Submission addressing the Child Protection Litigation Bill 2016

Subject of address:

Showing support for the Litigation Bill

Original copy to be submitted to:

Research Director

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Parliament House

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Queensland Alliance for Kids

In the following paper, Queensland Alliance for Kids supports the appointment of a Director position within Child Safety's Procedures. The appointment of such a position will greatly assist in the progression of children's cases where in depth court appointments are not needed. Within the Act, we at Queensland Alliance for Kids had some minor adjustments to ensure that decisions given by the Director are indeed child centred and supported.

In **Clause 6** *Other general principles*

(b) in protecting a child, the director should only take the action that is warranted in the circumstances, including, for example, by applying for the least intrusive child protection order;

Queensland Alliance wishes to raise the point that in some cases when a child needs permanency, this being evidenced in the child's situation, that it is imperative that an order for permanency be sort. We have concerns relating to the interpretation of 'least intrusive child protection order' and our concerns are that this interpretation in every child's case, will ensure lack of stability for the child through the constant misuse off extending 2yr short term orders when a permanent placement sourced from kin, guardianship or open adoption would be in the best interest for the child.

Permanency, when identified as being in the best in is best interest of the child, is best sort at the first opportunity. This is fully outlined in **appendix 1**.

Clause 27 **Term of office**
Subject to this division, the director holds office for a term, of not more than 5 years, stated in the director's instrument of appointment

Queensland Alliance for Kids recommends, that during the first year of the Directors appointment, that the role be highly supervised and supported, especially when the person holding the Directors position will be new to Child Protection as outlined in the Act. We also recommend that the appointment be reviewed yearly or 2.5 yrs by the Minister, to ensure child focused decisions are being made.

In conclusion, Queensland Alliance for Kids supports the appointment of the Director position as outlined in the Child Safety Litigation Bill 2016. We advise that the interests of the child be placed before the interpretation of 'least intrusive' wording in Clause 6, to ensure children in the care of the department of Child Safety receive permanency in a timely fashion, when appropriate. And additionally we recommend closer supervision and review to be undertaken when introducing a new experimental role into the Department.

Appendix 1

Summary

Family based foster care remains the most dominant form of out of home care for abandoned, neglected, abused dependent children in the western world (Fernandez & Barth, 2010). In Australia the number of children in foster care has increased by 100% in the past decade, with 64% (25% 10 years ago) of children in care requiring long term placement (Fernandez & Bath, 2010). In Queensland in 2013 there were estimated to be 8,136 children in out-of-home care (not able to live with their families) an increase of 14.7% from the previous year (Queensland Department of Communities, 2013).   While 35% of these children were placed with relatives, known as a form of kinship care (Queensland Department of Communities, 2013), many of the children not placed with relatives are in need of long-term permanent family options.

There is mounting evidence that long term foster care has negative short and long term effects on a child's well-being, including increased anxiety, insecurity and low self-esteem (Barth et al., 2005; Fernandez & Barth, 2010; James, 2004; Percora et al., 2006). Alternatively, adoption has been found to mitigate some of these negative effects largely due to providing the child with secure and identity in a permanent family (Fernandez & Bath, 2010; Pyjama Foundation, 2012; Triseliotis, 2002).

Despite these research findings Queensland has been reticent to embrace adoption as a permanent option for children requiring long term or permanent care. In 2013, there was only 9 Queensland children adoption (excluding step-parent adoption) and none were adopted using the provision in the Queensland Adoption Act 2009 which allows for the dispensing with requirement for parent's consent. This provision was introduced to protect the most vulnerable children but is not being practiced (Queensland Government, Department of Communities, Child Safety & Disability Services, 2014).

There are a number of alternative family care options for children who are currently living in temporary or semi-permanent foster care. This document is designed to consider the options available for family permanency and the best practice for these options.

The Australian context

The Halloran Report (2009) noted that the Australian government has not kept accurate records on the children in foster care, making it difficult to determine how many children enter the system and how many leave with successful outcomes. According to Fernandez & Barth (2010), government's failure to keep records of the children entering or leaving the system has been the major cause for non-accountability for children being abused or 'lost' in the system.

A Victorian study of children in foster care shows that children and young people in foster care, that is 53.4%, (5-17 years), compared to the population as a whole in Victoria, 13.3% (4-12 years), were at greater risk of developing clinical behavioural problems (Anglicare, 2014).

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Definitions

Family of origin – is used her to describe the child's biological family including parents, extended family, kin. In some jurisdictions this can also include siblings, half-siblings, and legal step-parents. Kin can be used to determine a person of the same ethnic, geographic or cultural background as is the case of indigenous children (Bromfield & Osborn, 2007, p. 1). Kinship placements represent 45% of out-of-home-care in Australia (Queensland Department of Communities, 2014a).

Out-of-home care is organised by statutory authorities as a result of substantiated child harm or inability/unwilling to care for a child and the necessity for a child to be placed out of the home (Queensland Department of Communities, 2014a). The child may or may not be in the custody/guardianship of statutory authorities (Strozier & Krisman, 2007; Carpenter & Clyman, 2004; Winokur, Crawford, Longobardi & Valentine, 2008).

Reunification is the process of reconnecting children and young people in out-of-home care with their (biological) families by providing services and supports to the child, their family and their carers. (Queensland Department of Communities, 2014a).

Foster care is a legal responsibility shared between the birth parents and social services (Fernandez & Barth, 2010) and is defined as the care for children (aged 0-17 years) which is provided on a short or long term basis by authorised carers in their own homes, or in a home owned or rented by an agency, with the objective being that the children return to their birth parents/families. In Australia foster care is managed on a state by state basis.

Kin refers to relatives, members of their tribes or clans, godparents, stepparents, or other adults who have a kinship bond with a child (CWLA, 1994, p. 2; cited in Winokur, Holtan & Valentine, 2009, p. 8). Kin may therefore include non-relative significant persons such as teacher, family friend etc.

Permanency planning refers to making decisions about alternative long-term care placements for children in out-of-home care." (Kenny et al., 2012). This plan is implemented in the following order of priority; family reunification, guardianship, long term foster care and adoption (Fernandez & Barth, 2010).

Guardianship is the appointment of a person, approved by the department and is "made where it is unlikely that a child or young person will have a parent who is willing and able to protect them in the foreseeable future" (Queensland Department of Communities, 2014a). In Australia the guardian is responsible for the child's long term care until 18 years of age, and is required to operate under the decisions, terms and conditions of the state (Fernandez & Barth, 2010).

Adoption is a legal process whereby another family, who by legal process has taken the child to be their own with all legal rights and responsibilities as any child born into that family (biological child) (Halloran, 2009).

> *Closed adoption* the child's original birth certificate is sealed and a new one created with the child's new identity and name of the adoptive family; no contact can exist between birth and adoptive families and records of the adoption are sealed until the adoptee is 18 years old.

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Open adoption provides the same permanency and legal standing but removes the secrecy of the birth parents identity and all parties can communicate in a form agreed by both sets of parents (Kenny et al., 2012).

Option 1 Family of Origin (parents or kin)

Maintaining family connections is vital for a child's identity and sense of self. However, the quality of the connection can vary greatly. The highest quality relationship is the most desired outcome yet children who are removed and/or placed in foster care are not likely to have the experience of a high quality family relationship. Education and training of parents can be a 'first step' approach to maintaining a quality relationship. Parents who have been ill-prepared for parenthood for any number of reasons (including poor parental models, youth pregnancy, immaturity, abuse, neglect, low self-esteem, substance abuse/addiction etc) are at risk of harming their children. Pre-reunification training, counselling, mentoring and support can assist families in success in maintaining a quality relationship even during separation.

Reunification

Reunification is the optimal plan to reunite the child with parent(s) in shortest time after separation. Fernandez and Lee (2011) explored the reunification process in Australia (Barnados) using NCFAS-R and found:

- Unification most successful in the first 13 weeks;
- Lack of services for parents directly correlated with failure of reunification;
- Reunification more successful with older children;
- A good regular level of contact prior to reunification determined success.

Table 1 (below) provides some key elements vital to successful re-unification.

Table 1   North Carolina Family Assessment Scale-Reunification (NCFAS-R) Version 2.0

Domain	Items
Environment	Overall environment, housing stability, safety in the community, habitability of housing, income/employment, financial management, food and nutrition, personal hygiene, transportation, and learning environment
Parental capabilities	Overall capabilities, supervision of children, disciplinary practices, provision of developmental/enrichment opportunities, parent/caregiver's mental health, parent/caregiver's physical health, parent/caregiver's use of drugs/alcohol
Family interactions	Overall family interactions, bonding with child, expectation of child, mutual support within the family, relationship between parents/caregivers
Family safety	Overall family safety, absence/presence of physical abuse of children, absence/presence of sexual abuse of children, absence/presence of emotional abuse of children, absence/presence of neglect of children, absence/presence of domestic violence b/w parents/caregivers
Child wellbeing	Overall wellbeing, child's mental health, child's behaviour, school performance, relationship with caregivers, relationship with siblings, relationship with peers, motivation/cooperation to maintain the family
Ambivalence	Overall caregiver/child ambivalence, parent/caregiver ambivalence towards child, child ambivalence towards caregiver
Readiness for reunification	Overall readiness for reunification, resolution of significant CPS risk factors, completion of case service plans, resolution of legal issues, parent/caregiver understanding of child's treatment needs, established back-up supports or service plans

Kinship care

The following is from Kinship Care: A Literature Review (RTF, 207 KB) (Child Safety Services, 2011). Kinship include relatives (on either side of the family) and non-relative significant persons with whom the child/ren have an existing relationship.

Reunification to biological parents has been found to occur more slowly for children in kinship care compared to foster placements (Cuddeback, 2004). It is also found to have mixed results.

Kinship care currently accounts for 45% of out-of-home-care and Hunt et al (2009) found that successful kinship placements are more likely if:

- the child is younger at the time of placement;
- the child has minimal problems;
- the child has resided with the kin previously;
- the kin initiated the placement ;
- the kin is a grandparent;
- the kin is a sole carer.

Benefits and risks of kinship care

Research on the effectiveness of kinship care is still emerging with results being mixed and inconclusive. A number of benefits and risks of kinship care have been identified.

Some research suggests that kinship care may afford the following benefits:

- removes a child from adversity by minimising disruption (Aldgate 2009);
- provides stability (Aldgate 2009);
- preserves continuities (Aldgate 2009);
- reinforces a child's sense of identity and self esteem (Aldgate 2009);
- buffers the effects of family separation (Aldgate 2009);
- is less disruptive than other forms of out-of-home care (Aldgate, 2009; Shearin, 2007);
- can be less traumatic than going to other forms of out-of-home care (Shearin, 2007);
- children may feel loved by kin (Shearin, 2007);
- children continue to enjoy a sense of belonging (Farmer, 2009);
- children and parents may prefer placements with kin (Farmer, 2009);
- children may experience less stigma than other out-of-home living arrangements (Messing, 2006);
- may result in fewer placement changes (Cole,2006);
- children more familiar with extended family (Cole, 2006);
- can be an avenue of social capital (Kang, 2007);
- continued connection and contact with birth parents (Cole, 2006; Rubin et al, 2008);
- children are more likely to remain in the same community (Rubin et al, 2008);
- is more likely to be placed with siblings (Rubin et al, 2008);

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- can create a 'normalising experience' for children (Warren-Adamson, 2009, p. 82);
- can be less restrictive for children (Scannapieco & Hegar, 1999; Winokeur et al, 2008) and
- can keep a child connected to their family and culture (Broad, 2006).

However, a number of risks or concerns about kinship care have been identified:

- impacts and effects on kinship carers and their own difficulties;
- developmental impacts on child (i.e. insufficient stimulation, meeting child needs) due to the capacity of kin carers (Cross et al, 2008; Palaclos & Jimenz, 2009);
- safety issues – parents may gain unsafe access and contact to their children (Messing, 2006);
- difficulties for kin to manage new responsibilities and boundaries within the family (Holtan et al, 2005);
- kin may not enforce court orders (Green et al, 2010);
- poorer or different standard of care expected by services providers compared to non-kin placements (Cuddeback, 2004);
- kin having to deal with difficult family dynamics and stress (Argent, 2009);
- kinship carers can be more difficult to work with for professional staff (Cuddeback, 2004);
- kin families are not sufficiently supported (Warren-Adamson, 2009).

Contact without reunification (like a parenting agreement)

Contact by itself is not going to promote good outcomes for children. Contact is a process through which relationships can be repaired, maintained, or ended temporarily or permanently. (Selwyn, 2004, p 198)

Contact which does not have reunification as the primary aim can be a 'contact agreement' between biological parent (s) and long term guardian/adoptive parents. Contact can include in-person, face-to-face EMC (Electornically Mediated Communication), phone calls, or Mail Box.

Contact agreements can benefit all parties (Selwin 2004; Taplin, 2005).

- Pressure is off the biological parent to reunite if they are not able and maintains family connections;
- maintains/encourages attachment to the birth family;
- prevents idealisation of the birth family;
- enhances the psychological well-being of the children in care;
- maintains links and cultural identity.

Contact is a means by which the quality of the relationship between the birth family and the child can be assessed, assisted and/or terminated.

Reasons why contact may not be in the best interests of the child (Taplin, 2005):

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- the threat of harm to the child;
- contact may undermine the placement;
- children's wishes for and reactions to contact being taken into account
- negative changes in the relationships and situations;
- disruption to the child's routines;
- birth parents reaction to contact arrangements.

Option 2 – Guardianship

This option is a blend of the best of Foster Care and Adoption so that identity is maintained but bonding and attachment as well as child-focussed parenting, not system-focused parenting, can occur and the healing begin. The relationship between the child and the guardian must be a priority and respected for bonding and attachment to happen.

"Under this arrangement, the guardian accepts full parental responsibility for all aspects of the child's care. This enables the guardian to make all decisions about the child's daily needs and long-term care, wellbeing and development."
https://www.communities.qld.gov.au/resources/childsafety/foster-care/long-term-guardianship-carers.pdf

Using the "Long term guardianship to other" alternative in the Child Safety Act 1999 with the following policy/legislation changes:

1. Name change to **Permanent Guardian**.

2. Permanent Guardian applicants must meet high assessment standards. They must attend education and be assessed to the same high standards that adoptive parents are.

   They must:

   - demonstrate an understanding of the complex nature of parenting a hurt child (Keck, 2001; Hughes 1999);
   - be familiar with best parenting practices for these children (including attachment parenting e.g. Forbes, 2002);
   - be committed to on-going self-education;
   - aware that they will need to seek support for themselves and their child during their journey (Forbes, 2002);
   - be willing to be active members of support groups (Harding, 1998);
   - and be willing to create a blended identity for their child based on their history; heritage, birth family and permanent family.

3. Duration is forever (21 years) after the 12 month Placement Review is successfully completed. Refer https://www.communities.qld.gov.au/resources/childsafety/foster-care/long-term-guardianship-carers.pdf and see Carmody (2011).

4. Contact is highly desirable (indirect or direct):

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- guardians must be pro-contact and be prepared to facilitate indirect and/or direct contact;
- direct contact with biological family and kin is at the discretion of guardians so that the child is emotionally & physically protected from negative contact;
- contact supervision provided by the department when requested (with reasonable cause) by the guardians to help deal with dissatisfied biological family members;
- there can be no forced contact as it must be the child's choice;
- there will be a contact agreement negotiated but it will not be binding;
- the guardian can supervise contact until they are confident of the child's safety.

5. Permission needed from Child Safety in first year only:

- travel interstate,
- travel overseas,
- passport,
- major medical procedures,
- unusual medical procedures i.e. circumcision,
- additional household members.

   Refer https://www.communities.qld.gov.au/resources/childsafety/foster-care/long-term-guardianship-carers.pdf

6. Name and identity:

- the child is able to call guardian family members whatever they like without comment or issue from birth family;
- the child called son, daughter, brother, sister, cousin, niece etc without reference to their path into the family unless they request otherwise;
- the internally family is open about the child's history & identity;
- the child's right to change by deed-poll if the child requests it (age and time in care need to be considered)with Participation of children and young people in decision-making ;
- where possible a positive yet balanced identity should be supported and encouraged regardless of their heritage ie Irish Australian, great grandfather was in WWII, Indigenous placements and Intercountry Adoption Community).

7. Placement Review is performed at 12 months unless the guardian requests a delay/change. Guardian sends yearly update until the child is 18 years as annual review visits can undermine the child's attachment security and is a constant reminder of past instability and damage (Mares & Torres, 2014; Riggs & Willsmore, 2012). The process of parents bonding with the child and the child attaching to the parent is often fluid. Therefore, as the guardian is viewed as the parent, care and consultation are vital before any review or intervention is considered.

8. While the child's views on their placement need to be heard the child cannot elect to break their guardianship and return to biological family or move to another foster care placement once the order is made without due cause, counselling and a change of orders by the

Children's Court. Permanent must mean permanent as children with disrupted backgrounds can seek to 'test' their permanency before committing to full attachment (Hughes, 1998).

- Such a request must be treated seriously but cannot be done lightly or on a whim;
- Counselling both parties and any allegations investigated;
- Must be grounded in best practice taking into consideration the original intent of the order.

9. The guardian's personal details are not to be disclosed to any biological family connection unless they give permission. The child and family have the right to privacy and safety as they build a secure and lasting relationship.

10. One of the guardians needs to stay home full-time for the first 12-18 months.

11. Guardian must be respected as the child's parent and have a voice in any potential changes, interventions or reviews.

This option:
- keeps legal links to biological family;
- birth certificate is unchanged;
- foster care payments;
- some foster care services.

NOTE:
Most applicants are unwilling to foster due to its disempowering and unstable nature and hence poor outcomes for children and carers. Applicants that know of the critical nature of permanency will not usually commitment to foster care.

There will be many more applicants for this option if it is permanent and empowering. Education is needed to address the myths and fear of instability associated with other forms of foster care but will not be relevant to this Permanent Guardian option.

Because there is security in Permanent Guardianship there is a greater likelihood that guardians can mentor or encourage birth families with contact and their relationship with their child/ren.

Option 3 – Open Adoption

As per the Adoption Act 2009 & Child Safety Act 1999
www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC029.pdf &
www.legislation.qld.gov.au/legisltn/current/c/childprotecta99.pdf

Open Adoption is a whole of life option for children for whom attachment and bonding is paramount and that a long-term order many not be sufficient for the child's ongoing security and safety.

The possibility of a move from Permanent Guardianship to Open Adoption if:

- Child and family sought this level of connection.
- Circumstances necessitate a change of name and/or a 'new start'.
- Circumstances allowed for this whole of life level of permanence.
- Loss of birth family.

With the following policy/legislation change:

- Carer's payments could be the same as general foster care for high needs children including extending beyond 21 years of age if necessary.
- Birth Certificates for children in Open Adoption can include:
  - A full birth certificate that includes both biological and adoptive parents, any names that may have been registered; dates of legal changes made;
  - A 'common use' birth certificate with the current legal status.

This option:

- breaks legal links to biological family;
- birth certificate is changed;
- no financial assistance for high-needs children unless there is change to legislation;
- no foster care payments;
- finalisation creating a legal family unit where outside bodies have minimal rights e.g. legal, medical, educational, religious etc.

NOTE:
More applicants because it is permanent in the traditional sense.

Due to the security of adoption there is a greater likelihood that the adoptive parents can mentor or encourage birth families with contact and their relationship with their child/ren.

For both Options 2 Guardianship & Option 3 Open Adoption

- high levels of post custody support;
- high levels of pre & post education;
- full disclosure of the child's difficulties;
- realistic and flexible applicants.

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