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1 October 2021

Committee Secretary
Community Support and Services Committee
Parliament House
BRISBANE QLD 4000

By email: CSSC@parliament.qld.gov.au

Dear Committee

Child Protection Reform and Other Legislation Amendment Bill 2021

Thank you for the opportunity to make a submission to the inquiry into the Child Protection Reform and Other Legislation Amendment Bill 2021 (the Bill).

The Commission notes the statement of compatibility discusses limitations on various rights arising from the Bill, including that the chief executive (working with children) may request additional information to assess a blue card application. The statement also notes that some provisions of the Bill promote rights including requiring the Department of Children, Youth Justice and Multicultural Affairs (the Department) to make 'active efforts' to implement the Aboriginal and Torres Strait Islander Child Placement Principle. The rights of children are also promoted by amendments that enhance their participation in decisions that affect them. The Commission hopes these changes result in meaningful alternatives to the removal of children from the extended family, re-emphasise efforts to fulfil the Aboriginal and Torres Strait Islander Child Placement Principle, and improve engagement with children.

In the time available however, the Commission's comments focus on proposed amendments which could result in a party to a proceeding not receiving notice of appeal.

Clause 37 inserts a new section 118A to the *Child Protection Act 1999*, which provides that an appellant may ask for an appeal to be heard before a person is served with a notice of appeal under section 118(2). Clause 38 replaces section 121 with new sections 121 and 121A. The new section 121 provides for the powers of the appellate court where the respondent appears, in line with the existing section 121.

The new section 121A provides for the appellate court to hear an appeal in the absence of the respondent if the court is satisfied the respondent has been served with the notice of appeal under section 118(2) or the court dispenses with the requirement for service under section 118(2). This change aligns with the new section 118A which enables an appellant to ask for an appeal to be heard before a person is served with a notice of appeal.

The statement of compatibility acknowledges that a party's right to fair trial will be limited if they are not notified that an appeal has been filed, thereby potentially preventing them being present to give evidence or contest evidence. The Commission suggests in situations where the party is the child's parents, it will also limit their rights to privacy under s 26 (not to have a person's family interfered with arbitrarily) and s 25 (the protection of the family).

The statement justifies the limitation on the right to fair trial (s 31 of the HR Act) on the basis that it will allow decisions to be appealed immediately in circumstances where any delay may place a child at risk of harm. This is particularly relevant where the original application is decided on an ex-parte basis due to immediate safety concerns. The protection of children in s 26 of the HR Act, along with the right to security (s 29) is cited as part of this justification. The statement also suggests there may be significant delays of 28 days or more to appeal proceedings when a notice of appeal is served on a child's parents, which could increase the immediate risk to a child's safety and wellbeing. The less restrictive option of reducing the period for filing a notice of appeal under s 118(3) of the CP Act is considered in the statement, but dismissed on the basis it would not address the immediate risk of harm to a child during the time it takes for the notice to be served and filed.

The Commission acknowledges this justification demonstrates the important purpose of the amendments, but suggests other less restrictive alternatives should also be considered and justified as not appropriate, given the significant limitation on rights that may arise from parents (and others) not receiving notification of an appeal. For instance, less restrictive options could include:

- That the court is given both options of shortening the period for filing a notice under s 118, as well as the option of dispensing with the requirement entirely, based on the nature of the risk to the child (eg it may be that a shorter period is appropriate in some circumstances);
- Setting out criteria for the court to consider in making a decision under s 118A to dispense with notice consistent with the justification set out in the statement of compatibility (eg only in exceptional circumstances when the risk to the child is of such seriousness and urgency)

Thank you again for the opportunity to comment on the Bill.

Yours sincerely



Neroli Holmes
A/g Queensland Human Rights Commissioner