

21 January 2021

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: cssc@parliament.qld.gov.au



Dear Committee Secretary

Child Protection and Other Legislation Amendment Bill 2020

Thank you on behalf of the Bar Association of Queensland (“the Association”) for the invitation to provide input to the Community Support and Services Committee’s inquiry into the Child Protection and Other Legislation Amendment Bill 2020 (Number 49 of 2020) (“the Bill”). The Association appreciates the extension granted by the Committee for it to make a submission by Friday 22 January 2021.

The Association notes the impetus of the Bill as being the findings of Deputy State Coroner Bentley of the Coroners Court of Queensland and her inquest into the death of Mason Jet Lee. The recommendation of the Deputy State Coroner that the Bill is said to respond to is that children in the care of the department should be permanently placed through out of home adoptions within 24 months.¹

The Association acknowledges that adoption is a controversial and emotive topic. It cannot profess to expertise on the appropriateness or otherwise of preferring adoption over alternatives for the permanent care of a child and defers to the comments and opinions offered by those with lived experience of adoption, and health and adoption experts. However, the Association can comment on whether the proposed amendments are consistent with the Deputy Coroner’s recommendations and the Parliament’s intention as stated in the Explanatory Notes to the Bill, and how they interact with other sections of the *Child Protection Act 1999* (the “CPA”) and the *Adoption Act 2009*.

The Association also notes the vital role of the Director of Child Protection Litigation, and the further safeguards provided for in the *Director of Child Protection Litigation Act 2016*, and the Director’s Guidelines.

¹ Explanatory Notes, Child Protection and Other Legislation Amendment Bill 2020, page 1. (Accessed 11 January 2021, <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2020-049>)

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The Association does not take issue with the express inclusion of adoption at clause 8 of the Bill, given that adoption is one option for giving permanency to children in care.

Further, the proposed amendments state that adoption is the last preference in respect of Aboriginal and Torres Strait Islander children. The Association believes that this position is consistent with section 7 of the *Adoption Act 2009*.² The proposed amendments of section 5BA also must be applied together with section 5C of the CPA and as such do not erode the protections afforded therein.

However, what is less clear is why alternative orders giving permanency to children in care, in particular permanent care orders under s 61(g) of the CPA, are not expressly referenced in the order of preferences in clause 8 of the Bill.

It seems that the reference to “guardianship of the chief executive” at sub-clause (d) of clause 8 would not include permanent care orders because such orders are defined expressly by the CPA (at section 61(f)) as being “granting long-term guardianship of the child to a suitable person, other than a parent of the child or the chief executive... [emphasis added]”

As such, as the Bill currently stands, clause 8 excludes reference to permanent care orders from its order of preferences for the permanent care of children. This could see adoption preferred over a permanent care order in circumstances where the latter is more appropriate.

Ideally, subsection 4 of clause 8 would set out the order of preference for all relevant orders. Further, providing for a hierarchy of placement preferences is said to be consistent with approaches in New South Wales and Victoria.³

The Association suggests that permanent care orders are referenced above adoption. This is because, when such orders were first inserted into the CPA in 2017, they were said to be somewhere on the continuum between a long-term guardianship order and adoption.⁴ As such, the Association views permanent care orders as being logically somewhat less disruptive to a child’s existing care arrangements than adoption. Only in the event that a permanent care order is not appropriate, should adoption be considered.

The Association would be pleased to provide further feedback or answer any questions you may have.

² The QLS in its submission about the previous Bill, Number 21 of 2020, stated that “Clause 8 appears to run contrary to section 7 of the *Adoption Act 2009*...” The proposed amendment to section 5BA provides that adoptions in respect of Aboriginal and Torres Strait Islander children are the last preference, as opposed to being expressed as a last resort.

³ Explanatory Notes, Child Protection Reform Amendment Bill 2017, page 25. (Accessed 11 January 2021, <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2017-027>).

⁴ Explanatory Notes, Child Protection Reform Amendment Bill 2017, page 6. (Accessed 11 January 2021, <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2017-027>).

Yours faithfully

A handwritten signature in black ink, appearing to read 'T. Sullivan', written over a light grey rectangular background.

Tom Sullivan QC
President