Queensland Government

Queensland Family & Child Commission

Telephone: [redacted]
Reference: OoC – TF21/3 – D20/26140

6 January 2021

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

Dear Committee Secretary

Thank you for providing the opportunity to make a submission regarding the Child Protection and Other Legislation Amendment Bill 2020 (the Bill), which was reintroduced into the Queensland Parliament on 3 December 2020.

We note the short timeframe provided for submissions to the Bill and the concerns raised by stakeholders when the Bill was first introduced to Parliament in July 2020. Significant feedback has previously been provided by key stakeholders in their independent submissions and we would contend that given the Bill has not been amended since it was first tabled, issues identified remain unaddressed.

The signatories to this letter have come together to make a joint statement in response to the Bill, outlining our shared priorities to make sure all children in contact with the child protection system are supported to be safe and well, and offered least intrusive interventions to enable full enjoyment of all of their rights. It is in this spirit that we offer recommendations for potential amendments to the Bill, safeguarding the paramount principle to ensure the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life.

We acknowledge the importance of permanency and stability for all children. We recognise the need to include provisions in the *Child Protection Act 1999* (the Act) to promote permanency for children in care, where such arrangement is in their best interests and necessary to ensure their immediate and long-term safety and wellbeing.

The Act clearly conceptualises permanency as multi-dimensional. The concept of permanency must always balance physical, relational and legal elements. 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.

We acknowledge the intention to reduce the number of children in contact with the child protection system. The focus must remain on achieving this 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 manner that pursues permanency in the context of an individual child's best interests, not merely as a legal means to an end.

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If adoption is to be elevated from an option to a preference for children living in care, even as the last preference in a list, we believe there must be further safeguards. These safeguards will have particular significance for Aboriginal and Torres Strait Islander children due to their ongoing disproportionate representation in the child protection system.

We would like to highlight two safeguards for inclusion in the Act:

- active efforts to implement the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP); and
- independent oversight for permanency decisions.

**Active efforts**

Aboriginal and Torres Strait Islander peoples have experienced a long history of systemic racism in child protection systems, including the forced adoptions of the Stolen Generations.

It is important that contemporary law, policy and practice are designed to build on the strengths of Aboriginal and Torres Strait Islander families and communities to raise children with strong connections to family and culture.

To make sure permanency decisions for Aboriginal and Torres Strait Islander children are made in a culturally safe framework, they must be made in accordance with the ATSICPP.

The most recent reform to the Act expanded provisions to include all five elements of the ATSICPP. This change was a significant step forward in furthering legal recognition and protection of Aboriginal and Torres Strait Islander children's connections to family, community, culture and country.

We believe there must be further reforms to the Act to introduce 'active efforts' as the formally recognised standard of action in accordance with the ATSICPP.

The standard of active efforts has been introduced in the United States, through the *Indian Child Welfare Act 2016*. It requires all child protection staff to take affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite a child with their family.

Statutory authorities should be required to clearly document their active efforts and prove these to the courts prior to an order being granted. Courts should only make an order if satisfied that active efforts have been undertaken to support the child to stay with their family. This responsibility will be particularly important for permanency decisions, such as adoption.

Active efforts will require the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) to make sure 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.

Implementation of the ATSICPP to the standard of active efforts is current Queensland Government policy, as per Action 3.3 of *Changing Tracks: an action plan for Aboriginal and Torres Strait Islander children and families 2020-22*, which calls on all agencies to embed active efforts to implement and give full effect to the ATSICPP.

Requiring the standard of active efforts will help to make sure decision-making is compliant with s.58 of the *Human Rights Act 2019*, which requires public entities to act and make decisions that are compatible with human rights, and give proper consideration to human rights when making decisions.

It will also help to reduce the risk that adoption is pursued as a way to meet targets, such as the current Closing the Gap target to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in care by 45 per cent.

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. Adoption should not absolve the child protection system of responsibility to provide adequate support to address these impacts. Children subject to adoption orders must not become invisible to the system and should continue to be counted in DCYJMA child protection data and reporting.

Active efforts to implement the ATSICPP will strengthen DCYJMA's obligation to make sure a child's connections to culture are not severed nor sacrificed for expediency when a decision is being made with permanent implications for a child's life, such as adoption. We must move beyond passive regard to these important principles, to set a new standard whereby full and proper implementation of the ATSICPP is the rule, not the exception. Only when this standard is achieved will the ATSICPP truly operate as an effective safeguard for the rights of First Nations children across the child protection system, including decision-making regarding permanent care.

**Independent oversight**

In addition, we believe decisions relating to permanency must be subject to independent oversight both prior to and following approval, to make sure every child has full enjoyment of all their rights.

It is our position that decisions made about the long-term care of Aboriginal and Torres Strait Islander children must be subject to independent oversight and provision of independent expert advice by an appropriate Aboriginal and/or Torres Strait Islander person or agency to both the Chief Executive, and where appropriate or requested, to the court.

When a child is placed in out-of-home care, most orders provide for ongoing monitoring by DCYJMA and the Office of the Public Guardian, with periodic reviews of their care. Permanency decisions, such as permanent care orders or adoption, remove these safeguards and introduce a risk that children will not have their rights protected. Adoption is the most intrusive order, currently subject to the least oversight.

At a minimum, before deciding the suitability of adoption for an Aboriginal and/or Torres Strait Islander child, the Director-General, DCYJMA and the courts should receive advice from an independent Aboriginal and/or Torres Strait Islander entity as to whether the ATSICPP was applied to the standard of active efforts throughout the child's interaction with the child protection system.

Under s.6AB of the Act, courts may request advice from an independent Aboriginal or Torres Strait Islander entity for the child when making decisions about child protection orders. We believe this should be standard practice, particularly for decisions regarding permanency. Where adoption is pursued under the *Adoption Act 2009*, under s.178 the Chief Executive must provide the court a signed document stating adoption is appropriate to meet the child's needs. This document could include advice provided by an independent Aboriginal or Torres Strait Islander entity.

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'. Any oversight mechanism must consider and balance

the rights of the child, the biological family and the adoptive family, including their rights to privacy, the protection of families and children, and the cultural rights of Aboriginal and Torres Strait Islander peoples.

Independent oversight of permanency decisions will help to make sure every child can enjoy the full scope of their rights, under the *Human Rights Act 2019*, the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples.

We strongly believe introduction of active efforts and independent oversight of permanency decisions in the Act will create meaningful safeguards to protect children and maintain the strengths of family and continuity of culture in their lives.

We would welcome the opportunity to meet with the Minister, departmental representatives and other key stakeholders to discuss the opportunity to introduce these safeguards into the Act.

If you or your officers have any queries in relation to this matter they may contact Anthony Morgan, Executive Officer to the Commissioner, Queensland Family and Child Commission on [redacted] or at [redacted]

Yours sincerely

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