



# Family Inclusion Network

## Submission on the Adoption and Other Legislation Amendment Bill 2016

*A submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee. October 2016*

### Family Inclusion Network

Valuing children. Partnering with families. Embracing Diversity

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Family Inclusion Network facilitates opportunities for parents to be advocates for children and themselves. We resource parents and extended family members to participate and have a voice in the policies and services impacting on the lives of their children, family and community.

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## Contents

About the Family Inclusion Network SEQ.....	3
Our approach to finding the answers .....	4
Further Amendments to the Adoptions and other Legislation Amendment Bill 2016 that are required.....	5
1. Carers should be required to undergo the same rigorous background and familial checks that all potential adoptive parents are required to undertake .....	5
2. That adoption is not considered as a continuum of the child protection process unless requested by the parent.....	6
3. The provision of proper, adequate and free legal representation for biological parents before adoption occurs .....	7
4. That there are other mechanisms to establish permanency for children within the Child Protection System .....	9
5. Inter-relationship between the Adoption and Other Legislation Bill 2016 and the proposed amendments to the Child Protection Act 2009 .....	9



## About the Family Inclusion Network SEQ

The Family Inclusion Network (FIN) South-East Queensland (SEQ) is a cluster of parents and Brisbane NGO organisations who believe the voices of families matter.

We facilitate opportunities for parents and kin to advocate for children and themselves on the issues affecting their lives. We believe parents and kin have the right to contribute to discussions about how systems impact on family life. FIN facilitates activities, gives families, services and governments the opportunity to work collaboratively to improve the way in which services are delivered to vulnerable families in South-East Queensland.

We encourage respectful and purposeful conversations about what is important for parents and families who have had interactions with Child Safety in Queensland. It is our goal to empower parents and families to have a voice about the issues impacting family life. FIN is auspiced by Micah Projects Inc.

Our parents' voices are represented in this report in quotes which have been italicized.

Queensland's adoption policies have identified family and community connections are important for maintaining the wellbeing of all children and families.

## Our approach to finding the answers

FIN consulted with a diverse range of stakeholders for the review of the operation of the Adoption Act 2009. Groups and individuals included people who have adopted a child, people who were adopted, Forgotten Australians, people from the Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) community, as well as parents with children who are currently in the child protection system whose children could potentially be considered for adoption. Their opinions and experiences reflect the diversity of the people we talked with. Due to the highly personal and sensitive nature of people's experience with past adoptions, the Family Inclusion Network SEQ chose to conduct one-on-one semi-structured interviews with stakeholders. This setting allowed individuals to share their insights in a safe and supportive environment.

The major concerns with the Adoption and Other Legislation Bill are listed below.

- correcting an oversight to allow long-term guardians under the Child Protection Act 1999 to be selected for assessment of suitability for adoption of a particular child, in the same way that approved carers under the Child Protection Act 1999 may be selected

## Further Amendments to the Adoptions and other Legislation Amendment Bill 2016 that are required

FIN recognises there are circumstances in which adoption may offer a child the best outcome and permanency, however this can only occur if adoption is truly the result of a very rigorous process where all options have been explored thoroughly.

Adoption of children in care should only occur when all due processes with birth parents have been undertaken. This must include:

1. That carers who wish to adopt are required to go through the same eligibility, assessment and background checks as any potential adoptive parent
2. That adoption is not considered as a continuum of the child protection process unless requested by the parent
3. Biological parents are provided with proper and adequate free and independent legal representation throughout the adoption process
4. That there are other mechanisms to establish permanency for children within the Child Protection System
5. Inter-relationship between the Adoption and Other Legislation Bill 2016 and the proposed amendments to the Child Protection Act 2009

These matters are considered in more detail below:

1. Carers should be required to undergo the same rigorous background and familial checks that all potential adoptive parents are required to undertake

The current foster care assessment and approval process has proven to be insufficient and therefore FIN asserts that carers who have long term guardianship and household members should be required to undertake the same process of adoption as any other potential adoptive parent, including supporting parental contact with children if requested.

2. That adoption is not considered as a continuum of the child protection process unless requested by the parent

FIN does not consider adoption as an alternative to the provision of care when parents are unable to provide for their children. Parental circumstances can change over time, therefore adoption should not be considered as a long term solution for children under statutory orders.

A parent who was considering adoption:

*"I'm so lucky that the (Department of Child Safety) team leader said to me, no, this is how you are feeling at the moment, but you may regret this later... They still took a 2 year order, but explained that I could have him returned to my care earlier. I'm so glad they stopped me... I took parenting classes. Positive parenting classes were useless. The parachute parenting class was really good. He used real examples. Some of the examples I couldn't use because my baby was too little but I still remember the examples. The trainer was really good. I got my child back in 9 months. I went to drug and alcohol counselling and did what they asked. The contact house was great. It was good for my child because they had bowed legs and Child Safety had the contacts to fix this up. They also helped with speech impediments... If I didn't have support I wouldn't have my child."*

### 3. The provision of proper, adequate and free legal representation for biological parents before adoption occurs

Independent legal advice for biological parents should be mandatory for parents who have children in the child protection system being considered for adoption. Parental consent is legally binding, therefore parents need to understand all aspects of adoption, their rights, and means of contact with their children and this information needs to be provided to them in a way that they understand. For parents with impaired capacity further consideration needs to be made about their rights, in particular the removal of children based solely on the basis of a parent's disability. The Office of Public Guardian (OPG) Queensland, has rightfully identified the lack of representation for these parents who are particularly disadvantaged by the lack of legal assistance and representation presently available to them in Queensland.

Current provisions within the Queensland Adoption Act 2009 are insufficient.

#### **QLD Adoption Act, Division 3 Giving forms, information and counselling to parents, section 26**

##### **26 Parents' access to legal advice**

The chief executive must ensure each of the child's parents is told that the parent may wish to seek legal advice and is given the details of at least 1 entity that generally provides free legal services.

Parents engaged with FIN have advised that access to free and ongoing legal advice is very difficult to obtain. Parents attempting to access these services are required to show that they do not have the means to pay for a service and are able to clearly



articulate the merits of their case. The barriers for parents accessing legal advice are many, therefore FIN asserts that without legal representation parents cannot provide true informed consent to adoption.

Parent quote

*“That the assumption that people with a mental illness or disability do not have the capacity to parent or have contact with their children if they are removed from their care. Legal representation for all parents should be accessible and contact with parents, regardless of their abilities should be maintained”.*

In the *Adoption Act 2000 (NSW)* provisions are made for parents to have therapeutic supports and adequate legal representation throughout the Adoption process. Parents need to be assured of procedural fairness in all interactions with Child Safety and Adoption services. Further, there does not appear to be a mechanism in the Bill that can ensure compliance with agreements between adoptive parents and the family of origin. Parents need access to adequate legal representation if they require assistance to maintain contact with their birth children.

The NSW Act uses more definitive language with parents being provided with ‘mandatory information’ and clear guidelines about parents understanding the process, all aspects of consent, selection procedures, the role of adoption plans, the role of court in relation to review and appeals procedures and the legal consequences of each stage, being given support to understand the effects, procedures and other matters relating to the adoption.

Within the NSW Act there are requirements that a counsellor must certify that parents and children have a clear understanding of all processes involved in adoption. NSW Adoption Act is more explicit about the process to gain ‘informed consent’. This is



relevant for all parents, but even more so for those who are considered to have diminished capacity.

#### 4. That there are other mechanisms to establish permanency for children within the Child Protection System

FIN believes that there are alternatives to providing secure and long term care for children, such as shared guardianship so that parents are able to maintain familial relationships and decision making for their children. Programs such as subsidised guardianship now implemented in over thirty states in the US show that less adversarial approach can be achieved for less money, less intervention and permanency can be achieved without children losing connections with their families.

#### 5. Inter-relationship between the Adoption and Other Legislation Bill 2016 and the proposed amendments to the Child Protection Act 2009

The main concern of the families FIN consulted is the inter-relationship of the possible amendments to the Child Protection Act (1999) and this Bill. The main points are relevant for families who are engaged with Child Protection services in Queensland.

In particular, we are concerned that the Queensland Child Protection Commission of Inquiry (the Carmody Inquiry) recommended “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”. This recommendation was accepted by the Queensland Government and the Child Protection Act 1999 is currently under review.

In the absence of information about revisions to the Child Protection Act 1999, we propose that a proper response cannot be formulated until both Bills can be considered

together as they intersect in relation to children in statutory care being considered for adoption.

Reforms to the Child Protection system in Queensland intend to improve the support to vulnerable families so that children who are taken into care are able to return to their birth families.

Reforms to improve support for vulnerable families have only just commenced, and any proposals under the Adoptions and Other Legislation Amendment Bill 2016 to make easier the ability of foster carers to adopt a child in their care, should be delayed until:

6. The current overhaul of arrangements for approval of foster carers is in place and
7. Improvements in support to vulnerable families are in place enabling children in care to be reunited with their birth families.
8. In particular we are concerned that the causal factors for children entering care should not be due to the lack of basic needs such as housing, support and resources following incidents of domestic violence, or limited access to in-home support when families are in crisis.

Until it is clear that these options are in place in the new Child Protection Bill, we are concerned that adoption will be considered as the only alternative.