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Submission on the Child Protection Reform Bill 2017

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1. Introduction

The Benevolent Society welcomes the opportunity to make a submission to the Parliamentary Committee on Health, Community and Disability Services and Prevention of Domestic and Family Violence on the Child Protection Reform Amendment Bill 2017. Whilst The Benevolent Society is broadly supportive of the amendments in this Bill we have concerns that these provisions are being considered without sufficient effort to ensure that all actions are taken to help children remain with their families, where it is safe to do so.

In December 2016, The Benevolent Society made a submission to the Review of the Child Protection Act 1999 (the Act). The submission was informed by the following principles that The Benevolent Society considers must underpin development of new legislation:

- Child focussed
- Rights based, consistent with Australia's international human rights obligations
- Sufficiently flexible to be responsive to advances in research and evidenced based approaches and other changes
- Enabling rather than prescriptive
- Accessible to consumers and key stakeholders, especially child protection workers
- Informed by contemporary research, knowledge and evidence bases
- Informed by the theory of responsive regulation[1], that is regulation that is responsive to the conduct of those they seek to regulate, based on the assumption that state regulation is most cost effective and appropriate when regulation of conduct is achieved through collaboration.

The Benevolent Society strongly advocates that all Australian child protection systems adhere and support internationally recognised principles and obligations outlined in the ***United Nations Convention of the Rights of the Child*** (CRoC) and ***the United Nations Declaration on the Rights of Indigenous People*** (UNDRIP)**.** All permanency options for children in out-of-home care need to be consistent with these principles.

The Benevolent Society strongly supports the expert evidence given to the Queensland Child Protection Commission Inquiry (the Inquiry) regarding the drivers of the out-of-home-care population and urges Government focus on this evidence:

"Since duration in care is the main driver of the current out of home care population, then policy and practice efforts need to be put into improving quality of care, and good casework. This requires greater focus on intensive work with parents as soon as children enter care to ensure short term ... care does not necessarily become long term out- of-home- care" [2]

We note the absence of agreed national measures for reducing removals and reunification to inform policy making and call for development of these measures to drive greater accountability for achieving outcomes related to supporting families before removal is necessary, reunification and, only if in the best interest of the child, permanency.

[1] Braitwaith V, Harris, N, Ivec M (2009) Seeking to Clarify Child Protection's Regulatory Principles , Communities, Children and Families Australia, Vol 4 (1)

[2] Queensland Child Protection Commission of Inquiry (QCPI), Taking responsibility: a roadmap for Queensland child protection 1 July 2013 p. 40

Whilst not necessarily within the purview of the review, but consistent with the policy objectives of the Act, The Benevolent Society urges the Queensland Government to focus effort and investment on early intervention and intensive family support and reunification. Increased engagement and resources and timely decision making at critical junctures in a child's interaction with the child protection system can impact effectively on reunification outcomes for the child and their family and reduce the need for permanent long term care.

The Benevolent Society considers that legislation must support program and policy that directs investment and focus to interventions that have the best chance of being effective and of keeping children with their families where it is safe to do so. The Benevolent Society has direct experience as a service provider with intensive family support programs across NSW and in Queensland. These programs provide similar quality services that are supported by our evidence informed, outcomes based **Resilience Practice Framework**. We are best able to demonstrate the effectiveness of these programs through the rigorous outcomes measures established under our Social Benefit Bond: Resilient Families.

Case Study: Resilient Families Program

Resilient Families is an intensive family support service designed to keep children with their families where safe to do so and away from out of home care. Resilient Families is funded under the $10 million social benefit bond established by The Benevolent Society in partnership with Westpac and Commonwealth Bank.

Resilient Families provides intensive, in-home practical and therapeutic support to families for up to 12 months with an initial 12 week intensive period that includes 24/7 support.

The performance measurement system for the Resilient Families Program is underpinned by data from NSW Family and Community Services department's data system. Progress made by families referred to the program is compared against progress made by a control group who receive standard support provided by the department.

The Resilient Families Program had achieved improvement in the key performance measure – reducing the number of entries into OOHC compared with the control group.

Having access to departmental data enables the establishment of a robust performance measurement system which is crucial for measuring the outcomes and impacts and improving social service delivery regardless of the program and funding mechanism.

In 2015, there was a 16% reduction of children in out-of-home-care compared with the control group
In 2016, there was a 22% reduction of children in out-of-home-care compared with the control group

Australian service systems continue to remain reactive rather than preventative, with only 16.6% of total child protection expenditure nationally invested in supporting families and preventing children entering

into out- of-home-care. [3] The Benevolent Society maintains a strong commitment to intensive, early interventions and sustained support for families to keep children from entering and remaining in out-of-home-care. It is incumbent on Governments to promote and support the preservation and restoration of families to provide safe care for their children as a priority over permanency planning approaches.

The Benevolent Society is campaigning for urgent funding reforms, policy and practice change by all levels of Australian governments to focus on outcomes for children and families rather than the requirements of the system.

2. About The Benevolent Society

The Benevolent Society is Australia's first charity. We are a not-for-profit and non-religious organisation and we have helped people, families and communities achieve positive change for 200 years. The Benevolent Society aims for a just society where all Australians can live their best life. The Benevolent Society helps the most vulnerable people in society, and supports people from all backgrounds including Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds. We believe that building stronger communities will lead to a fairer Australia. We work in, with and through communities to improve the welfare of individuals and families.

Snapshot

The Benevolent Society is a secular non-profit organisation with 904 staff and 658 volunteers who, in 2016/2017 supported more than 47038 children and adults primarily in New South Wales and Queensland.
We deliver services from 71 locations with support from local, state and federal governments, businesses, community partners, trusts and foundations.
We support people across the lifespan, delivering services for children and families, older people, women and people with mental illness, and through community development and social leadership programs.
Our revenue in 2016/17 was $ 108,454 million.
The Benevolent Society is a company limited by guarantee with an independent Board.

The Benevolent Society offers a range of services to all families to help them thrive, such as parenting support and coaching, early childhood development programs, and specialist support when challenges arise. Specifically, across NSW and QLD we provide services to vulnerable families where children have been identified as at risk, including Brighter Futures, Intensive case management programs, Fostering Young Lives, Headspace, Resilient Families, Communities for Kids, Family Mental Health Support Services, Family Preservation and Intervention Programs and Family and Child Connect.

The Benevolent Society believes that removal of a child from a parent causes trauma to the child or young person, at the time of removal and in the longer term. The Department must be held accountable for any decision that causes trauma and every effort must be made, at crucial decision making junctures, to consider the best interests of the child.

3. Child Protection Reform Amendment Bill (the Bill)

[3] Productivity Commission(2016) Report on Government Services 2016, Volume F:Community Services Http://www.pc.gov.au/research/ongoing/report-on-government-services/2016

The Benevolent Society believes the limited scope of the legislative reform presented in this Bill represents a missed opportunity to examine the Act as a whole as recommended by the Commission of Inquiry (Recommendation 14.1). The Benevolent Society acknowledges that amendments were made in 2015 and 2016 and those now under proposal represent a significant legislative agenda. However, we urge the Government to conduct a further review of the Act in its entirety to support the recommendations made by the Inquiry and ensure the total suite of legislative support is in place for implementation of its *Our Way* Strategy and *Making Tracks*: An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019 (the Action Plan).

It is widely acknowledged that removal of a child from a parent may damage a child or young person, at the time of removal and in the longer term. Every effort and decision to remove may cause trauma and impact on the long term well-being of that child. The Benevolent Society believes the Department must be held accountable for any decision that causes trauma and every effort must be made, at crucial decision making junctures, to consider the best interests of the child.

Promoting positive long-term outcomes for children in the child protection system

Amendment of s 5A of the Act (Paramount principle)
The Benevolent Society strongly supports:

- the expansion of the paramount principle to include provision for the care, safety and well being of the child both throughout childhood and for the rest of a child's life.

This amendment responds to Recommendation 14.5 of the Inquiry which sought to clarify the best interests of the child as the guide to all decision making under the Act. The expansion compels decision makers to consider issues and outcomes beyond the immediate safety of the child and is consistent with Australia's obligations under the United Nations Convention on the Rights of the Child.

Insertion of new s 5BA of the Act (Principles for achieving permanency for a child)
The Benevolent Society supports:

- the new permanency principles of stability and security for children who are involved in the out-of-home-care system which encompasses all three dimensions of permanency – relationship, physical and legal.

Amendment of s 51B of the Act (What is a case plan)
The Benevolent Society supports with reservations:

- the inclusion of a permanency goal in all case plans for children and the actions to be taken to achieve that goal.

The focus on permanency in recent state and territory reforms has concentrated on physical permanence and legal arrangements which may actually work to break connections to culture, community and family for some children, most overwhelmingly for Aboriginal and Torres Strait Islander children. Mainstream notions of stability, implicit within permanency measures have not adequately examined what stability is from an Aboriginal or Torres Strait Islander perspective nor the most appropriate way to support that stability for children. The amended principle compels consideration of relational permanency in all case planning and decisions and addresses concerns at the narrow focus on physical and legal arrangements.

Whilst research shows that children in out-of-home-care who have greater placement stability and certainty achieve better outcomes, the focus on permanency must prioritise action toward reunification. The Benevolent Society supports greater focus on policy and practice that focuses on relationship stability

and continuity for children which encompasses maintaining connection to community, country, culture, extended family, kinship groups, peers, friendship groups, and siblings.

The Benevolent Society does not support a narrow focus on achieving legal permanency through legislative measures, at the expense of consideration of the unique needs and interests of individual children and their situations.

The Benevolent Society does not support a narrow focus on achieving legal permanence as a way to drive down numbers of children in the care system.

Replacement of s 75 (Transition from care)
The Benevolent Society supports:

- as far as practicable the Chief Executive must ensure help is available to assist the person in transition from being a child in care to independence ….. starting when a person is 15 and ending when the person turns 25.

The Benevolent Society supports the extension of eligibility to 25. We affirm this is significantly longer than the 21 years recommended by the Inquiry (Recommendation 9.1). The amendment also recognises the significant and ongoing assistance young people transitioning to independence will need with health, justice, housing, education, counselling, employment and other services. Whilst the intention of this amendment is strongly supported, significant cross agency resourcing of appropriate and relevant services for young people transitioning from care will be needed as a matter of some urgency.

The Benevolent Society is, however concerned that these provisions relate only to children in the custody or under guardianship of the chief executive and calls for this help and assistance to be extended to all children in care.

Amendment of s 62 (Duration of child protection orders)
The Benevolent Society acknowledges this amendment is in response to Recommendation 13.4 from the Inquiry which found that while the imposition of more rigid timeframes for shifting from reunification to permanency planning has little support, the practice of 'rolling short-term orders' must be stopped.

The Benevolent Society has reservations about a legislated time limit on short term orders. Whilst other jurisdictions have legislated timeframes (Victoria, 2 years; NSW and Tasmania 1 year), The Benevolent Society is concerned that there is no significant evidence to support the 2 year limit and believes that greater prescription in legislation generally provides far less flexibility in reflecting unique family circumstances and changing practice and evidence base. The risk is that the individual needs and circumstances of individual children and families are not properly considered in decision making and related case work. If legislated timeframes to prohibit short term orders are implemented, commitment and support is needed to enable workers, carers and families to have access to:

- Evidence based programs that better support families to care for their children
- An appropriately resourced long term casework model to meet the needs of children placed in long term care;

The Benevolent Society believes the importance of permanency to a child's well being must be balanced with acknowledgement of the benefits and right to reunification with the child's birth family. Intensive family based services, drug and alcohol and other vital services may not be accessible to families in the legislated timeframe, particularly families in regional or remote locations, or Aboriginal and Torres Strait

Islander communities. The lack of suitable and accessible services further disadvantages birth families' ability to meet the requirements for reunification, which may not be in the best interests of the child. There is an obligation on the government therefore, to resource and deliver suitable services for parents and families seeking reunification, to ensure the principle of the best interests of the child is applied.

Permanent Care Orders

Amendment of s 59 of the Act (Making of a child protection order)
Permanent care orders are proposed to provide a more stable arrangement than a long term guardianship order, without severing a child's legal relationship with their birth family. The Bill obliges the permanent Guardian to ensure the Charter of Rights for a child in schedule 1 of the Act is complied with and enables the Children's Court to grant the permanent care order only if it is satisfied that the guardian will preserve the child's identity, relationships with their birth family and connection to their culture of origin.

The Benevolent Society acknowledges the need for children's stability but is again concerned to see that the best interests of the child, as outlined in the international child rights framework is applied in all steps of the permanent care order process.

We believe that children are best cared for by family and kin where possible and that every effort should be made to achieve family preservation so that children can remain with and return to their family. The longer children stay in the care system the more likely they are to experience multiple placement moves and different carers. Despite the consensus about the importance of stability for development of nurturing relationships and a positive sense of identity, many children continue to experience high levels of instability for extended periods. With poor quality, inconsistent or absent relationships, children have less opportunity to achieve longer term positive outcomes in life. Entering out of home care typically will disrupt a child's relationships with their parents and siblings; and it often disrupts continuity of education, community/neighbourhood, social networks, health care, pets, and belongings. The importance of both preventing entry into the system and achieving stability and continuity for children once they enter the care system is clear.

The Benevolent Society does not support permanent care orders as a way of driving down numbers of children in out-of-home-care or associated costs of having children in care. Children who become subject to permanent care orders, their carers and families must be well resourced and supported by evidence based programs. These children are likely to have ongoing needs related to past trauma and to their ongoing relationships with their biological family. If the policy objectives outlined in the ACT include better long term outcomes for children in permanent care, the legislation and policy needs to provide incentives and supports for carers, children and parents, not penalise them by withdrawing supports.

The Benevolent Society advocates for safeguards to be embedded in the legislation that would ensure consideration of the long term wellbeing of the child. For example in NSW, the general principle for making an application for a care order under the *Children and Young Persons (Care and Protection) Act* 1998, is acknowledgement that removal of a child from a parent may damage a child or young person. Additionally, the paramount principle under s9 (1) of the Act refers not just to the safety of the child or young person but also to their welfare and well-being. This requires the Court to take into consideration the impact on the child, including the detriment to the child, when making an interim or other order.[4]

[4] Child protection/General Purpose Standing Committee No 2 [Sydney NSW]: the Committee 2017 [xvi,223]pages;30cm (Report no.46 /General Purpose Standing Committee No 2) P 74.

This principle of the welfare and long term wellbeing of the child as having equal weight to the safety of the child, as articulated in the NSW Act, is strongly supported by The Benevolent Society and should be rigorously applied in all child protection intervention decisions in Queensland.

The Benevolent Society is concerned that permanent care orders will override the objectives of reunification, with the safety of the child as the primary consideration for children under a care order. The lack of intensive family based services and general supports for families seeking reunification identify not only a lack of funding and resources, but also a lack of policy objectives for this outcome. This contributes to the perception that permanent care orders provide a permanency solution that is cost effective for Government. Children and carers under Guardianship do not receive ongoing support services, despite the evidence that children living away from families often have complex and long term support needs.

In its review of long term guardianship in New South Wales, the Aboriginal Child Family and Community Care State Secretariat highlighted the lack of service supports provided to carers when permanent orders are made, despite the high therapeutic care needs of many children in out–of-home-care who are impacted by trauma. Similar experiences have been reported in other states, including Queensland. Any decision to implement permanent care orders needs corresponding resourcing to ensure service supports for Guardians, child and birth families are available. [5]

The Benevolent Society recommends a strong review and accountability framework be adopted to ensure permanent care orders comply with the international child protection obligations and the best interest principles of the Act.

Complaints

The Benevolent Society has concerns about the complaints mechanism for birth families and children in care placed on permanent care orders and the failure to acknowledge the barriers to accessing legal help of those seeking to make a complaint.

The ability to vary or revoke the order can only be made by the Children's Court on application by the litigation director upon referral by the chief executive. The child or child's family can make a complaint to the Department about the guardian or the application of the order and the Department may then work with all parties to resolve the issue. It is only when this process does not resolve the issue that the Department may refer to the litigation director to apply to change the order. This is a complex complaints process for the child and their family, which is neither accessible nor impartial and risks primarily serving the interests of the Government in avoiding risks and obligations of support to the child and their family.

A NSW study of access and processes of the NSW Children's Court noted that in care and protection matters '*that several research participants felt that once the statutory department establishes a particular understanding of a child's needs and the potential for parents to change, this understanding becomes entrenched and conflicting information is treated as irrelevant….. Furthermore, the recommendations made by the statutory department were not perceived to be based on research evidence. The statutory department's authority to influence the information that is presented in Court was noted by some research participants. When reports are made about children at risk the statutory department determines what*

[5] AbSec (2015) Guardianship orders for Aboriginal children and young people, available at http://www.absec.org.au/images/pdf/submissionsGuardianshipOrdersPositionpaperNovember 2015.pdf

intervention should occur. The statutory department also selects information from the reports that they see as relevant to present in Court.'[6]

These findings paint a picture of the statutory body in control of the narrative presented to Court, with the views of carers and families significantly disadvantaged. In this context, whilst a complaints process and the ability of the birth family and child to challenge the permanent care order are provided for, the ability of families to challenge or vary a permanent care order would be considerable. The Benevolent Society notes an additional complicating factor of lack of access to legal advice by families to assist in navigating this process.

The Benevolent Society calls on the Department to adhere to Article 12 of the CRoC and facilitate child friendly complaint mechanisms within the Departmental system so that children may be involved in decisions that affect their lives.

The Benevolent Society considers birth families should have greater access to legal advice and representation during earlier intervention processes, as recommended by the Inquiry in Recommendation 13.15. Legislation should place a clear and enforceable obligation on government and the department to ensure access to legal advice and representation for parents, to ensure they are actively represented and informed of all decisions regarding their child's interaction with out-of-home-care.

Promoting safe care and connection of Aboriginal and Torres Strait Islander children with their families communities and cultures

Replacement of s 5C of the Act (Additional principles for Aboriginal or Torres Strait Islander children)

The Benevolent Society strongly supports:

- Additional principles for Aboriginal and Torres Strait Islander children:
  - The long term effect of a decision on a child's identity and connection must be taken into account
  - All five of the Aboriginal and Torres Strait Islander Placement Principles (prevention, partnership, placement, participation and connection) are embedded in the Act's administration and the making of significant decision in regard to Aboriginal and Torres Strait Islander children

This amendment responds to Aboriginal and Torres Strait Islander peoples' advocacy over many years for particular recognition and action on the needs of their children. It is a critical step in building awareness and understanding of the broader intent of the Principle and to create accountability for the actions required to fully implement it.[7] It will align the Queensland legislation with the broader definition of the Principle that has been adopted nationally within the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020. In addition, the right to self determination will promote awareness of its significance as a critical right of Indigenous people, as recognised in UNDRIP.

These amendments will require consideration of the Principle at each step in an Aboriginal and Torres Strait Islander child's interaction with the child protection system and support the *Our Way* Strategy, and

[6] Fernandez, EA; Bolitho, J; Hansen ,P, 2013, 'The Children's Court in NSW', in Sheehan; Borowski, A (ED), Australia's Children's Courts Today and Tomorrow,edn.1st,Springer, Dordecht, pp 22-44, HTTP://www.springer.com/lw/international/books/978-94-00-5927-5, P 32

[7] Review of the Child Protection Act 1999(QLD), Submission to the Queensland Government Department of Communities, Child Safety and Disability Services, January 2017, SNAICC P6

Changing Tracks. Both the strategy and action plan are centred on the principle of self determination, which will be supported by the amendments to the Act.

Replacement of s 6 of the Act (Recognised entities and decisions about Aboriginal and Torres Strait Islander children)

The Benevolent Society supports:

- the introduction of a new concept of an 'independent Aboriginal or Torres Strait Islander entity' for a child to facilitate the meaningful participation of the child and the child's family in making a significant decision.

This change responds to the widespread dissatisfaction, identified at the Inquiry with the limited role and functions of recognised entities and recommendations from SNAICC and Queensland Aboriginal and Torres Strait Islander Child Protection Peak for increased functions and powers in child protection matters to be delegated to an Aboriginal and Torres Strait Islander agency. [8]

The Benevolent Society supports the SNAICC position that 'the suite of core functions for recognised entities identified by the Inquiry are appropriate - family conferencing, carer identification and assessment, cultural support planning and transition from care planning – these functions can only by properly enabled by legislative authority to participate in the decisions that they relate to.'

The Benevolent Society supports the position articulated by SNAICC that 'recognised entities' must fully participate in decision making about an Aboriginal or Torres Strait Islander child, providing as identified by SNAICC, ' better decisions and better outcomes … achieved for Aboriginal and Torres Strait Islander children in out-of-home-care where the agencies and the people who know their culture, community, family and historical context have control over the decisions made about their care'. [9]

The Benevolent Society notes the Inquiry found particularly strong evidence that a community development approach can directly contribute to improvements in life outcomes for Aboriginal and Torres Strait Islander peoples and supports the recognition and support of Recognised entities to speak for Aboriginal and Torres Strait Islander children but also to be supported and resourced to design and deliver services to children in out-of-home-care, their guardians and carers and their birth families.[10]

In addition, Recommendation 11.4 of the Inquiry called on the Department of Communities, Child Safety and Disability Services to review training needs of recognised entities and develop a program that includes training in child protection processes, court procedures, and preparing and giving evidence to ensure entities are fully skilled and empowered to perform their increased and enhanced functions.

The Benevolent Society calls on the Queensland Government to review its resourcing of independent Aboriginal or Torres Strait Islander entities to a level that is commensurate with the standards of the Department. Delegating one or more functions of the Chief Executive to independent Aboriginal or Torres

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[8] Review of the Child Protection Act 1999(QLD), Submission to the Queensland Government Department of Communities, Child Safety and Disability Services, January 2017, SNAICC P7

[9] Review of the Child Protection Act 1999(QLD), Submission to the Queensland Government Department of Communities, Child Safety and Disability Services, January 2017, SNAICC P8

[10] Queensland Child Protection Commission of Inquiry (QCPI), Taking responsibility: a roadmap for Queensland child protection 1 July 2013 p 354

Strait Islander entities must not be an opportunity for the Department to shift costs to the community sector.

Providing Contemporary information sharing regime for the child protection and family support system, which is focussed on children's safety and wellbeing.

The Benevolent Society supports:

- the provisions in the Bill for information sharing, to simplify and consolidate the current provisions to be clearer about who can share information and the purposes for which they can share it.

The Benevolent Society emphasises that implementation must ensure the principle of the best interest of the child is being adhered to in the purpose and practice of information sharing. The Benevolent Society recommends the development of safeguards to protect the privacy of children and their families and ensure information is only shared solely for the purpose of support and assistance.

Addendum

The Benevolent Society makes note of the relevant articles of the ***United Nations Convention of the Rights of the Child*** (CRoC) and ***the United Nations Declaration on the Rights of Indigenous People*** (UNDRIP) in particular;

- The child's best interests are the primary consideration (CRoC Article 3.21)
- Children have the right to participate in decisions that affect their lives (CRoC Article 12)
- Children have the right to know and have access to information about their family background and cultural heritage (CRoC Article 9)
- Indigenous children have the right to his or her own community and culture (CRoC Article 30)
- Indigenous peoples have the right to self determination (UNDRIP Article 3)
- Indigenous peoples have the right not to be subjected to forced assimilation or destruction of their culture(UNDRIP Article 8)
- Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations (UNDRIP Article 15)
- Indigenous people have the right to participate in decision-making in matters which would affect their rights (UNDRIP Article 8)
- Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (UNDRIP Article 23)

The Benevolent Society strongly advocates that all Australian child protection systems adhere and support internationally recognised principles and obligations outlined in the CroC and UNDRIP. The United Nations 2012 response to Australia's 4th periodic report outlined a range of concerns regarding adherence to the CRoC.[11] The response urged greater effort to ensure the principle was widely known and consistently applied in all legislative, administrative and judicial proceedings and all policies, programmes and projects with an impact on children and that it be disseminated to public and private social welfare institutions, courts of law, administrative authorities and legislative bodies.

[11] United Nations **Committee on the Rights of the Child**, Concluding observations (2012) CRC/C/AUS/CO/4