes should be respected to the extent that they have decision-making capacity.*[262]

Professor Walsh recommended that 'a provision be added to this Bill that requires the chief executive to ascertain the child's views and wishes, and give proper consideration to them when undertaking a review'.[263]

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259 Submission 5, p 3.

260 DCSYW, correspondence dated 7 August 2020, attachment, p 40.

261 Submission 9, p 1.

262 Submission 5, pp 5-6.

263 Submission 5, p 6.

The CREATE Foundation advised that its research with children and young people has shown that adequate efforts are not always made to seek the views of children and young people in child protection matters, and that too often children and young people do not feel that they have been involved in fundamental decisions. To address this, the CREATE Foundation suggested:

> *… that legislation requires that "active efforts" be made to seek the views of children and young people in adoptive matters, and that these efforts are required to be demonstrated before the court. To ensure the Court is supported to make a determination in the "best interests" of the child or young person, it is imperative that appropriate resourcing is committed to ensure timely, child-centred, and thorough pre-adoptive assessments. Such assessments would necessitate active engagement with the child or young person and a process to ensure that all kinship options have been explored.*[264]

Both CREATE Foundation and the QFCC referred to a child's right under article 12 of the United Nations *Convention on the Rights of the Child*, to participate in decisions made about them.[265]

CREATE Foundation noted that neither the proposed amendments or the Statement of Compatibility acknowledge or enshrine the child's participation or expression of views in this process, submitting:

> *Actively participating in decisions that affect one's life is not a privilege, but rather, an important developmental process, which enables children and young people to have a sense of agency in relation to their own care and lives (Davies, 2011). Thus, for adoption to be genuinely considered, the child or young person needs to be fully informed and supported, be part of the decision-making process, and consent to adoption (in line with age of the child/young person) before it proceeds. This reiterates the importance of children and young people having an inherent right to have their opinions heard and considered (G-Force, 2013).*[266]

The CREATE Foundation recommended:

- *Children and young people should be included in decisions about their lives. This is especially critical in permanent decisions such as adoption;*
- *The child or young person should be fully informed about the legal implications of adoption and supported to make an informed decision;*
- *In the case of young children under three where they do not have the capacity to be involved in such a significant decision, adoption should only be considered as a last resort, in exceptional circumstances, and in collaboration with the child's family and other support systems;*
- *Principles for permanency should include and call for children and young people to be part of the process*.[267]

FIN, SEQ/Micah Projects advised that they support the above recommendations.[268]

QCOSS also called for amendments to the CP Act 'to give greater weight to the views and wishes of children when decisions are made about them, including when orders are made by the Court'.[269] QCOSS advised that 'children often have very clear views about whether they would like to be

[264] Submission 17, pp 3-4.

[265] Submissions 17, p 4; submission 34, p 10.

[266] Submission 17, p 4.

[267] Submission 17, pp 4-5.

[268] Submission 23, p 17.

[269] Submission 25, p 2.

adopted. When a child is able to express a clear preference this should be given significant, and even determinative weight to a decision related to permanency planning for a child'.[270]

The QHRC suggested that in its upcoming review of the Adoption Act in 2021, the government should consider a framework for ensuring that due weight is given to the child's views based on their age and maturity.[271]

In contrast, Ms Lesley Mitchell submitted that no child has the capacity to understand the full consequences of consenting to their adoption, stating:

> *No-one under the age of 16 (in Queensland) can legally 'consent' to sex or to marriage (last time I looked anyone under 18 who wants to marry has to have an adult's/parent's consent lest young vulnerable people end up as sex slaves etc). Anyone under 16 is not legally allowed to drive a car – no one under 18 can legally drink in a bar - or buy cigarettes - so why on earth would we want it to be 'legal' let alone 'appropriate' for a child to 'consent' to their own adoption?*[272]

The department advised that the CP Act provides for the participation of children and young people in the making of decisions that affect them, stating:

> *Section 5D of the CP Act provides that to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under the Act. A relevant person includes the child to whom the decision relates.*
>
> *Section 5E sets out how a child should be given an opportunity to express their views under the CP Act. This includes that language appropriate to the age, maturity and capacity of the child should be used; communication with the child should be in a way that is appropriate to the child's circumstances; if the child requires help to express their views, the child should be given help; the child should be given an appropriate explanation of any decision affecting the child; and the child should be given an opportunity to respond to any decision affecting the child.*
>
> *Section 59(1)(d) provides that the Childrens Court may make a child protection order only if it is satisfied that the child's wishes or views, if able to be ascertained, have been made known to the Court. A child is also a party to the proceedings on an application for a child protection order and may be directly represented by a lawyer or have a court appointed special representative act in accordance with their best interests.*
>
> *From July to September 2019, the department undertook public consultation on the next stage of reforms to the CP Act through the discussion paper Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families. Children's voices in decisions that affect them was a key focus of the consultation process.*
>
> *A consultation summary report was released in December 2019. Government is considering how the results of consultation may support a stronger child protection and family support system*.[273]

The QFCC called for separate independent support 'to make sure the child's best interests are considered at the start of the adoption conversation, as ultimately adoption results in the cutting of all legal ties for the child with their birth family'. The QFCC expanded on this stating:

> *Under the Adoption Act 2009, the court may provide separate legal representation for a child in adoption proceedings. There are certain circumstances in which the court must consider whether to provide separate legal representation, however there are no circumstances in which the court is required to decide in favour of representation. This could be strengthened to make sure the*

[270] Submission 25, pp 3-4.

[271] Submission 33, p 9.

[272] Submission 12, p 5.

[273] DCSYW, correspondence dated 7 August 2020, attachment, pp 19-20.

child is separately represented in all adoption proceedings, as a safeguard to make sure the child's best interests remain paramount before the court.[274]

FIN, SEQ/Micah Projects similarly advocated for the exploration of an independent commissioner such as an Early Childhood and Family Commissioner or other relevant independent authority given that adoption is so frequently applied to children under the age of five.[275]

In response to the suggestions that children should be given separate independent support, the department advised:

Under the Adoption Act, a child who is able to form and express views about adoption is to be provided with information and counselling about the proposed adoption in a way and to the extent which it is reasonable having regard to the child's circumstances. The child is also to be given the opportunity to express views about the adoption, which the Court must consider before deciding whether to make an adoption order for the child.

In a proceeding for an adoption order, the court may also appoint a person to give separate legal representation or support to the child if the court considers it is in the child's best interests.[276]

Amendment requires greater post-adoption support

A number of submitters referred to the need for post-adoption support to be improved for both adoptees, adoptive families and biological families, especially if the number of adoptions is to increase as a result of the Bill.[277] For example, the AASW stated that 'All parties in adoption (children, adopted adults, families, adoptive families) need support and appropriate services across the lifespan'.[278] FIN Townsville similarly called for ongoing support for adoptive parents, children and natural parents.[279]

TBS advised that such help is needed in different stages of life, submitting:

These manifestations of adoption-related trauma can emerge and recur throughout the lifetime of all concerned … Client feedback demonstrates that people affected by adoption need a diverse range of assistance at all stages of life.[280]

Some submitters referred specifically to the potentially high needs of children who have experienced trauma and abuse. For example. Ms Glover:

Adoption is not a magic pill that provides solutions for all of a child's challenges. Many children in care have highly complex mental and physical health and social support needs which do not end just because they have been adopted. What does end is the support from the Queensland Government Department of Communities. There is no package of social support, mental or physical health care available for adoptive children, and no welfare checks beyond 12 months post adoption. Provision of these complex care needs is at the discretion and financial capacity of the adoptive parents. This is clearly not in the best interest of the child.[281]

Adoptee-aware and competent mental and physical health care and social support services are extremely limited for the current cohort of adopted people...

274 Submission 34, pp 10-11.

275 Submission 23, p 17.

276 DCSYW, correspondence dated 7 August 2020, attachment, p 32.

277 See, for example, submissions 2, 7, 11, 18, 20.

278 Submission 11, p 6.

279 Submission 10, p 5.

280 Submission 20, pp 3, 5.

281 Submission 18, p 2.

Ms Glover referred to the need for:

- *improved access to and assistance with costs for mental, behavioural and physical health services;*
- *ensuring that lessons from past practices are learned from and translated where appropriate into current child welfare policies, and that adoption-specific services are created or enhanced to respond to the consequences of past practices.*[282]

Hope for Our Children stated:

> *Hope For Our Children are supportive of children in care, having a range of permanency options available to best suit their individual needs. Some children have experienced severe trauma and as a result, have high needs that require expensive therapy, both current and in the future. Offering high need children permanency options with financial and agency support would be a preventative measure against future placement breakdown.*[283]
>
> *…*
>
> *After a child has achieved permanency (through any of the previously stated orders), the family may wish to disengage from a close relationship with the Department of Child Safety. The family, however, still requires strong support around them to help prevent placement breakdowns. This support is where NGO's can be supportive in linking families with existing support groups. International Adoption has existing parent groups that support placements and educate parents on trauma behaviours, attachment parenting and mentors. When children can experience permanency, access to groups such as the Intercountry Adoption Communities is invaluable for the children involved. NGO's can assist families in applying for NDIS support to ensure that children receive all therapeutic support possible.*[284]

TBS submitted that post-adoption support is under-resourced at present, and more would be needed if adoption is explicitly included in the permanency hierarchy.[285] TBS called for:

- *Information, support and resources for all family members affected by adoption*
- *Independent 'Support Centres' to assist in the creation of adoption plans (similar to government funded specialist mediation services such as those provided to separating parents to develop child custody arrangements)*
- *Providing support and assistance for managing contact arrangements set out in the adoption plan (including mediation/intermediary support)*
- *Outreach and intermediary services to re-establish contact when it has lapsed*
- *Specialised support for adoptive parents (support, information, groups and counselling)*
- *Specialised support for birth parents (support, information, groups and counselling)*
- *Specialised support for adopted people throughout life stages, i.e. as children, young people and adults (support, information, groups and counselling).*[286]

Ms Lesley Mitchell also called for greater support, stating:

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[282] Submission 18, p 3.

[283] Submission 7, p 4.

[284] Submission 7, pp 7-8.

[285] Submission 20, p 5.

[286] Submission 20, p 6.

You cannot possibly understand what adoption, loss of identity, loss of family and grief does, unless you've been there yourself. Adoption is a permanent solution to what is often a temporary problem. Subsidised or free adoption competent counselling needs to be offered to ANYONE in the adoption triad until it is no longer required.[287]

Types of adoption and other long-term care options

Some submitters made suggestions regarding the form that adoption should take. A number of submitters expressed support for open adoption as compared to closed adoption. For example, FIN Townsville submitted:

Closed adoption is an outdated 20th century social policy which, in the 21st century, is being replaced by OPEN forms of long term care for children unable to stay in the custody of their First parents – including Open Adoption and Open Long term Guardianship. The reasons for these latter developments stem, in part, from the views of adults who were placed in closed adoption as children. As adults, including many who were happy in their adoptive home, adoptees have lamented:

- *the deceit entailed in replacing their original birth certificates with an adoption certificate thereby denying them the unfettered right to knowledge of their biological origins.*
- *their lack of knowledge of their First parents, of their First extended family, and their First culture. As adults, many have gone to great lengths to research their origins and renew contact with members of their First family. This is as true for non-Indigenous adult adoptees as for Aboriginal and Torres Strait islander members of the Stolen Generations.*[288]

Adopt Change promoted open adoption rather than closed adoption, stating:

This ensures that a child continues to have a relationship and understanding of their biological family where that is safe and possible. This also recognises the impact of past practices and ensures that the larger community understands that those practices are not being continued.[289]

However, some submitters referred to concerns about open adoption, including the difficulties that can be faced in maintaining contact with the biological family and the potential distress for adoptees and their biological parents in regular meetings, especially if there is no support.[290] For example, PeakCare, stated:

The permanent reconfiguring of relationships between a child and their family generally no longer means a complete break from the child's birth family, as in 'closed adoption', but may involve some ongoing contact between adopted children and their parents and the exchange of information about the child. These changes are designed to address the identity issues for adopted children and prevent or minimise future difficulties for these children and their families, avoiding the legacy of past adoption practices highlighted by the 'Stolen Generations', 'Forgotten Australians', and all those affected by 'forced adoptions'.[291]

However, while Queensland's adoption legislation encourages open adoption practices, it is not legally mandated. Queensland has an 'adoption plan' system to negotiate contact and information exchange between the birth and adoptive families before the adoption. While data

[287] Submission 12, p 2.

[288] Submission 10, p 3.

[289] Submission 2, p 3.

[290] See, for example, submissions 8, 19, 20, 22, 23, 24, 28.

[291] Submission 22, p 4.

about the type of contact agreed to is collected for some adoptions, contact data in relation to known child adoptions (for example, adoption by relatives or carers) is not collected.[292]

Concerns have been raised about contact plans, made at the time of the adoption order, not being able to be reviewed and adjusted to meet children's changing developmental stages and needs. Additionally, for both adoptive and birth parents, and for children, contact can also bring up a complex range of emotions, which may result in contact plans not being enacted or sustained after the adoption is finalised. Hence some caution is to be applied as to what "open" adoption actually means in practice and in subsequent outcomes for adopted children regarding ongoing birth family connection and identity formation.[293]

VANISH Inc similarly submitted:

… granting an adoption order under 'open' arrangements, does not guarantee that contact between a child and their family of origin will be maintained. This is particularly the case in the absence of dedicated specialist services to support and manage the inevitably changing needs of the adopted child and their family of origin and adoptive family members as the child matures.[294]

Ms Sliwka also referred to open adoption as being problematic, stating:

Open adoption leaves decisions around contact with biological family with the adoptive parents and there is no legal obligation to maintain contact. Some of these biological family relationships may be complex and with open adoption, there are not always supports in place to assist adoptive parents to facilitate such contact on behalf of their child.[295]

TBS advised its support for open adoption from out-of-home care where it has been comprehensively determined that this is in the best interests of an individual child. However, TBS referred to emerging evidence and TBS' experience that open adoption as currently practiced does not eliminate the trauma of adoption, rather it creates new stresses for the child and for its birth and adoptive parents. TBS provided the following example:

In a sample case from TBS in New South Wales, contacts between the birth mother, the child and the adoptive parents created new stresses. Despite voluntarily giving up her son for adoption, the mother found that she was re-experiencing the loss of her child after each visit. Without any mandated external supervision or support, past mental health issues re-emerged and she was hospitalised.[296]

Mr Scott McDougall, Queensland Human Rights Commissioner, told the committee:

… unlike New South Wales, there is no system in place at present in Queensland to allow for enforceable adoption plans to be put in place that would facilitate continuing contact, particularly between Indigenous children and their extended families. The ability to maintain their kinship connections and maintain their cultural connections to country effectively is wiped out, and it is left to the whim of the adoptive parents as to whether they will maintain those connections. It is important to understand that New South Wales—and it is clear from the coroner's recommendations that she based her recommendations on the New South Wales

[292] Submission 22, p 4.

[293] Submission 22, p 4.

[294] Submission 28, p 5.

[295] Submission 24, pp 1-2.

[296] Submission 20, p 4.

> *model—does allow for adoption plans to be enforced, and that is not in place in Queensland. That is a real weakness.*[297]

The QHRC recommended that when the government reviews the Adoption Act in 2021, the government consider a framework for mandatory and enforceable adoption plans to safeguard the rights of the child and birth family.[298]

In contrast to open adoption, a number of submitters expressed support for simple adoption.[299] For example, Jigsaw Queensland Inc proposed that policy which 'takes into account the past and is responsive to the present should be moving towards simple adoption rather than plenary adoption', stating:

> *If adoption is to be a genuine option to meet the permanency needs of children in care then it must take into account current realities. In most cases, such an option will no longer involve placing children at or near birth with alternative carers. Instead, permanency orders or adoption orders will apply to children who are already embedded in family relationships. To deny the existence of those relationships or to legally sever them forever, as is the case with plenary adoption, is rarely, we believe, in the child's long-term best interests. Simple adoption allows a child to be recognised as legally related to two families, with the parental responsibilities to eighteen years of age clearly acknowledged. We believe this to be a potentially better arrangement than so-called open adoption which, while an improvement on past practices, still involves permanent severing of the legal relationship between a child and the original parents, siblings, grandparents and other relatives.*[300]

Ms Glover also supported simple adoption, providing the following information about its benefits and how it may complement permanent care orders:

> *Simple/Additive Adoption allows the child to retain their name, identity, birth certificate and legal connection to their family, while forming a new legal relationship with the adoptive family. The end result is that the natural family and adoptive family maintain an ongoing legal relationship with the adopted person.*
>
> *Permanent Care Orders (PCO) provide a stable and secure family arrangement for a child requiring care, legally ending when the child reaches legal adulthood at 18 years old. If it is appropriate and in their best interests for the child to have an ongoing legal relationship with their PCO parents, then Simple/Additive Adoption is the preferred option and I strongly recommend that it be introduced in Queensland.*[301]

As an alternative, the Association for Adoptees stated that simple adoption may offer the benefits required to meet a child's need for permanency while still retaining their true identity (no change to birth certificates) and connection to family.[302] To address their concerns about a lack of checks, balances and accountability if an adoption goes wrong or when the child faces certain life challenges, the Association of Adoptees recommended that simple adoption be coupled with strong continued support.[303]

PeakCare recommended further investigation into simple adoption, submitting:

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297 Public hearing transcript, Brisbane, 10 August 2020, p 12.

298 Submission 33, p 9.

299 See, for example, submissions 4, 6, 17, 18.

300 Submission 4, pp 2-3.

301 Submission 18, p 2.

302 Submission 3, p 6.

303 Submission 3, p 6.

This form of adoption is used in some countries and while vesting parental responsibility with the adoptive parent, it does not result in the termination of the legal relationship between the adopted child and their birth family. Whether this option is substantially different to existing third party guardianship options is not clear. Further investigation and analysis of the potential benefits, or otherwise, of this type of adoption and its applicability, or not, to the Australian context is needed.[304]

Adult adoption as another option was supported by Adopt Change and Ms Hawken. Adopt Change advised its support for adult adoption as an option for people to have agency over their own life and family choices:

Children who have been on Permanent Care Orders in out of home care (but not adopted), should have the ability to elect to be legally adopted once they have turned 18. This means that the permanency and stability for this child (now adult) continues not only in the physical sense but also legally. This is also in line with supporting young people over age 18, given that often those years after completing school and transitioning to adulthood are when a child needs the most support.[305]

Similarly, Ms Theresa Hawken stated 'I wish that the child could choose to adopt the parents at 18 to 25 after a permanent care order has been in place if they wish to choose to adopt that family as their own. Children are not a commodity to fix infertile couples' pain'.[306]

In response to suggestions for different types of adoption, the department advised 'these proposals for reform are out of scope of the Bill and are policy matters for consideration by Government'.[307]

Some submitters called for legislation to be more flexible and for alternatives to adoption that do not sever a child's right to have a connection with their birth family and instead preserve their identity while still keeping a child safe and ensuring they have lives characterised by stability. For example, AASW called for a more nuanced approach, submitting:

Furthermore, painting adoption as the one-size-fit-all solution to children in care disregards our history of forced adoption and the right for children to connect with their family and kin. The current legislation does not focus on the needs of children and families from diverse backgrounds in terms of ethnicity, culture and religion. There is no explicit requirement for connection to culture with this diverse group. There is a strong evidence base indicating that as children grow, they seek their biological families, seeking their sense of belonging and connection. We respectfully draw the Queensland Government's attention to the findings from the Commonwealth Contribution to Former Forced Adoption Policies and Practices, and the importance of learning from this inquiry. Once a child is adopted there is no oversight or assurance that connection with family and kin is going to be continued, which can lead to another generation of traumatised children and adults. The evidence around permanency and stability, particularly for the first 1000 days of a child's life is compelling and significant. However, the other compelling body of evidence around the implications for children in care and their need to seek their identity also needs to be recognised equally. We need a more nuanced and integrated approach that recognises the importance of relational stability, of connection and belonging if we are to avoid the mistakes of our recent past.[308]

The AASW is also concerned that adoption can compound the trauma of children and their families. AASW members often witness the trauma experienced by children in a permanent care

304 Submission 22, p 3.

305 Submission 2, p 3.

306 Submission 4, p 4.

307 DCSYW, correspondence dated 7 August 2020, attachment, pp 21-35.

308 Submission 11, p 6.

order, even by very young children placed in care. The trauma can manifest as they grow as we have seen with very young children placed in foster care as they grow and enter their teenage years.[309]

Similarly, PeakCare supported the need for a case-by-case approach, stating:

While PeakCare supports adoption being one of a suite of permanent care options (as it already is in Queensland), because it may be the best option for some children, there is concern that legislative and policy changes to drive a strong preference for permanence via adoption has the potential to be extremely harmful, as individual children require case by case solutions best suited to their particular needs and circumstances.

…

PeakCare proposes that adoption is not an end in itself, rather it is the means. "The end" is life-long permanency, stability, security and connections for a child, either with their family or in an alternative care arrangement for those who cannot live with their parents, and it encompasses legal, physical and relational permanency, rather than just placement type. The most suitable permanency option for each individual child's needs and circumstances is not determined by a hierarchy of options, nor by an ideologically directed priority placed on adoption as a solution, but should be determined by the most suitable permanency option for each individual child's needs and circumstances.

Rather than a "hierarchy", each permanency option could have criteria developed about what should be considered and taken into account relevant to each option, essentially what works best for children in which circumstances and when is one option clearly preferable than another, to support decision making about which option is most suitable for a child's specific needs and circumstances.[310]

In response to Peak Care's suggestion, the department advised:

The CP Act is administered under the main principle that the safety, wellbeing and best interests of a child, both through childhood and the rest of the child's life, are paramount.

Section 5B of the CP Act provides general principles for ensuring the safety, wellbeing and best interests of a child. These include that a child has a right to be protected from harm or risk of harm; a child's family has the primary responsibility for the child's upbringing, protection and development; and the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family.

The main principle and the principles in section 5B are considered when making a decision to ensure the safety, wellbeing and best interests of a child.[311]

FIN Townsville suggested there is merit in long term options being available which are not a 'one size fits all' model and that may achieve relational, physical and legal permanency which involve the continuing active involvement of biological parent(s) in contact, planning, decision making, such as:

- *flexible care could be considered – including shared, part time care.*[312]

309 Submission 11, pp 6-7.

310 Submission 22, p 3.

311 DCSYW, correspondence dated 7 August 2020, attachment, pp 20-21.

312 Submission 10, p 4.

- *Respite care for biological parents - At present, Queensland employs respite carers for children placed in foster care or kinship care. The need for respite is one that is shared by parents involved with child protection services.*[313]
- *Joint guardianship models to help support parents who, due to capacity, may need assistance to meet all their guardianship responsibilities.*[314]
- *Lifelong Families – A model that is of interest in relation to holistic long-term planning for children is that of lifelong families, a program for working towards permanence with children in foster care developed by the Annie E. Casey Foundation in the United States.*[315]

An alternative put forward by Mr Mundy was for a National Framework to occur in accordance with the Federal Family Law Act. Mr Mundy stated:

> *This may dispense with the need for Adoption Orders altogether, and instead replace them with Parenting Orders in accordance with the best interests of the child in the context of the child's family and direct community. Issues of child protection are common in many Family Law proceedings however child protection issues are dealt with by local state government authorities and legislation, whilst the Family Law act is a piece of Federal legislation and covers all states and territories. If permanency and stability is in the best interest of the child and the Family Law Act also has as its basis the best interest of child, Parenting Orders by default must also create permanency and stability for the child. Under this consideration, family members would need the family law system to be accessible and affordable however this is no different to the current system in regards to Child Protection Orders and Adoption orders.*[316]

In response to these suggestions, the department advised:

> *The CP Act requires the department to investigate or take other action considered necessary when the department is aware of alleged harm or risk of harm to a child and reasonably suspects the child may be in need of protection.*
>
> *There is a wide range of options for the actions the department may take to meet the child's protection and care needs.*
>
> *This includes supporting the child's family to help them to care safely for the child, commencing an intervention with parental agreement or applying for a child protection order for the child.*
>
> *Review the range of intervention options that may be provided is beyond the scope of the Bill.*[317]

Adoption without consent

Some submitters raised issues with the level of non-consensual adoptions and recommended that adoptions should only occur with the consent of the biological parents.[318] The QFCC submitted the following on this issue:

> *The proposed preference option list oversimplifies the complex issues involved when a parent chooses adoption for their child. Making it necessary for the child protection system to consider adoption as a preferred option to achieve permanency may remove the discretion of the parent to make this decision when they are ready, in a child's best interests.*

313 Submission 23, p 15.

314 Submission 23, p 15.

315 Submission 23, p 15.

316 Submission 8, pp 6-7.

317 DCSYW, correspondence dated 7 August 2020, attachment, pp 21-22.

318 See, for example, submissions 10, 17, 22, 24, 28.

It may also encourage Child Safety to seek contested adoptions where the parents do not provide consent, with complex consequences for the children and their family. This may lead to situations where Child Safety applies to the court to expedite adoption processes without giving parents the opportunity to be in charge of the decision to place their child with an adoptive family.

Placing adoption as a preference to achieve permanency for a child could lead to an increase in applications for dispensation of parental consent, to allow adoptions against the wishes of parents.

Under s.39(e)(i)(ii) of the Adoption Act 2009, the court may dispense with the need for a parent's consent if the court is satisfied the relevant parent is not willing and able to protect the child from harm and is unreasonably withholding consent to the adoption or refusing to engage with the chief executive on this matter. There may need to be further guidance on what is considered reasonable in this circumstance.

The Adoption Act 2009 also provides for dispensation of consent if, following an assessment, the parent is found to lack the capacity to consent. The consequences of this are particularly concerning in circumstances where the parent of a child is not legally an adult. This could also have consequences for parents with impaired capacity who may, through this process, lose all contact and connection with their children.[319]

PeakCare raised issues about the level of non-consensual adoptions and what they termed 'the obvious implications from a human rights perspective and the subsequent impact on the future 'openness' of adoption to benefit children's identity development'. PeakCare submitted:

For carer (known child) adoptions in Australia finalised in 2018–19, consent from one or both parents occurred in only 21 percent of cases. With the majority (nearly 80 percent) of adoptions consent was dispensed or not required.[320]

VANISH Inc also expressed concerns about dispensing with parental consent for adoption, suggesting this would '… compound the multiple disadvantages often experienced by parents whose children are placed in out-of-home care against their wishes in the first place'.[321] VANISH Inc suggested that non-consensual adoption violates children's rights and parents' rights, as well, submitting '[t]herefore, there are strong arguments that, in the context of child protection, an adoption order is punitive for the parents and child, and a violation of UNCROC, to which Australia is signatory'.[322]

FIN Townsville called for no forced termination of parental rights with a view to securing adoption, including open adoption. Even then, FIN Townsville supported limited use of open adoption 'in circumstances where it is the First parents' first preference, when their parental consent is given freely, and when grandparents' support is also forthcoming'.[323]

Ms Jane Sliwka stated that the only situation where an adoption should be considered without a parent's consent 'is where the child is able to consent to their own adoption when they reach a suitable age and level of maturity, as appropriately assessed with great care and consideration to all involved'.[324]

The department responded to these concerns, stating:

[319] Submission 34, p 10.

[320] Submission 22, p 5.

[321] Submission 28, p 4.

[322] Submission 28, p 6.

[323] Submission 10, p 5.

[324] Submission 24, p 2.

If the department determines that a child needs long term care and adoption is the most appropriate long-term care option for a child, the requirements in the Adoption Act 2009 will apply.

The consent of a child's parents and every person who is a guardian of the child must be given freely and voluntarily before the Childrens Court can make an order for a child to be adopted.

Only in very limited circumstances the Childrens Court, on application by the department, may dispense with the need for the consent of a child's parent.

A child who is able to form and express views about adoption is to be provided with information and counselling about the proposed adoption in a way and to the extent which it is reasonable having regard to the child's circumstances. The child is also to be given the opportunity to express views about the adoption, which the Court must consider before deciding whether to make an adoption order for the child.[325]

The department also advised:

Under the Adoption Act, in very limited circumstances the Childrens Court, on application by the department, may dispense with the need for the consent of a child's parent. Dispensation of the need for consent may occur if the court is satisfied that there are grounds for dispensing with the need for the parent's consent and that it is in the child's best interests for arrangements to be made for the child's adoption. The grounds on which the need for a parent's consent may be dispensed are if:

- *a parent does not have the capacity to consent*
- *the identity or location of a parent cannot be established*
- *a child was conceived as a result of an offence*
- *there is an unacceptable risk of harm to the child or mother if the parent were made aware of the child's birth or proposed adoption*
- *there are other special circumstances.*

A child who is able to form and express views about adoption is to be provided with information and counselling about the proposed adoption in a way and to the extent which it is reasonable having regard to the child's circumstances. The child is also to be given the opportunity to express views about the adoption which the Court must consider before deciding whether to make an adoption order for the child.[326]

Onus on the department to prove it has supported the family to try to turn their life around

Some submitters called for the CP Act to be amended to include a requirement that the department prove that adequate resources and support were provided to biological families (including extended family) when making an application for an order that would lead to removing a child from their family.[327]

Both FIN, SEQ/Micah Projects and Legal Aid Queensland referred to the Queensland Child Protection Commission of Inquiry's[328] recommendation 13.20, which stated:

[325] DCSYW, correspondence dated 7 August 2020, attachment, p 31.

[326] DCSYW, correspondence dated 7 August 2020, attachment, p 34.

[327] See, for example, submissions, 23, 25, 37.

[328] Queensland Child Protection Commission of Inquiry, Taking Responsibility: A Roadmap for Queensland Child Protection, p 487.

- *the Minister for Communities, Child Safety and Disability Services propose amendments to the Child Protection Act 1999 to provide that:*
- *before granting a child protection order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family*
- *participation by a parent in a family group meeting and their agreement to a case plan cannot be used as evidence of an admission by them of any of the matters alleged against them.*

FIN, SEQ/Micah Projects also referred to recommendation 13.21, which recommended:

- *the Department of Communities, Child Safety and Disability Services ensure, when filing an application for a child protection order, its supporting affidavit material attests to the reasonable steps taken to offer support and other services to a child's family and to work with them to keep their child safely at home.*[329]

On these recommendations, Legal Aid Queensland submitted:

> *We repeat our submission made in 2017 that it is the experience of LAQ's child protection lawyers that child protection reforms aimed at ensuring that families have better and more intensive support to address child protection concerns have yet to be meaningfully and consistently implemented. We suggest that section 59 of the CPA should be amended to implement the Queensland Child Protection Commission of Inquiry's recommendation 13.20 (that before granting an order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family). A requirement for the court to be satisfied of the matters recommended in 13.20 would provide an important balance to the amendments regarding both the duration of child protection orders and the proposed new permanent care orders.*[330]

FIN, SEQ/Micah Projects similarly recommended that:

- *Section 59 of the* Child Protection Act 1999 *be amended so that if the court was not satisfied the Department had "taken all reasonable efforts to provide support services to the child and family" then it could refuse to make the child protection order.*[331]
- *the Queensland government ensure that a right to legal representation in the Child Safety jurisdiction is embedded in the legislation and that the Legal Aid funding pool is expanded to meet this need*.[332]

To improve the adoption process, the AASW recommended ensuring there is a 'right to appeal process' for biological family, 'particularly where there is evidence that appropriate case work was not undertaken (due to systems or resource issues) within the 24-month period outlined'. AASW submitted:

> *This adds weight to our concerns about many families not having access to appropriate case work. The* Child Protection Act 1999 *(QLD) must have rigorous protections in place with regards*

[329] Submission 23, p 9; Queensland Child Protection Commission of Inquiry, Taking Responsibility: A Roadmap for Queensland Child Protection, p 487.

[330] Submission 37, p 3.

[331] Submission 23, p 11.

[332] Submission 23, pp 12-13.

to the potential adopting parents and adopted children, and as we have argued, a strong safety net to support all involved including the need for connection and identity.[333]

The department responded to these submissions, stating:

This suggestion is beyond the scope of the Bill. The CP Act includes the general principle that the preferred way of meeting a child's safety and wellbeing is through supporting the child's family. This principle applies to decision-making and the exercise of powers and functions under the Act by the department, the Director of Child Protection Litigation and the Childrens Court.

Before making a child protection order, the Childrens Court must be 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 is appropriate for meeting the child's assess protection and care needs, and the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms.[334]

Legal support for parents

Some submitters also called for better legal support for parents to help address the imbalance of the system. For example, Professor Tamara Walsh submitted '…there is a risk that parents will consent to adoption without realising what the consequences are, without obtaining sufficient legal advice. Yet, the legal consequences here are much more profound, and they are practically irreversible'.[335]

FIN, SEQ/Micah Projects provided the following on the barriers and issues parents can experience in child protection-related legal proceedings, including:

- *Meeting lawyers five minutes prior to their proceedings*
- *Parents' current circumstances not being reported in court documents showing progress or changes in circumstances which could impact their case*
- *Lack of information available to parents about their rights and responsibilities, therefore parents not engaging as they should because they don't understand the process, or the purpose of interactions with different agencies*
- *Long and protracted legal procedures further exacerbated by delays in Family Group Meetings and reports being compiled to inform the courts*.[336]

FIN, SEQ/Micah Projects called for mandatory legal support, stating:

Again it is hard to reconcile how Child Protection legislation that does not provide mandatory legal representation is compatible with the Human Rights Act. Women as mothers, who are often the subject and respondents of the child safety system, even when they are the victims of domestic violence, abuse, coercive control are disproportionately impacted by the lack of appropriate funding mechanisms and right to legal representation.[337]

FIN, SEQ/Micah Projects also referred to parents who find themselves struggling having to contend with the following layers to process:

1. *firstly, they are petrified of their children 'being taken'*

[333] Submission 11, pp 8-9.

[334] DCSYW, correspondence dated 7 August 2020, attachment, pp 23-24.

[335] Submission 5, p 4.

[336] Submission 23, pp 11-12.

[337] Submission 23, p 12.

2. *secondly, if they do seek help, it can be 'used against them' or they are 'not eligible' to receive help; and*
3. *thirdly, if they do become embroiled in the Child Safety system, then they have no clear information about what is happening, nor what is required of them*.[338]

The department's response to increased funding for legal services was to advise that the suggestion is beyond the scope of the Bill and is a policy matter for Government. The department added:

> *Section 109 of the CP Act provides that if, in a proceeding on an application for an order for a child, a parent of the child appears in the Childrens Court but is not represented by a lawyer, the court may continue with the proceeding only if it is satisfied the parent has had reasonable opportunity to obtain legal representation.*[339]

The Office of the Public Guardian (OPG) raised particular concerns for birth parents with impaired decision-making capacity under formal public guardianship (*Guardianship and Administration Act 2000*) and the importance of these rights being upheld in considering permanency options for a child. The OPG submitted:

> *The OPG has come across issues in relation to the way the child protection system can regard a parent's disability (particularly an intellectual, cognitive or psychosocial disability) as evidence of their inability to care for their child. This can often mean parents with disability are at a position of disadvantage, based on the existence of a disability itself, representing a notable potential breach of their human rights.*[340] *The OPG is concerned the Bill creates a risk of permanent removal of children from parents with impaired decision-making capacity in circumstances where the original removal of the child was based solely on the parent's disability rather than evidence of harm or inability to parent.*[341]
>
> *…*
>
> *Given the ramifications of any order concerning permanency for a child, particularly an adoption order, birth parents must be provided with access to legal advice and representation throughout the entirety of the child protection and processes.*
>
> *Legal advice is particularly important when birth parents are involved in discussions with professionals and the Department of Child Safety, Youth and Women (DCSYW) about their ability to provide a safe and nurturing environment for their children. For example, parents are not always aware that their views are being recorded, and 'off the cuff' remarks or statements can potentially be used against them for the purposes of determining custody and access rights. Legal representation is even more critical where the parent has an intellectual, cognitive or psychosocial disability, with parents requiring additional support to ensure that they fully understand and are aware of their rights and how such information will be used in child protection proceedings. Most importantly, it is in the best interests of the child or young person that their parents are also made aware of what will happen with the information they provide before they express their views. The absence of legal advice in these circumstances can be a further obstacle to reunification for families where one or both parents have impaired decision-making capacity.*[342]
>
> *OPG is concerned that, should attempts at reunification fail and adoption be pursued as contemplated by the Bill, the Adoption Act does not provide adequate safeguards to protect the*

338 Submission 23, p 6.

339 DCSYW, correspondence dated 7 August 2020, attachment, p 40.

340 Submission 36, p 3.

341 Submission 36, p 4.

342 Submission 36, p 5.

rights and interests of birth parents with impaired decision-making capacity, specifically the absence of protection around the dispensation of consent.[343]

The OPG also raised an ongoing issue regarding the Adoption Act, submitting:

OPG is concerned that, should attempts at reunification fail and adoption be pursued as contemplated by the Bill, the Adoption Act does not provide adequate safeguards to protect the rights and interests of birth parents with impaired decision-making capacity, specifically the absence of protection around the dispensation of consent[344]*….While the OPG recognises that the best interests of the child is the paramount concern of the Childrens Court in deciding whether to dispense with the need for the parent's consent to the adoption, the OPG submits that the Adoption Act should provide other factors which the court must take into consideration, including the General Principles of the Guardianship and Administration Act and the right of parents with impaired decision-making capacity to raise and maintain a relationship with their children*.[345]

The OPG recommended:

1. *The Bill be amended to ensure the rights of birth parents with disability are protected when decisions are being made about permanency options for their children by incorporating adequate safeguards for birth parents with disability, in particular, those with decision-making impairments, to meet the requirement of recognition and equality before the law under section 15 of the* Human Rights Act 2019*.*
2. *2. Adequately fund legal representation of birth parents, particularly given the significant impact of adoption on the legal relationship between children and birth parents.*
3. *The* Adoption Act 2009 *be amended to ensure consistency with the* Guardianship and Administration Act 2000 *for matters of adoption and dispensation with the need for the parent's consent to the adoption.*
4. *The* Adoption Act 2009 *be amended to provide clarity around the role and functions of a formal guardian for the matter of dispensation.*
5. *The* Adoption Act 2009 *be amended to provide greater protection and safeguards for the rights of parents with impaired decision-making capacity for matters of adoption and dispensation.*

The department responded to concerns about how parents with a disability or impairment will be supported to participate in the adoption process by advising:

The Adoption Act includes safeguards about the consent of a child's parents to adoption. This includes obligations on the department to ensure information is given to each of the child's parents and counselling is provided in a way that enables the parent to understand.

The Adoption Act also requires the provision of specific information, pre-consent counselling and access to legal advice to a child's parents before they consent to the adoption of their child. The Adoption Act includes specific protections for ensuring parents have capacity to consent and enables the Childrens Court to dispense with the need for consent in limited circumstances.[346]

[343] Submission 36, p 5.

[344] Submission 36, p 5.

[345] Submission 36, p 8.

[346] DCSYW, correspondence dated 7 August 2020, attachment, p 12.

In response to concerns that the Bill creates a risk of permanent removal of children from parents with impaired decision-making capacity where the original removal of the child was based solely on the parent's disability rather than evidence of harm or inability to parent, the department advised:

> *The Bill does not change the availability or obligation for support to be provided to families to help them to care safely for their child or the threshold for statutory child protection intervention.*
>
> *The CP Act provides for statutory intervention for children in need of protection. Under section 10 of the CP Act, a child in need of protection is a child who:*
>
> - *has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and*
> - *does not have a parent able and willing to protect the child from harm.*
>
> *There are existing protections and safeguards in the CP Act and the* Adoption Act 2009 *to protect the rights and interests of parents with impaired decision-making capacity*.[347]

Early support for families

A number of submitters called for more work to be done 'upfront' to support families to keep their children, including improved funding for existing initiatives or new programs to provide earlier support for children and families before or once engagement with the child protection system is required.[348]

The AASW submitted that governments have a responsibility in the first instance 'to concentrate efforts on creating environments in which children and families are supported and assisted so that the various factors that contribute to the need for intervention by the state is substantially reduced'.[349] AASW also recommended that the department improve staff resourcing to provide holistic and comprehensive case planning, and develop a knowledgeable, well trained, accredited, and supported child protection workforce.[350]

For those families that are engaged with the child protection system, the QHRC suggested:

> *When considering less restrictive options that achieve stability for a child compared with the out of home adoption of a child, the Commission suggests that focus on early intervention to prevent removals to out-of-home care in the first instance needs to remain a key priority, along with the increased use of kinship care, particularly for Aboriginal and Torres Strait Islander children as required by the Child Placement Principles.*[351]

QCOSS similarly called for greater support for biological families, stating:

> *A lack of resources should not be the reason that children are irreversibly severed from their biological family and their identity. When a child is interacting with the child protection system their family should be provided with adequate support and assistance to improve their ability to safely care for their children.*[352]

The CREATE Foundation raised concerns about the 24 month time period for short-term orders, stating:

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347 DCSYW, correspondence dated 13 August 2020, attachment, p 2.

348 See, for example, submissions 2, 11, 17, 22, 33.

349 Submission 11, p 4.

350 Submission 11, p 5.

351 Submission 33, p 4.

352 Submission 2, pp 4, 5.

There is extensive evidence to suggest that families who receive adequate support when needed are far more likely to be able to safely care for their children (CREATE Foundation, 2019). In line with prevention and early intervention strategies, increased investment and early support for families is important and permanency with family should also be a legitimate goal that is adequately considered, supported and invested in.[353]

The Queensland Indigenous Family Violence Legal Service (QIFVLS) submitted that in relation to considering and bolstering permanency options, specifically for Aboriginal and Torres Strait Islander children:

There is a clear nexus between the rates of family violence experienced by Aboriginal and Torres Strait Islander peoples and the rate of child removal…. In addition, to actually see a reduction in the disproportionate and escalating rates of family violence driven child removal, there must be a greater focus on front end support for Aboriginal and Torres Strait Islander people especially mothers.[354]

…

The focus must be on early intervention and support and active efforts by the Department of Child Safety to actively support a child before removing that child. QIFVLS supports consideration being given to statutorily mandate that the Department of Child Safety must take active efforts to prevent Aboriginal and Torres Strait Islander children entering into the out-of-home system. This is similar recommendation 26 of the Family is Culture Report. QIFVLS calls for consideration being given to statutorily mandate that the Department of Child Safety must take active efforts to prevent Aboriginal and Torres Strait Islander children entering into the out-of-home care system has received endorsement and support from QATSICPP.[355]

The ATSIWLSNQ also made reference to the high number of children placed in out of home care due to neglect, which they stated is closely linked to lack of resources and poverty. The ATSIWLSNQ noted 'that a relatively small proportion of overall spending on child protection funding is directed towards support services for children, with the majority of resources going to child protection intervention and out of home care'.[356]

To address the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, the ATSIWLSNQ recommended the government:

a) *Improve outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with child protection systems; and*

b) *Improve prevention and early intervention…*[357]

In terms of funding, PeakCare submitted there continues to be a vast imbalance in resourcing prevention and early support services as opposed to tertiary child protection responses.[358]

Similarly, FIN Townsville submitted that it is not in favour of enhancing the approach to permanency if:

… it entails a shift of emphasis from the need to enhance prevention of child maltreatment and early appropriate, adequate and effective support for and with families who come to the attention of Child Safety Services. Most such families live in poverty and many have housing

353 Submission 17, p 5.

354 Submission 30, p 12.

355 Submission 30, p 13.

356 Submission 38, p 2.

357 Submission 38, p 4.

358 Submission 22, p 8.

issues or are homeless (Bennett, Booth, Gair, Kibet & Thorpe 2020). The unrelenting stress of living in poverty can easily result in domestic and family violence, mental ill-health (especially depression and PTSD), and/or can lead to problematic substance use for escape, comfort and, sometimes, added income. Given the very common background of poverty, it is NOT appropriate to remove children into state care leading to permanency arrangements without first making herculean efforts to support families with both structural/material and personal issues and, in the interim if necessary, to go to great lengths to secure kinship and/or culturally appropriate alternative care arrangements.[359]

FIN Townsville also stated that it 'has grave concern that enacting this Amendment Bill will lead to less effort being invested into family support and a concomitant premature focus on permanency options'.[360]

FIN Townsville recommended:

… the proportion of Child Safety resources invested in prevention and family support should be massively increased with a consequent reduction, over time, in the resources which need to be devoted to tertiary level services, including long term permanency arrangements. This was a significant recommendation of the Carmody Report of 2013 which since then, sadly, has not yet been implemented to the necessary high level.[361]

The QFCC recommended the department undertake and evaluate practice reform to strengthen permanency outcomes for children in addition to any legislative changes, with the QFCC to independently review and publicly report progress on the implementation of these practice reforms and the permanency outcomes achieved. [362]

In response to submissions stating that adoption should not be prioritised over providing early appropriate, adequate and effective support for families who come to the attention of the department to enable them to care for their children in the long term, the department stated:

The general principles for the administration of the CP Act in section 5B include that a child's family has the primary responsibility for the child's upbringing, protection and development and the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family.

The first priority for achieving permanency for a child in section 5BA(4) will continue to be for the child to be cared for by the child's family.

Additional principles for Aboriginal and Torres Strait Islander children, including the prevention principle, will remain unchanged in section 5C.

The matters that the Childrens Court must be satisfied of before making a final child protection order for a child in section 59, including that the child is in need of protection and the order is appropriate and desirable for the child's protection and the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms will remain unchanged. Also, before making a long term order for a child, a 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 best be met by making the order.

[359] Submission 10, p 2.

[360] Submission 10, p 4.

[361] Submission 10, p 2.

[362] Submission 34, p 6.

When a child protection order is made for a child, section 73 places an obligation on the chief executive to take steps that are reasonable and practicable to help the child's family to meet the child's protection and care needs.

Adoption will only be considered as an option for children who require long term care.[363]

The department also advised:

This is outside the scope of the Bill.

The 2019-20 State Budget included $1.3 billion in 2019-20 to support the child protection system through early intervention and continue the Supporting Families, Changing Futures reforms.

The Supporting Families Changing Futures reform program is focused on delivering the right services at the right time to support families and keep children safely at home.[364]

Other issues

Other issues raised by submitters that fall outside the scope of the Bill included:

- Inability to reverse adoption should be addressed because a child can't give informed consent to the legal name and identity changes and family severance, and there is a possibility once an adopted person reaches adulthood and gains awareness of the impacts of the loss associated with these changes, they may want to return to the identity they were born with and reinstate their legal connection to their family.[365]
- Lack of data collection and research to provide an evidence base on out of home care and the long-term effects of adoption on the lived experiences of children, birth parents, and adoptive parents, with recommendations including collecting data with adopted people as an identified demographic in all dealings with government and non-government and committing to funding research that investigates whole of life outcomes for adopted people.[366]
- Education of legal practitioners and members of the judiciary, with recommendations that practitioners making legal decisions concerning children being permanently placed or adopted from out of home care should be provided with appropriate professional development to set the context for their decision-making, particularly for matters involving dispensation of consent for parents.[367]
- Training of social workers, with a recommendation that more comprehensive professional development, education and training of social workers, including at an undergraduate degree level be introduced, focusing on evidence best practice, brain development, the neurobiology of trauma, as well as the need for timely stable attachments for optimal pro-social development.[368]

3.1.3 Alternative permanency outcomes to long-term guardianship to chief executive

The Bill proposes amendments to clarify the importance of alternative permanency options for children under a long-term guardianship order to the chief executive. The amendments provide that the chief executive must review the case plan for a child two years after the long-term guardianship

[363] DCSYW, correspondence dated 7 August 2020, attachment, pp 9-10.

[364] DCSYW, correspondence dated 7 August 2020, attachment, pp 9-38.

[365] Submission 18, p 2.

[366] See, for example, submissions 13, 18, 19, 20, 22.

[367] Submissions 7, p 8; submission 34, p 10.

[368] Submission 7, p 8.

order was made. This review must consider whether permanency for the child would be best achieved by an alternative arrangement under the hierarchy of preferences for achieving permanency.[369]

The new section 51VAA proposes the following:

1) *This section applies if a long-term guardianship order, granting long-term guardianship of the child to the chief executive, is in force for the child.*
2) *If the long-term guardianship order was made before the commencement, at least 1 review of the case plan that is carried out under section 51V within the period of 2.5 years after the commencement must comply with subsection (4).*
3) *If subsection (2) does not apply—*
   a. *the chief executive must review the case plan under section 51V within the period of 6 months starting on the day that is 2 years after the day the long-term guardianship order was made; and*
   b. *the review must comply with subsection (4).*
4) *For subsections (2) and (3)(b), the review must consider whether permanency for the child would be best achieved by an alternative arrangement mentioned in section 5BA(4)(a), (b) or (c).*
5) *This section does not limit section 51V.*[370]

Subsection (5) of the above clause means that whether permanency for the child would be best achieved by an alternative arrangement could be considered as part of a review already required at least every six months under current section 51V, regardless of how long the order has been in force.[371]

Finally, the Bill amends the provision regarding the reporting of the review in section 51(X) of the CP Act so that if the new section 51VAA applies, the report must include the review's findings in in relation to whether permanency for the child would be best achieved by an alternative arrangement mentioned.[372]

Ms Megan Giles, Executive Director, Strategic Policy and Legislation at the Department of Child Safety, Youth and Women told the committee:

> *This amendment reflects that the needs and circumstances of children may change as they grow and develop, and being cared for under the guardianship of the chief executive will be the fourth priority for achieving permanency under the amended section 5BA(4). If the review identifies a better option, the department would need to then progress a brief of evidence to the Director of Child Protection Litigation for an application to the Childrens Court to commence court proceedings for a different type of child protection order for the child or instigate proceedings for an adoption.*[373]

3.1.4 Stakeholder views and departmental response

Adopt Change welcomed the proposed change, stating:

> *Attaching timeframes to the framework, will assist in driving timeliness around decision making and the work that needs to take place surrounding that, recognising that childhood is fleeting,*

369 Explanatory notes, p 3.

370 Clause 9, Child Protection and Other Legislation Amendment Bill 2020.

371 Explanatory notes, p 8.

372 Explanatory notes, p 8.

373 Public briefing transcript, Brisbane, 27 July 2020, p 3.

and the child's best interests should always remain at the centre. It ensures attention is provided to a child's case and a plan is put in place for them that will provide them with the best chance at stability and nurture.[374]

Adopt Change also expressed support for an approach that reviews children's case plans regarding permanency who are already in out of home care, stating:

Given that there are already over 8,000 children in care in Queensland, we consider that the same priority of permanency should also be offered to those children, not just children entering into care for the first time or those transitioning from an interim order to a long-term order. It is very likely that there are families who have long term care of a child who would like to formalise their commitment by obtaining permanent care orders or an adoption order.[375]

Hope For Our Children and Sisters Inside Inc also supported the proposed amendments.[376]

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. expressed support for the insertion of proposed section 51VAA, 'provided that reviews are implemented in a way that consider all options including reunification of the child with family'.[377]

In contrast, QFKC questioned the need for the proposed insertion given that the legislation already compels the department to report on the progress made in planning for alternative long term arrangements for children and young people in care who are subject to a long-term guardianship to the chief executive. QFKC stated:

*[Section] **51X 4** is very clear in its intent and QFKC have used this particular section to assist in advocacy in this space when carers are seeking to be assessed as suitable guardians. QFKC considers it appropriate in the instance that LTG [long-term guardianship] to CE [chief executive] is granted that the action of reviewing the appropriateness of this order is a mandated and established practice in Service Centers.*[378]

The department responded as follows to QFKC's concern that the amendment is unnecessary as the CP Act already compels the department to report on the progress made in planning for alternative long term arrangements for children and young people in care who are subject to a child protection order granting long term guardianship to the chief executive:

The proposed amendment to insert a new section 51VAA in the CP Act to require the chief executive to review the case plan of a child who is subject to a child protection order granting guardianship to the chief executive 2 years after the order was made is a new requirement. This review must specifically consider whether permanency for the child would be best achieved by an alternative arrangement mentioned in section 5BA.[379]

Act for Kids raised concerns that the amendment 'does not enhance the child's ability to request interim or further reviews or voice their views on permanency planning other than what is already provided for under section 51VA'.[380] Act for Kids stated:

The term of two and a half years seems to be designed to align with the period of an order or statutory process rather than being a term designed to limit the impact on children's development and wellbeing of temporary or changing placement options. Developmentally, two

[374] Submission 2, p 2.

[375] Submission 2, p 3.

[376] Submission 7, p 6, submission 35, p 2.

[377] Submission 38, p 4.

[378] Submission 1, p 3.

[379] DCSYW, correspondence dated 7 August 2020, attachment, p 17.

[380] Submission 9, p 1.

years can be critical for infants and very young children, but may have a lesser impact for older children.[381]

However, Act for Kids also advised it supports the amendment to require the Chief Executive to produce a brief of evidence to the Director of Child Protection Litigation for an application to the Children's Court where a better option has been identified during a permanency planning review.[382]

Professor Tamara Walsh referred to the amendment as a positive reform as it assists parents who did not fully understand the consequences of the long-term guardianship order. She stated:

Long-term guardianship orders are sometimes imposed in situations where a parent did not have legal advice, did not have legal representation and did not fully understand the consequences of the order. Our research suggests that it is not uncommon for mothers to seek legal advice after a long-term guardianship order has been made, and the options for review at that stage are limited. Currently, in order to have a long-term guardianship order varied or revoked, a parent will need to satisfy the court that they have 'new evidence' (Child Protection Act 1999 (Qld) s 65(3)) and in practice, that is a high threshold to meet. Providing an option for review of a long-term guardianship order should be considered a positive development.[383]

However, Professor Walsh also stated that in the life of a child protection matter, reviews of long-term guardianship orders in two to two and a half years into the order is a very short period of time. This is particularly so for long-term guardianship orders, where little or no effort may be made by the department to ensure that contact between the child and their birth family occurs. She submitted:

Even when a short-term order is imposed (maximum two years duration) it is not uncommon for parents to spend two years fighting for a reunification plan – and certainly it is a rare situation where a reunification plan is well and truly being implemented by the end of a two year order. When it comes to maintaining contact with a child after removal, there are so many variables that the parent has no control over. Contact visits (if allowed for) often get cancelled, and the goal-posts keep shifting so more and more tasks are required to be done by parents so they can progress through a reunification plan. Further, the smallest set back in the life of a parent can have huge ramifications for any reunification plan on foot; for example, if a mother loses her housing because she no longer has care of her children, she will need to regain access to appropriate housing before a child will be permitted to visit her at home. Add to that the need to exit a violent relationship, obtain mental health treatment (in the context of profound depression at the loss of the child). There is most often no quick fix.

Just because a parent is not ready to regain care of their child in two years does not mean they will not be ready in three years, or four. Especially if there is some commitment on the part of child safety to make them ready – by providing support where it is needed.

Instead, it is my belief that legislation should require the chief executive to demonstrate to the court that reasonable steps have been taken to support parents to regain care of their child before an order can be made in the first place.[384]

Regarding the issue of the timeframe for review raised by Professor Walsh and Act for Kids, the department responded as follows:

In deciding when, or how often, to review the plan, the chief executive must have regard to a number of factors including the child's age and circumstances. The proposed new section 51VAA

[381] Submission 9, p 2.

[382] Submission 9, p 2.

[383] Submission 5, p 2.

[384] Submission 5, pp 4-5.

will operate alongside section 51V, and will not change the existing requirement for regular reviews of a case plan.[385]

Professor Walsh also contended that 'a hierarchy of carers that places the birth family first is disingenuous if no steps have been taken to make this possible', and recommended that:

… a provision be added that requires the chief executive to take reasonable steps within the first two years of a long-term guardianship order to:

1. *ensure that contact continues between the child and their birth family, where this is safe and appropriate; and*
2. *ensure that support is provided to birth families to enhance their capacity to protect the child, so that regaining care of the child after two years is a reasonably practicable alternative.*[386]

Similarly, PeakCare stated:

The push for more timely decisions as to whether to place children in a secure long-term 'family for life' is often at odds with the time that parents need to make the changes required to become a 'good enough' parent. This tension is exacerbated where rehabilitative and support services for parents are hard to access in a timely manner, as is the case across Queensland, and more so in regional and remote areas.[387]

The QFCC raised similar concerns in its submission:

The Bill provides for children under the long-term guardianship of the chief executive to have case reviews within two and a half years to consider whether permanency would best be achieved by an alternative arrangement, noting adoption as one preferred option. This could also lead to undue pressure to pursue adoption to provide legal stability and 'remove' the child from the child protection system within short timeframes, even where adoption may not be the best option to provide overall relational stability for that child.[388]

The AASW recommended the Queensland government repeal the insertion of new s 51VAA to ensure that all children and their families, in particular Aboriginal and/or Torres Strait Islander children and families, can have sufficient time to receive the necessary support and access to service to prevent children being in care or remaining in care.[389] AASW raised concerns that the proposed section may expedite adoption instead of securing the best interest of children, stating:

We agree that the insertion imposes an unreasonable expectation for very young parents and Aboriginal and/or Torres Strait Islander children and families. Our members recognise that for very young parents it can take more time to address issues and support them to become parents, particularly as they themselves continue to work through their own developmental changes. This is made more complex for a very young parent who themselves has experienced abuse or neglect as a child, and so has that trauma to work through. Expecting a young person to work through their own trauma, grief and loss, within 2 years, while learning to become a parent, may be unrealistic.

For Aboriginal and/or Torres Strait Islander children and families, the concern we have is that a two year timeframe to address what are most often systemic, and intergenerational issues associated with trauma, dispossession and structural inequality fails to recognise the complexity involved and indeed continues to punish families for the results of colonisation and oppressive

385 DCSYW, correspondence dated 7 August 2020, attachment, p 18.

386 Submission 5, p 5.

387 Submission 22, p 6.

388 Submission 34, p 13.

389 Submission 11, p 5.

policies and practices. It is, in our view, unreasonable that adoption be considered after two years, particularly when we take into consideration the issues of workload and resourcing within the Department, the limited number of Aboriginal and/or Torres Strait Islander workers to ensure culturally appropriate practices; and the lack of culturally appropriate services which is still an ongoing issue, particularly in regional and remote locations. We need to avoid another stolen generation and therefore require a robust process to ensure that Aboriginal and Torres Strait Islander children and families receive the necessary support and access to services to prevent children being in care or remaining in care.[390]

The AASW claimed that the proposed insertion ignores the complex issues faced by parents whose children are subject to a long-term guardianship order, stating:

Our members suggest that many parents have not received the appropriate supports and services within the specified period. For others, the period has not been sufficient to address their concerns. If this were to result in the child being removed permanently, it could create a 'narrative' about the parent as unwilling or unable to care for their child safely. For example, a parent with complex mental health issues can recover sufficiently with time, however they have already been deemed 'incapable' parents by the child protection system. This can then result in denying the parent the opportunity to parent into the future, when we know that people can change, particularly with the right support.[391]

The AASW also raised concerns regarding the potential for this insertion to introduce the need for long term orders after 24 months, submitting:

This has in fact led to more children being placed on long term orders. Our concern is that the 2-year period is insufficient when the actual resources required to support the family are not available. Funding continues to be inadequate to provide the comprehensive services that families with complex needs, as was evidenced with Mason Jet Lee's family. Intergenerational trauma, abuse, and neglect requires significant support and when this is not provided children will revolve through the child protection system.[392]

The department responded as follows to the AASW's concerns:

The Bill does not require that adoption be considered or expedited after two years of a child protection order granting guardianship to the chief executive. Rather, the Bill requires the chief executive to review the case plan in these circumstances to consider whether there is a better way of achieving permanency for the child.[393]

FIN, SEQ/Micah Projects addressed the reasons why it can take parents a longer time to have their capacity to parent restored:

In most cases it takes intensive, long-term support to restore 'protective parenting' for individuals with addictions to methamphetamine and other substances, with mental health issues, and those subject to partner violence. The strengthening of parent capacity is not usually a linear process—there is often a cycle of progress, regression and resistance. Progress can also be reliant on intensive intervention and follow-up. Stable housing, income support and assistance from family support agencies is essential.[394]

In light of this, FIN, SEQ/Micah Projects made the following recommendation:

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390 Submission 11, p 7.

391 Submission 11, p 7.

392 Submission 11, p 8.

393 DCSYW, correspondence dated 7 August 2020, attachment, p 18.

394 Submission 23, p 19.

> *The two-year timeframe for 'permanency' should serve as a guide, not a fixed timeframe following which permanency orders are to be pursued. Timeframes need to be flexible, not rigid to take account of the complex factors that contribute to progress and regression for parent/s in building their protective parenting capacities*.[395]

The 'arbitrariness' of the two year timeframe was also criticised by VANISH Inc:

> *VANISH believes that consideration should only be given to permanently removing children whose parents are unable to care, or resume caring, for them in an adequately safe, nurturing and secure manner after appropriate support services have been provided for a reasonable period. Sustained change requires consistent, trauma-informed service provision. We consider it inappropriate to impose an arbitrary time limit on reunification efforts, rather this should be assessed on a case-by-case basis, as appropriate to the individual circumstances and best interests of the child.*[396]

The department responded to the concerns of various stakeholders that the deadline of two years for a parent to address issues may be too short and may not be in the interests of the child and that this is leading to an increase in child protection orders granting long term guardianship to the chief executive:

> *There is an existing two year limit on consecutive short terms orders being made under section 62 of the CP Act, however the Childrens Court may make an order for a longer period if it is in the best interests of the child and reunification is reasonably achievable within the longer stated time.*
>
> *The Bill does not impose a two year time limit on reunification of a child with their parents.*[397]

While the QLS was supportive of the review process, it raised concerns regarding the funding of the implementation of new section 51VAA:

> *The Society is supportive of the review process for long-term guardianship orders as contemplated by proposed new section 51VAA. We understand that the new provision will apply to orders granting long-term guardianship of a child to the chief executive. However, the Society is concerned as to how the implementation of this provision will be funded.*
>
> *The Department of Child Safety, Youth and Women has published some relevant statistics that point to a growing trend of children and young people on long-term protection orders. While not all will be subject to the review process in proposed new section 51VAA, the increase in the number of long-term protection orders is a relevant consideration when contemplating the adequacy of resources for the review of such orders.*
>
> *…*
>
> *As a corollary, we seek clarification as to what funding arrangements are being made outside of the additional funding that has already been provided to undertake these reviews. We note that significant additional funding would be required for the Department, ATSILS, Legal Aid Queensland, community legal centres, Director of Child Protection Litigation and the Public Guardian. In the absence of such funding, it is unlikely that the requirements set out in new section 51VAA will be achieved.*[398]

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395 Submission 23, p 20.

396 Submission 28, p 2.

397 DCSYW, correspondence dated 7 August 2020, attachment, p 18.

398 Submission 32, pp 6-7.

In relation to the QLS's concern regarding funding, the department responded that 'any financial impacts associated with this amendment will be met within existing resources'.[399]

3.2 Proposed amendments to the *Adoption Act 2009*

The Bill proposes an amendment to s 198(1) of the Adoption Act to add the following to the circumstances under which the chief executive can apply to the Children's Court for a final adoption order for the adoption of the child by the prospective adoptive parents:

(d) *because the Minister responsible for` administering the Immigration (*Guardianship of Children) Act 1946 *(Cwlth), as the child's guardian under that Act, placed the child in their custody between 30 April 2018 and 1 July 2019, both dates inclusive*.[400]

This will enable the chief executive to apply to the court for final adoption order for those children placed with their prospective adoptive parents by the Department of Home Affairs during the outlined period.

The Bill also proposes amendments to sections 152, 198 and 312 in the *Adoption Act 2009*, to replace the words 'responsible Minister under' with 'Minister responsible for administering' which according to the explanatory notes is a 'technical drafting correction'.[401]

3.2.1 Stakeholder views

Only one submitter expressed a view on the proposed amendments to the Adoption Act.

Adopt Change expressed support for the proposed legislative changes.[402]

399 DCSYW, correspondence dated 7 August 2020, attachment, p 19.

400 Clause 5, Child Protection and Other Legislation Amendment Bill 2020.

401 Explanatory notes, p 7.

402 Submission 2, p 2.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 8 of the Bill amends section 5BA(4) of the Child Protection Act, to provide that adoption is third in the order of priority of options for achieving permanency for a child. If the child is an Aboriginal or Torres Strait Islander child, the last preference is for the child to be adopted under the Adoption Act.

Making provision that adoption is third in the order of priority could be considered to involve a departure from the principle that legislation must have sufficient regard for the rights and liberties of individuals.[403] The explanatory notes set out how this might arise:

> *This may have the potential to restrict the rights and liberties of the child, biological parents and siblings and extended family members. This is because an adoption order severs the legal relationship between the child and their birth parents, creating a new identity for the child (including a changed birth certificate). There is no legal recourse for biological parents, siblings or extended family members if adoptive parents decide the adopted child will no longer have an ongoing relationship with their siblings and broader family group.*[404]

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The explanatory notes give this justification for the provision:

> *The amendment is necessary to promote the permanency needs of children who require long-term care, when reunification with family is not possible. Instability in a child's living and care arrangements is widely recognised as having negative long-term impacts. Adoption is an existing option for a child who is subject to a child protection order and the Bill seeks to clarify this.*[405]

The explanatory notes set out a range of what are described as safeguards in the CP Act, including the principles for the administration of the CP Act, with specific reference to the main principle that the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life, are paramount.[406]

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403 Section 4(2) of the *Legislative Standards Act 1992*.

404 Explanatory notes, p 2.

405 Explanatory notes, p 5.

406 *Child Protection Act 1999*, section 5A.

Committee comment

The committee notes that while adoption could be considered to involve a departure from the principle of the rights and liberties of individuals in terms of the legal severance of a child from their birth family, clause 8 does not introduce adoption as an option. Adoption is a currently available option for children in care, and the clause clarifies this by proposing that adoption be specifically included as third in the order of priority of the options to provide permanency for a child.

The amended section still retains the current first priority as being for a child to be cared for by the child's family.

The committee also notes that the principles guiding the process of adoption in the Adoption Act include considering the views of the child's parents, and of the child, if the child is able to form and express views about the adoption, having regard to the child's age and ability to understand.[407]

In providing that if the child is an Aboriginal or Torres Strait Islander child, the last preference is for the child to be adopted, new section 5BA(4) preserves regard for the principle (contained in section 7(1)(a) of the Adoption Act) that because adoption is not part of Aboriginal tradition or Island custom, adoption of such a child should be considered only if there is no better available option.[408]

Conclusion

The committee is of the view that sufficient regard has been given to the rights and liberties of individuals.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

[407] *Adoption Act 2009*, section 6(2)(e).

[408] See also the additional principles for Aboriginal and Torres Strait Islander children in section 5C of the *Child Protection Act* 1999, including the five elements of the Aboriginal and Torres Strait Islander child placement principles.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[409]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act* 2019 (HRA).[410]

The HRA protects fundamental human rights drawn from international human rights law.[411] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly concerning:

- clause 8 of the Bill: Amendment of s 5BA of the CP Act (Principles for achieving permanency for a child)
- clauses 3-6 of the Bill: Amendments to the Adoption Act.

5.1 Human rights compatibility of clause 8 of the Bill

5.1.1 Clause 8 of the Bill: compatibility with right to recognition and equality before the law (HRA, s 15)

5.1.1.1 Nature of the right

Section 15 of the HRA protects the right to recognition and equality before the law. It requires that the government secure 'equal protection against discrimination'. Discrimination is further defined in accordance with Queensland's *Anti-Discrimination Act 1991*. That Act prevents both direct and indirect discrimination based on a wide range of attributes, which relevantly includes race.[412] This section reflects governments' obligations under international human rights law to 'preserve the principles of dignity and equality for everyone'.[413]

Clause 8 of the Bill provides a different set of 'principles for achieving permanent care' for Aboriginal and Torres Strait Islander children than it does for all other children. Aboriginal and Torres Strait Islander children have guardianship under the chief executive ranked as a third-preferred option and adoption as the fourth-preferred option. For all other children, the preference is reversed. The Bill therefore treats individuals differently on the basis of race.

5.1.1.2 Does the Bill limit the right?

There are two potential views on whether this difference engages s 15 of the HRA in respect of cl 8 of the Bill.

409 HRA, s 39.

410 HRA, s 8.

411 The human rights protected by the HRA are set out in sections 15 to 37 of the HRA. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

412 *Anti-Discrimination Act 1991*, s 7(g).

413 *Anti-Discrimination Act 1991*, preamble.

Mere differential treatment does not by itself constitute a limitation on s 15 of the HRA. Section 15(5) provides that 'measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination'. Section 15(5) recognises that differential treatment may sometimes be necessary to rectify historic violations of human rights, and to ensure that principles of dignity and equality can be accessed by all. This principle is recognised in international[414] and Commonwealth law.[415] Similar provisions in Victorian human rights legislation have been interpreted as permitting differential treatment on the basis of race.[416]

There is an open question, however, whether this confirms the desirability of a substantive approach to understanding norms of equality, or also creates a special 'safe harbour' or carve-out for measures that have the purpose of overcoming past group-based disadvantage. Courts in both Canada and South Africa have taken different views on this question,[417] and it is likely a question that will require future resolution by the Supreme Court of Queensland.

Committee comment

The committee believes that the approach taken by the Bill is ultimately compatible with s 15 of the HRA in relation to cl 8 of the Bill as it:

- recognises Aboriginal and Torres Strait Islander children and families as a group that has experienced substantial historical disadvantage, including in connection with the removal of children from their biological families both nationally and in Queensland [418]
- has a rational connection to that aim, and
- recognises, rather than impairs, the dignity of indigenous children, and does not perpetuate harmful stereotypes about indigenous families.[419]

The s 15 carve-out addresses the legacy of historical forced adoption practices and their ongoing harmful effects for indigenous communities and seeks to 'assist' indigenous children by promoting culturally appropriate and sensitive care arrangements.

5.1.2 Clause 8 of the Bill: Compatibility with rights of privacy and reputation (HRA, s 25) and protection of the family and children (HRA, s 26)

5.1.2.1 Nature of the rights

Section 25 of the HRA protects the right to privacy and reputation. Relevantly, this includes the right 'not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with'. The Victorian Civil and Administrative Tribunal (VCAT) has observed that the right secures a person's interest in:

414 United Nations Convention on the Elimination of Racial Discrimination, 660 UNTS 195, signed 21 December 1966, entered into force 4 January 1969, art. 1(4). See also United Nations Committee on Human Rights, *General Comment No. 18: Non-discrimination*, para 10, 1989.

415 *Racial Discrimination Act* (Cth.) 1975, s 8(1).

416 See for example *Parks Victoria (Anti-Discrimination Exemption)* [2011] VCAT 2238 (28 November 2011).

417 See for example *Minister of Finance v Van Heerden* 2004 (6) SA 121 (Constitutional Court of South Africa); *R v Kapp* [2008] 2 SCR 483. See also discussion in Rosalind Dixon, *Constitutional Carve-outs,* 37 Oxford Journal of Legal Studies 276 (2016).

418 See further *Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait islander Children from Their Families*, Human Rights and Equal Opportunity Commission, 1997.

419 For the relevance of these questions to the analysis, compare the decision of the Supreme Court of Canada in *R v Kapp* [2008] 2 SCR 483 with the decision of the Constitutional Court of South Africa in *Harksen v Lane* [1997] ZACC 12, 1998 (1) SA 300.

> *personal integrity and autonomy, both physical and mental, his private capacity for individual decision-making about matters affecting him, his development and relations as a person and member of society and, most importantly of all, his unique human dignity.*[420]

A private life, a home, and family relationships are important components of a private life.

The United Nations Human Rights Committee has observed that the term 'family' should be given a 'broad interpretation to include all those comprising the family as understood in the society of the State party concerned'.[421] In Queensland's multicultural and pluralistic society, 'family' should therefore be understood to include the many different types of family structures which are valued by Queenslanders. This includes biological and adoptive, immediate and extended, as well as single- and two-parent households. This also means that the right against interference with family life continues even after a child is taken into public care.[422]

Section 26(1) of the HRA further provides that families 'are the fundamental group unit of society and are entitled to be protected by society and the State'. Section 26(2) provides that '[e]very child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interest, because of being a child'.

Section 26(1)-(2) serves two related purposes. First, it protects the family unit. While s 25 provides that the state may not unlawfully and arbitrarily *interfere* with the family, s 26(1) goes further: it clarifies that the state has a positive *obligation to protect* the family. As with s 25, the word 'family' in s 26(1) should be understood broadly to encompass the full range of understandings of the concept of 'family' that are held by members of Queensland communities.[423]

Section 26(2) serves the purpose of protecting the 'best interests' of children. The 'best interests' principle underpins family law. The United Nations Convention on the Rights of the Child requires that it be a 'primary consideration' in 'all actions concerning children',[424] and it is the 'paramount principle' of the CP Act. The 'best interests' principle recognises that children are particularly vulnerable members of society and require special protection.[425]

In most cases there will be no conflict between ss 26(1) and 26(2): a child's interests will often be best served by the protection of his or her family. However, s 26(2) will conflict with s 26(1) when the child's best interests diverge from those of their family. The VCAT has observed that the Victorian equivalent of s 26(1) 'aims to protect families as the fundamental unit of society, [but] there are a number of situations in which it may reasonably be limited. One of these is where it is appropriate for a court or decision maker to give paramount consideration to the safety of a child. Conflicts between the interests of a parent and child will generally be resolved in favour of the child'.[426]

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420 See *Kracke v Mental Health Review Board* [2009] VCAT 606, [2009] 29 VAR 1, at para 845.

421 United Nations Committee on Human Rights, *General Comment No. 16: Article 17 (Right to Privacy)*, para 5, 1988.

422 This conclusion has been reached by the European Court of Human Rights in *Johansen v. Norway* (1997) 23 EHRR 33 and *Eriksson v. Sweden* [1989] ECHR 10.

423 United Nations Committee on Human Rights, *General Comment 19: Protection of the family, the right to marriage and equality of the spouses*, 1990, para 2.

424 United Nations Convention on the Rights of the Child, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

425 *EJG v Registrar of Births Deaths and Marriages (Review and Regulation)* [2019] VCAT 370, para 8.

426 *EJG v Registrar of Births Deaths and Marriages (Review and Regulation)* [2019] VCAT 370, at para 34, citing *AMS v AIF* [1999] HCA 26.

In the statement of compatibility, the Minister observed that children and parents may have different conceptions of 'family', and that it will often be difficult to balance the ss 26(1) and 26(2) rights.[427] The Minister observed that this will be particularly so, for example:

> *… where the child has been removed from the care of their biological parents at a very young age and placed into the care of carers who they have effectively known as their parents for their entire life.*[428]

The Minister observes that the balance between 26(1) and 26(2) will vary from case to case. Section 26(1) protects all families, including biological parents with no other relationship to their child, subject only to competing rights and the considerations contained in s 13 of the HRA.

5.1.2.2 Does the Bill limit the right?

It is arguable that cl 8 of the Bill *prima facie* interferes with a persons' right to family under s 25; and rights to family life under s 26(1). The clause clarifies that adoption is to be an option for achieving permanency for children at risk of harm, and that it should be preferred over guardianship by the chief executive. Adoption is a severe form of interference with the family. It severs the legal relationship between a child and their biological parent(s), thus removing parents' rights over their children, and significantly affects the relationship between a parent and child.

Clause 8 of the Bill likewise clearly engages s 26(1): it permits the permanent severance of children from their existing caregivers (in most cases, their birth parents) through the process of adoption.

Sections 25 and 26(1), however, do not prevent all interference with a person's family or family life: only interference that is unlawful or arbitrary. The Bill, read together with the CP Act and Adoption Act, sets out a lawful procedure for determining whether adoption should be pursued. Any interference with family life would therefore be lawful.

The key question is whether the Bill interferes in a way that is arbitrary. The Supreme Court of Victoria has defined instances of arbitrariness in this context as including:

> *… interferences which, in the particular circumstances applying to the individual, are capricious, unpredictable or unjust and also to interferences which, in those circumstances, are unreasonable in the sense of not being proportionate to a legitimate aim sought. Interference can be arbitrary although it is lawful.*[429]

The question of whether interference is arbitrary in the sense described by the Supreme Court of Victoria is best addressed by applying the factors in s 13(b)-(g) of the HRA.

Committee comment

The committee's view is that there is no such arbitrary interference, and that on balance, the Bill contains sufficient protections, and seeks to advance the best interests of the child, in ways that mean that these limitations are 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom', as required by s 13 of the HRA.

5.1.3 Clause 8 of the Bill: HRA, s 13 analysis regarding s 25 (privacy and reputation) and s 26 (protection of families and children) considerations

5.1.3.1 Nature of the right

The nature of the rights under ss 25 and 26 of the HRA are discussed above.

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427 Statement of compatibility, p 5.

428 Statement of compatibility, p 6.

429 *P J B v Melbourne Health (Patrick's Case)* [2011] VSC 327 (9 July 2011) at para 85.

5.1.3.2 Nature, purpose and importance of the limitation

As noted above, s 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The limitation in cl 8 of the Bill would interfere with family life by permitting children at risk of harm to be permanently adopted by other families, thus severing the legal relationship between parents and their children. Adoption will often result in a child never again having contact with his or her birth parents. As the European Court of Human Rights has observed, '[i]t is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist'.[430] In this sense, the Bill's effects will be irreversible. Clause 8 thus places a significant limitation on the right to non-interference with, and protection of, the family unit.

At the same time, the purpose of protecting at-risk children is clearly consistent 'with a free and democratic society based on human dignity, equality and freedom'.[431] The purpose of the cl 8 limitation is to ensure that there are a range of options for securing permanent living arrangements for children at risk of harm, and for whom the chief executive has assessed as requiring out-of-home care. This aim is also underpinned by a concern to protect the physical and psychological security of children in out-of-home care, in ways that are important to protecting their right to freedom and security of the person and basic human rights, as protected by s 29 of the HRA.[432]

This purpose of cl 8 also accords with the aims of s 26(2) of the HRA, in ways that lend weight to the claim that the relevant interference is lawful.

5.1.3.3 The relationship between the limitation and its purpose

There is a rational relationship between the limitation and its purpose. Adoption provides a permanent legal framework for a child's care. It is reasonable for the Queensland parliament to conclude that a permanent adoption is likely to be in the best interests of a child who is otherwise at risk of harm. This conclusion is supported by the recommendations of Deputy Coroner Bentley into the death of Mason Jet Lee.

It should also be noted that the Bill has a rational relationship to the interests secured by s 26(2). In some cases – particularly where the child is at risk of harm with his or her existing caregivers – this child's protection and best interests may be best served in the care of permanent adoptive parents. The Bill clarifies that this living situation is an option for some children at risk of harm, and that it should be preferred over guardianship by the chief executive.

5.1.3.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

The United Nations Convention on the Rights of the Child permits family separation against parents' wishes only when such separation is 'necessary for the best interests of the child'.[433] The European Court of Human Rights has observed that 'such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests'.[434]

430 *Strand Lobben and Others v Norway* 37283/13, [2017] ECHR 1094 at para 209.

431 *Human Rights Act 2019*, s 13(2).

432 On the relevance of psychological security of the person as a consideration in this context, compare for example *R v Morgentaler* [1988] 1 SCR 30.

433 United Nations Convention on the Rights of the Child, Article 9(1).

434 *Strand Lobben and Others v Norway* 37283/13, [2017] ECHR 1094 at para 209, citing *Johansen v Norway* 17383/90, (1997) 23 EHRR 33.

Consistent with this, the Bill provides that adoption is an option to be considered only after considering the viability of family care and extended family care, or is third-ranked after these options (or fourth-ranked in the case of Aboriginal or Torres Strait Islander children). Any officer making decisions about the child's care will be required to first consider options which maintain the rights of existing family members. Importantly, the CP Act, by requiring that all decisions be made in the best interests of the child, aligns with the rights contained in s 26(2). These are important safeguards which minimise the rights limitations.

Furthermore, any adoption decisions will be subject to the safeguards contained in the CP Act and the Adoption Act. The Adoption Act generally requires existing parents to consent to the adoption. Under s 39 of the Adoption Act, the consent requirement may only be dispensed of in certain circumstances to be assessed by the Childrens Court. The Bill thus contains safeguards on the extent to which it limits the ss 25 and 26(1) rights.

Notwithstanding these safeguards, there may some alternative measures which would constitute less restrictive limitations on the rights. In her statement of compatibility, the Minister acknowledged that 'there is extensive evidence to suggest that families who receive adequate support when needed are far more likely to be able to safely care for their children'.[435] The Minister acknowledged that it is therefore arguable that better provision of appropriate support for all families who require it, 'with the view to keeping families together', could be a reasonably available alternative. The Minister then went on to reject this alternative on the basis that this option is not available in all cases, and that inclusion of adoption as an option serves the purpose of providing 'for arrangements to be made in accordance with the best interests of each individual child'.[436]

The Bill as currently worded ranks adoption as a lower priority than long-term care in the child's immediate or extended family. This could be interpreted consistently with the Minister's observations: in other words, that efforts must be made to appropriately resource the child's family before considering other options (i.e., adoption will only be considered for those children who cannot be guaranteed a safe environment with their existing family, even when that family is appropriately resourced). However, such an interpretation is not explicit in the legislation.

A possible modification could be to require that parents retain contact after any resulting adoption. The Adoption Act makes provision for contact to be maintained in some adoption situations, but the Bill could be amended to make this a requirement. We do not believe, however, that this would be consistent in all circumstances with s 26(2) and the focus of the HRA on the best interests of the child, or necessary for the compatibility of the Bill with the HRA.

5.1.3.5 *The importance of the purpose of the limitation; the importance of preserving the human right; and balance between the importance of the purpose of the limitation and the importance of preserving the human right*

In short, the Bill imposes a significant prima facie limitation on the rights protected by ss 25 and 26(1) of the HRA, but the Bill has provided a range of safeguards to protect the rights of the child and ensure that ss 25 and 26(1) rights are limited only in certain situations.

[435] Statement of compatibility, p 7.

[436] Statement of compatibility, p 8.

Committee comment

On balance, the committee concludes that the rights limitations can be seen as 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom', as required by s 13 of the HRA.

5.1.4 Clause 8 of the Bill: compatibility with cultural rights – generally (HRA, s 27)

5.1.4.1 Nature of the right

Section 27 provides that '[a]ll persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.'

The s 27 right is enjoyed by individuals. However, it is exercised together with – and requires access to – a community of other persons with the same cultural background.[437] The right therefore places a positive obligation on the state to maintain and protect individuals' access to culture.[438]

5.1.4.2 Does the Bill limit the right?

Clause 8 of the Bill clarifies that, for most children, adoption should be preferred over the chief executive's long-term guardianship. This could result in more children being adopted by families who do not share their culture. Because the right requires the state to secure access to a person's cultural community, cl 8 limits the s 27 right.

5.1.4.3 Nature of the purpose of the limitation; relationship between the limitation and its purpose

The nature and purpose of the limitation is as discussed above in relation to the ss 25 and 26 rights.

5.1.4.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

There are several safeguards which minimise cl 8's limitation on the s 27 right. First, caregivers within the immediate or extended family, or 'another suitable person', are prioritised above adoption. Because members of the child's family are likely to share their culture, this minimises the range of situations in which a child's s 27 rights will be limited. Secondly, in cases where adoption is pursued, the placement of the child will be governed by the Adoption Act. The Adoption Act contains several provisions which protect a child's access to culture, including:

- the principle that an adopted child shall have access to his or her ethnic or cultural heritage; opportunities to develop and maintain a connection with their ethnicity or culture; and opportunities to maintain contact with their community or language group (s 6(f))
- a requirement that the chief executive consider a prospective adoptive parent's suitability to care for a child of a 'particular ethnic or other cultural background' (s 132)
- a requirement that the child's 'ethnic or other cultural background' will be considered in any adoption plan (s 165)
- a requirement that the Childrens Court consider whether adoptive parents have demonstrated willingness to facilitate a child's connection to ethnicity or culture as part of the assessment of whether a final adoption order should be made (ss 189 and 200).

These safeguards significantly minimise the extent of the limitation on the s 27 right. There is no less restrictive alternative which would achieve the Bill's purpose.

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437 United Nations Committee on Human Rights, *General Comment No. 23*, CCPR/C/21/Rev.1/Add.5, 26 April 1994, paras. 3-9.

438 United Nations Committee on Human Rights, *General Comment No. 23*, CCPR/C/21/Rev.1/Add.5, 26 April 1994, paras. 3-9.

5.1.4.5 The importance of the purpose of the limitation; the importance of preserving the human right; and balance between the importance of the purpose of the limitation and the importance of preserving the human right

The foregoing analysis demonstrates that the limitation of the right serves a pressing objective, and the limitation of the right will be moderate.

Committee comment

On balance, the rights limitations can be 'demonstrably justified in a free and democratic society based on human dignity, equality and freedom', as required by s 13.

5.1.5 Clause 8 of the Bill: compatibility with cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HRA, s 28)

5.1.5.1 Nature of the right

Section 28(1) provides that 'Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights'. Section 28(2) sets out a range of rights which Aboriginal and Torres Strait Islander peoples hold. Importantly, s 28(2)(c) provides that Aboriginal and Torres Strait Islander peoples have a right 'to enjoy, maintain, control, protect and develop their kinship ties'. Finally, s 28(3) provides that Aboriginal and Torres Strait Islander peoples 'have the right not to be subjected to forced assimilation or destruction of their culture'.

As with the s 27 rights, s 28 recognises that Aboriginal and Torres Strait Islanders' rights can only be exercised in community with others. This in turn places positive obligations on the state to protect indigenous culture.[439]

5.1.5.2 Does the Bill limit the right?

As the First Nations of Australia, Aboriginal and Torres Strait Islanders are entitled to distinct cultural rights. Kinship ties form part of that distinct culture and are the primary vehicle through which culture is maintained.[440] When kinship ties are destroyed, Aboriginal and Torres Strait Islander cultures are at risk of destruction. Section 28 therefore includes a right to ties of kinship between parents and children. The importance of this right to Aboriginal and Torres Strait Islander peoples is underscored by a history of shameful human rights violations. Over many decades, thousands of Aboriginal and Torres Strait Islander were children were forcibly removed from their parents – in many cases, these removals were ostensibly justified on supposed child welfare grounds.[441] These forced adoptions continue to have effect today, as many Aboriginal and Torres Strait Islander communities experience the effects of intergenerational trauma.

A recent review of out-of-home care for Aboriginal children in New South Wales (the 'Davis Report') concluded:

> *Aboriginal communities remain strongly opposed to the adoption of their children, which undermines their right to family, community, culture and identity, and potentially breaches rights under the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child.*[442]

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439 United Nations Committee on Human Rights, *General Comment No. 23*, CCPR/C/21/Rev.1/Add.5, 26 April 1994, paras. 3-9. See also the United Nations Declaration on the Rights of Indigenous Peoples, UN Doc. A/61/L.67 and Add.1, 13 September 2007.

440 See further the decision of the Full Family Court of Australia in *RE CP* (1997) 21 Fam LR 486.

441 Megan Davis (chair), *Family Is Culture: Review Report*, Independent Review into Aboriginal Out-of-Home Care in NSW, 25 October 2019, 372.

442 Megan Davis (chair), *Family Is Culture: Review Report*, Independent Review into Aboriginal Out-of-Home Care in NSW, 25 October 2019, 372.

Similarly, s 7(1)(a) of the Adoption Act acknowledges that 'adoption (as provided for in the Adoption Act) is not part of Aboriginal tradition or Island custom'.

In the statement of compatibility, the Minister acknowledged the centrality of kinship ties to Aboriginal and Torres Strait Islander cultures, as well as the 'long and difficult history and enduring impacts of former forced adoption policy and practice in Queensland'.[443] The Minister further noted that, partly as a result of forced adoption practices, '[t]here is a disproportionate representation of Aboriginal and Torres Strait Islander children involved in the child protection system'.[444] However, the Minister concluded that the Bill's ranking of adoption as the lowest possible preference for achieving permanency for Aboriginal and Torres Strait Islander children, as well as existing safeguards in the CP Act and Adoption Act, meant that the Bill did not limit s 28.

The various safeguards included in the Bill and existing legislation may reduce the Bill's limitation on s 28 rights. However, they do not eliminate it. The Bill clarifies that adoption will be considered for Aboriginal and Torres Strait Islander children (albeit as a last preference). Adoption in any form is a limitation on s 28 rights because it interferes with the right to kinship and thus the broader framework for transmission of Aboriginal and Torres Strait Islander culture. This must not be minimised or overlooked. It is a separate question as to whether such a limitation may be justified or permitted as part of 'a free and democratic society based on human dignity, equality and freedom'. That question must be answered with recourse to the remaining factors in s 13 of the HRA as set out below.

5.1.5.3 Nature of the purpose of the limitation; relationship between the limitation and its purpose

The nature and purpose of the limitation is as discussed above in relation to the ss 25 and 26 rights.

5.1.5.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

Clause 8 of the Bill, as well as the CP Act and Adoption Act, restricts the use of adoption as a means for securing permanency for Aboriginal and Torres Strait Islander children. For example:

- Clause 8 of the Bill clarifies that adoption is the least preferred option for achieving permanency for Aboriginal and Torres Strait Islander children.
- Section 5C of the CP Act contains a set of principles aimed at securing Aboriginal and Torres Strait Islander children's ongoing connection to culture and family.
- Section 6AA of the CP Act requires officers to consult Aboriginal and Torres Strait Islander entities when making significant decisions about Aboriginal and Torres Strait Islander children.
- Section 6AB of the CP Act requires the Childrens Court to have regard to Aboriginal tradition and Torres Strait Islander custom.
- Part 2A of the CP Act establishes a system of 'prescribed delegates' to exercise functions and powers in relation to Aboriginal and Torres Strait Islander children.
- Section 7 of the Adoption Act provides that adoption of Aboriginal and Torres Strait Islander children should 'only be considered as a way of meeting the child's need for long-term stable care only if there is no better option', and provides that it is in the best interests of Aboriginal and Torres Strait Islander children to be cared for within Aboriginal and Torres Strait Islander communities.
- Section 131 of the Adoption Act requires the chief executive to consider prospective adoptive parents' willingness to 'help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom'.

443 Statement of compatibility, p 3.

444 Statement of compatibility, p 3.

- Section 163 requires the chief executive to consult 'with an appropriate Aboriginal or Torres Strait Islander person' on adoption selection decisions.

Adoption of Aboriginal and Torres Strait Islander children would thus be subject to an extensive range of restrictions and additional requirements. There do not appear to be any less restrictive means of meeting the government's purpose of clarifying that adoption is an option for achieving permanency for a child.

One possible less restrictive option could be explored: that of an outright ban on the adoption of Aboriginal and Torres Strait Islander children. Relevantly, the Davis Report recommended:

> *The New South Wales Government should amend the [New South Wales equivalent legislation] … to ensure that adoption is not an option for Aboriginal children in out-of-home care.*[445]

However, it is doubtful whether this option would achieve the government's purpose of achieving permanency. There may be Aboriginal and Torres Strait Islander children for whom there are no available family carers, and for whom the guardianship of the chief executive is not possible. In these cases, adoption would be the only means of achieving the government's purpose. Thus, an outright ban on adoption would not be the least restrictive and reasonably available way to achieve the purpose of the Bill.

5.1.5.5 The importance of the purpose of the limitation; the importance of preserving the human right; and balance between the importance of the purpose of the limitation and the importance of preserving the human right

Any limitation on s 28 rights is serious. Aboriginal and Torres Strait Islander peoples have suffered gross human rights violations through forced adoption over an extended period of time. These violations damage the ties of kinship which sit at the heart of Aboriginal and Torres Strait Islander cultures. Aboriginal and Torres Strait Islander leaders have consistently voiced opposition to adoption practices. Any limitation on these rights must be carefully scrutinised.

In the overall analysis, however, the restrictions on the adoption of Aboriginal and Torres Strait Islander children are extensive. Furthermore, the objective pursued – the protection of children by achieving permanency – is of high importance.

Committee comment

On balance, it is possible to conclude that the Bill strikes a balance which can be demonstrably justified in a free and democratic society.

5.2 Human rights compatibility of clauses 3 to 6 of the Bill

5.2.1 Clauses 3-6 of the Bill: compatibility with rights of families and children (HRA, ss 25 and 26) and cultural rights (HRA, s 27)

Clauses 3 to 6 of the Bill would finalise adoption arrangements for a small number of children from overseas. As discussed above, adoption by its very nature constitutes an interference with family life. Finalising adoption will sever the legal relationship between children and their parents. Sections 25 and 26(1) rights are therefore limited.

Furthermore, for reasons discussed above, cls 3 to 6 could limit cultural rights. This is because some of the children whose adoption will be finalised will be cared for by adoptive parents from a different culture. This could impede these children's access to their own culture, religion, or language.

The purpose of the limitation is to finalise arrangements which have already been in place for one to two years. The notion of 'family' should be broadly construed. In this light, the relevant children will

[445] Megan Davis (chair), *Family Is Culture: Review Report*, Independent Review into Aboriginal Out-of-Home Care in NSW, 25 October 2019, 380.

have formed new family units with their prospective adoptive parents, and the Bill will provide greater protection to those arrangements. To this end, the Bill will further the s 26(1) objective of protecting recently-formed families.

The incursions on the s 27 right are limited by the additional safeguards contained in the Adoption Act (discussed above). Furthermore, clauses 3 to 6 are consistent with the 'best interests' standard of protection by s 26(2), because any adoption will be required to comply with the 'best interests' standards of both the Adoption Act (ss 5(a) and 6(1)) and the Hague Convention on Intercountry Adoption.[446] Clauses 3 to 6 will further protect the best interests of these children by opening a path to citizenship. Because of the minimal limitations on the right, as well as the furtherance of other rights, these limitations can be demonstrably justified in a free and democratic society.

Committee comment

The committee finds the Bill is compatible with human rights and any limitations on human rights are reasonable and demonstrably justified.

5.3 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA.

Committee comment

The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

[446] Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, opened for signature 29 May, 1993, 1870 UNTS 167, entered into force 1 May 1995.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Foster and Kinship Care Inc
002	Adopt Change Limited
003	Association for Adoptees
004	Jigsaw Queensland Inc.
005	Professor Tamara Walsh
006	Therese Hawken
007	Hope for Our Children
008	Christopher Mundy
009	Act for kids
010	Family Inclusion Network Queensland (Townsville) Inc
011	Australian Association of Social Workers
012	Lesley Mitchell
013	Peter John Moore
014	Parents on a Mission
015	Confidential
016	Sarah Wilson
017	CREATE Foundation
018	Judy Glover
019	Adoptee Rights Australia (ARA) Inc.
020	The Benevolent Society
021	Mandy Williamson
022	PeakCare Queensland Incorporated
023	Family Inclusion Network, South East Queensland/Micah Projects Limited
024	Jane Sliwka
025	Queensland Council of Social Service

026	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
027	ARMS (Vic)
028	Vanish Inc.
029	Jan Kashin
030	Queensland Indigenous Family Violence Legal Service
031	Kurbingui Youth & Family Development
032	Queensland Law Society
033	Queensland Human Rights Commission
034	Queensland Family & Child Commission
035	Sisters Inside Inc
036	Office of the Public Guardian
037	Legal Aid Queensland
038	Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc
039	Queensland Alliance for Kids

Appendix B – Officials at public departmental briefing

Department of Child Safety, Youth and Women

- Ms Deidre Mulkerin, Director-General
- Ms Kate Connors, Deputy Director-General, Strategy
- Ms Megan Giles, Executive Director, Strategic Policy and Legislation

Appendix C – Witnesses at public hearing

Jigsaw Queensland Inc

- Dr Trevor Jordan, President

CREATE Foundation

- Rachael Donovan, State Coordinator QLD

Adoptee Rights Australia

- Peter Capomolla Moore, President
- Sharyn White, Secretary

The Benevolent Society

- Leith Sterling, Executive Director, Child and Family Services

Queensland Human Rights Commission

- Scott McDougall, Queensland Human Rights Commissioner
- Heather Corkhill, Senior Policy Officer

Queensland Law Society

- Luke Murphy, President
- Binari De Saram, Legal Policy Manager and Policy Solicitor for QLS Children's Law Committee
- Kate Grant, Deputy Chair of QLS Children's Law Committee

Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd

- Garth Morgan, Interim CEO
- Lisa Hillan, Director of Policy and Research

Queensland Family and Child Commission

- Cheryl Vardon, Principal Commissioner
- Natalie Lewis, Commissioner

Australian Association of Social Workers

- Angela Scarfe, Senior Policy Advisor
- Dr Fotina Hardy, Qld Branch Member

Statement of Reservation

The LNP members of the Legal Affairs and Community Safety Committee are generally supportive of the Bill.

However, the LNP members note the Palaszczuk Labor Government's inaction towards the Carmody Inquiry's recommendation of more adoption permanency orders through use of adoption.

A question asked during the public briefing held on 27 July 2020 exposed the shocking truth that in the last five years under the Palaszczuk Labor Government only six children have been adopted from the child protection system.

Question taken on Notice

Legal Affairs and Community Safety Committee
Child Protection and Other Legislation Amendment Bill 2020 Public Briefing

Asked on 27 July 2020

Mrs Laura Gerber MP, Member for Currumbin asked—

QUESTION

How many adoption requests (for children in care) have been rejected by the department in the past five years?

ANSWER

It is not possible to apply to adopt a child in care. The department prepares a case plan for every child in care, which must include the goal for best achieving permanency for the child. If the case plan outlines that adoption would be the most appropriate alternative long-term option, the department works with a child's parents, the child and other relevant parties to seek consent and progress the proposed adoption.

In the last seven years 10 children have been adopted from the child protection system. Two of those children were adopted by their foster carers and the other eight children were adopted by people on the Suitable Adoptive Parents Register. In the last five years there have been six children adopted from the child protection system.

How many more reports or inquiries need to be undertaken that highlight Labor's broken child safety system before the Palaszczuk Labor Government implements the LNP's Child Protection policy – lock, stock and barrel.

The Coronial Inquest into Mason Jet Lee reported that select key findings from the Carmody Commission of Inquiry from seven years ago have not been implemented in any real sense by the Palaszczuk Labor Government.

7.4
the Department of Communities, Child Safety and Disability Services routinely consider and pursue adoption (particularly for children aged under 3 years) in cases where reunification is no longer a feasible case-plan goal.

On its website the Department of Child Safety, Youth and Women notes that, and I quote, "to grow up happy and healthy, children need permanency in their lives. For children to feel a sense of permanency, they need to know where they will be living from one day to the next, and from one year to the next".

However, the Auditor-General's report tabled on 4 Aug 2020 found that almost 25% of children in care have had at least six placements, with 6% (626 children) having had between 11 and 20 placements.

Labor's child safety system is broken and needs a complete overhaul. Too many vulnerable kids are falling through the cracks.

The LNP is determined to change the system to protect vulnerable kids, improve transparency and accountability and ensure parents are accountable.

LNP Leader Deb Frecklington has announced a range of significant bold new measures to fix a broken system and protect the most vulnerable children in our community including a new triage model to increase the use of adoption with permanency order targets and new KPI's, with a priority for vulnerable children under three years of age.

Vulnerable kids don't need any more reviews or inquiries, it's time to take real action to protect these kids.

Only an LNP Government will fix child safety and help families across Queensland.

James Lister MP

Deputy Chair

Member for Southern Downs

Laura Gerber MP

Member for Currumbin