Australians for Native Title and Reconciliation QLD

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Australians for Native Title and Reconciliation Qld

Submission in response to:
Child Protection Reform Amendment Bill 2017

August 2017

We believe FAMILY MATTERS

ANTaR Queensland acknowledges the Traditional Owners of the lands on which Queensland is situated.

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Submission

To: Committee Secretary Health, Communities, Disability Services, and Domestic and Violence Prevention Committee
Date: 30 August 2017
Topic: Child Protection Reform Amendment Bill 2017

ANTaR Queensland (AQ) is an independent advocacy organisation that works for rights, justice and reconciliation with Aboriginal and Torres Strait Islander peoples. AQ has been working on the issue of over-representation of Aboriginal and Torres Strait Islander children in out of home care as one of its more recent campaigns. We have attended various forums and met with key stakeholders, and community members. AQ has also signed the Family Matters Statement of Commitment as a Strategic Alliance Member and welcomes the opportunity to assist in reducing the disproportionate representation of Aboriginal and Torres Strait Islander children and families in the child protection system in Queensland AQ is therefore pleased to provide a submission to the Committee Secretary Health, Communities, Disability Services, and Domestic and Violence Prevention Committee outlining our research, feedback and recommendations relating to the Child Protection Reform Amendment Bill 2017.

Yours sincerely

[redacted]

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OVERVIEW

Whilst Aboriginal and Torres Strait Islander children make up only eight percent of the Queensland child population (Australian Institute of Health and Welfare [AIHW] 2016, p. 113) they are 6.4 times more likely than non-Indigenous children to be the subject of statutory intervention (AIHW 2016, p. 69) and 8.5 times more likely to be in out of home care (AIHW 2017, p. 52). Over-representation is the result of multiple factors including:

- Intergenerational trauma caused by past policies of forced child removal away from family and culture leading to lower socio-economic status, alcohol and substance abuse and family violence (SCACS 2015)
- Cultural misunderstandings of Aboriginal and Torres Strait Islander child rearing practices (Ryan 2011)
- Risk adverse child safety system (Queensland Government 2013)
- Heavy reliance and funding directed towards tertiary intervention rather than preventative services (Council Of Australian Governments [COAG] 2009; National Congress of Australia's First Peoples 2016)
- The Child Placement Principle (CPP) not being implemented fully in legislation nor practice (Tilbury et al. 2013)
- Accountability for Child Safety Officers (CSO's) adhering to the CPP is based on self-reporting mechanism (CCYPCG 2014)
- Recognised entities have no decisional power (McVeigh 2013)
- Funding directed to mainstream organisations rather than Aboriginal and Torres Strait Islander controlled organisations (Combined Voices 2010; QATSICPP 2016)
- Limited legal representation and knowledge of rights (Aboriginal and Torres Strait Islander Legal Services (ATSILS) 2016)
- Barriers to Blue cards for kin carers (ATSILS 2016)

Based on current projections Aboriginal and Torres Strait Islander children in Queensland will make up 50% of the children in out of home care by 2020 (DCCPDS 2016) without fundamental changes being made.

'What will happen if we continue on this path is in about another 50 or 60 years we will have another person standing up in Parliament and apologising' (Mick Gooda 2015)

RECOGNISING PROGRESS

AQ recognises the efforts of the Commonwealth and Queensland Governments to address the issue of over-representation through the following initiatives:

- The Queensland government's commitment to address the over-representation of vulnerable Aboriginal and Torres Strait Islander children and families in the statutory child protection system, as a key priority in the *Supporting Families Changing Futures* reforms.

- The Queensland government's commitment to the *Changing Tracks An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019* and *Our way A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037*

- The COAG's National Framework for Protecting Australia's Children 2009 – 2020 (the National Framework) has identified *Indigenous children are supported and safe in their families and communities* as one of the six supporting outcomes.

To support the government initiatives the *Child Protection Act 1999* (Qld) (CPA) needs to incorporate new legislation that will address the over-representation effectively.

Clause 7

Sec 5C (1)(a) Self determination

AQ fully supports the inclusion of this principle.

The general right to self-determination for Aboriginal and Torres Strait Islander people is enshrined within the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) (United Nations 2008) and was adopted by the Australian government in 2009. Recommendations 43a, 43b and 43c of the *Bringing Them Home* report (HREOC 1997) specifically address the implementation of self-determination in relation to the wellbeing of Aboriginal and Torres Strait Islander children. Self-determination is also one of the three aims of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) (Tilbury et al. 2013) and is also consistent with *Key Recommendation 5* from the *Family Matters* report (SNAICC 2016). Introducing this principle aligns with Articles 3 and 4 of the UNDRIP, reflects the aims and intent of the ATSICPP and strengthens the proposed legislation relating to the delegation of function powers to the chief executive of an Aboriginal or Torres Strait Islander agency.

Sec 5C (1) (b) The long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account

AQ fully supports the inclusion of this principle.

Currently the CPA is focussed primarily on the child's immediate needs and does not satisfactorily address the best interests of Aboriginal and Torres Strait Islander children in the long term. Inserting this principle will require consideration to be given to the long term impacts on Aboriginal and Torres Strait Islander children's identity and cultural connection.

AQ recommends the provision of a non-exhaustive list of matters for consideration, to be determined by Aboriginal and Torres Strait Islander community members, to provide clearer guidance for decision makers to determine what is in the Best Interest of the Child (BIC).

Other legislation including the *Family Law Act 1975* (Commonwealth) the *Children and Young People Act 2008* (ACT), *Children, Youth and Families Act 2005* (Vic) and the *Care and Protection of Children Act 2007* (NT) offer a non-exhaustive list of matters to consider when determining what is in the child's best interest. It has been asserted that this lack of clarity around the BIC leads to biased decisions (Dias 2014) and as proposed by the Aboriginal and Torres Strait Islander Legal Services (ATSILS) Qld, the setting out a list of specific matters to consider would help alleviate this problem (Duffy 2016). Of particular importance for Aboriginal and Torres Strait Islander children is the inclusion of wording that reflects the intent of Articles 5, 8.2 and 30 of the *Convention on the Rights of the Child* (United Nations 1989).

5C (2) (a-e) Child Placement Principle

AQ fully supports the inclusion of this principle.

The original intent of the ATSICPP was '… to enhance and preserve Aboriginal and Torres Strait Islander children's connection to family and community, and sense of identity and culture' (Tilbury et al. 2013, p. 7). As noted by Tilbury et al. (2013, p. 3) the placement hierarchy for out of home care is only one element from '… a range of interventions to protect an Aboriginal or Torres Strait Islander child at risk of harm'.

The Secretariat of National Aboriginal and Islander Child Care (SNAICC), Australia's peak body for Aboriginal and Torres Strait Islander child care, has conceptualised the aims of the ATSICPP as:
'(1) recognition and protection of the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters; (2) self-determination for Aboriginal and Torres Strait Islander people in child welfare matters; and (3) reduction in the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system'. (Tilbury et al. 2013, pp. 6-7)

Introducing this principle containing all five elements of the ATSICPP is consistent with the original intent and aims of the ATSICPP as well as the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) (Johnston 1991), the *Bringing Them Home* report (HREOC 1997), the Queensland Child Protection Commission Inquiry (QCPCI) (Queensland Government 2013), the *National Framework for Protecting Australia's Children Third Three-Year Action Plan 2015-2018* (Commonwealth of Australia 2015), and the *Family Matters* report (SNAICC 2016).

Clause 8

6 (1) (a) – 6 (2) (d) Independent Aboriginal or Torres Strait Islander entity

AQ fully supports the broadening of '…the range of entities or individuals that may support the provision of relevant cultural advice relevant to an Aboriginal or Torres Strait Islander child and their family beyond recognised entities' (Department of Communities, Child Safety and Disability Services [DCCSDS] 2017a, p. 11).

Broadening the scope of people able to participate in decision making processes offers the greatest opportunity for a culturally appropriate range of interested parties to participate in all decisions relating to the care and protection of an Aboriginal or Torres Strait Islander child, including the development and agreement of a care agreement. These amendments will align with The Victorian *Children, Youth and Families Act 2005* and the New South Wales *Children and Young Persons (Care and Protection) Act 1998* that provide comprehensive lists of culturally appropriate parties to participate in decision making including the child, parents, families, kinship groups, representative organisations and other appropriate members of the Aboriginal community as determined by the child's parent. Rather than narrowing the decision making processes to only include participation and consultation of Recognised Entities the legislation now allows a broader range of people to participate.

AQ acknowledges that the DCCSDS (2017b, p. 20) is in the process of completing and evaluating the Aboriginal and Torres Strait Islander family-led decision-making trials.

AQ recommends that future amendments to the CPA should incorporate Aboriginal and Torres Strait Islander family-led decision-making.

As stated within Action 4 of the *Pathways to Safety and Wellbeing for Aboriginal and Torres Strait Islander Children Report* '… Aboriginal Family Decision-Making (AFDM) processes [should be] available to all Aboriginal and Torres Strait Islander families at the earliest possible opportunity when there are child safety concerns' (Tilbury 2015, p. 19). Section 12 of the Victorian *Children, Youth and Families Act 2005* also contains provision for Aboriginal Family Led Decision Making. The use of the AFDA in addition to the inclusion of a greater range of participants in the decision making process supports both the ATSICPP's aim to achieve self-determination and the ATSICPP's element of participation. AQ notes that these recommendations are also consistent with recommendations made by the QCPCI (Queensland Government 2013), the *Out of home care* report (Senate Community Affairs Committee Secretariat [SCACS] 2015) and the inaugural *Family Matters* report (SNAICC 2016).

6AA (1) (a) – 6AB (3) (c)

AQ supports the inclusion of legislation that requires the chief executive, litigation director or an authorised officer to comply with the principles in section 5C when making a significant decision under the CPA about an Aboriginal or Torres Strait Islander child.

The inclusion of this legislation provides for greater strengthening and prominence of the ATSICPP within the CPA and is again consistent with the ATSICIPP's original intent.

Clause 48

Delegation of powers and functions for some Aboriginal and Torres Strait Islander children

AQ fully supports the legislative changes to allow for delegation of decision making authority to the chief executive of an Aboriginal and Torres Strait Islander agency.

AQ fully supports additional legislative changes comprising the sharing of information, and quality and safeguard measures to support this delegation of decision making authority.

AQ recommends that appropriate long term funding to support this delegation of decision making authority be provided.

The issue of greater Aboriginal and Torres Strait Islander control of Aboriginal and Torres Strait Islander child welfare has been raised in a number of reports including the RCIADIC (Johnston 1991), the *Bringing Them Home* Report (HREOC 1997) and the *Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria* (Jackomos & Buchanan 2016). At the time the QCPCI report was handed down no recommendation was made by Commissioner Carmody, to delegate statutory responsibilities to the non-government sector, in the immediate term (Queensland Government 2013). However four years on, the over-representation of Aboriginal and Torres Strait Islander children in the

Queensland child protection system continues to escalate and self-determination via greater control is needed now. Introducing this new power will align with the aims of the ATSICPP as well as the "partnership" component (Tilbury et al. 2013). Introducing the relevant quality and safeguard measures and the sharing of information to support the delegation of powers are vital to ensure the ongoing safety and wellbeing of a child. A time frame should therefore be implemented for the transfer of powers as capacity and expertise increases and the **proportionately required resourcing** of Aboriginal or Torres Strait Islander agencies to be determined and provided.

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