Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc.

Submission to

Department of Justice and Attorney-General (Qld)

Child Protection Reform Amendment Bill 2017

Introduction

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. ("ATSIWLSNQ") welcomes the opportunity to comment on the Child Protection Reform Amendment Bill 2017 ("the Bill"). Due to the timeframes and limitations on our capacity, our submission is brief and addresses mainly the proposed amendments regarding permanency, which are of great concern to the Aboriginal and Torres Strait Islander women who are our client base.

About the Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc.

ATSIWLSNQ is a not for profit Community Legal Centre developed by Aboriginal and Torres Strait Islander women, managed by a committee of Aboriginal and Torres Strait Islander women and providing legal services for Aboriginal and Torres Strait Islander women in North Queensland. Based in Townsville, we provide free legal services, including court representation for Aboriginal and Torres Strait Islander women with a focus on North Queensland to the Torres Strait and other northern regions, from Mount Isa in the West, to Palm Island in the East. Areas of legal advice and representation include child protection, domestic and family violence, family law, discrimination and victims' compensation.

Child protection work forms a significant part of our practice, usually in the order of about one third of all advice and casework undertaken by ATSIWLSNQ. Our services also include community legal education and legal clinics in regional outreach areas of North Queensland including Palm Island.

Aboriginal and Torres Strait Islander child amendments

ATSIWLSNQ congratulates the Queensland Government on its express recognition of the right of Aboriginal and Torres Strait Islander peoples to self-determination as included in the principles in the proposed amendment of section 5C(1)(a) of the Bill. We welcome the amendments which support this recognition and support the decision-making, participation of and determination by Aboriginal and Torres Strait Islander people for the best interests of Aboriginal and Torres Strait Islander children.

ATSIWLSNQ supports the broadening of Aboriginal and Torres Strait Islander participation by replacing "recognised entity" (s.6) to extend the opportunity for participation to "an independent Aboriginal or Torres Strait Islander entity". We anticipate that this amendment

will support the engagement of persons as well as entities, in particular elders and "persons of significance" or "authority" (s.6(2), with cultural and local knowledge, in the situation that the recognised entity cannot always be representative of every first nation or community.

We welcome the introduction of s.6AA and in particular the inclusion of subsection (2), making it mandatory that regard must be had to the Child Placement Principle. This will address a cultural and accountability gap which we have found all too evident in decisions made about placement by the Department of Communities, Child Safety and Disability Services ("the Department").

We question the potential reading down of the inclusion of Aboriginal and Torres Strait Islander entities or family in decision making referred to subsection (3) and submit that it would be more appropriate that section 6AA(3)(a)(i) read:

> *Is not practicable because an independent Aboriginal or Torres Strait Islander entity for the child is not available* **and** *urgent action is required to protect the child;*

We submit that if left at "available" there is a risk of departmental officers deferring to convenience.

Permanency Issues

While the objectives of the new permanency provisions are well understood, ATSIWLSNQ has a number of concerns about the proposed amendments.

Section 5BA Principles :

It is submitted that mixing the legal permanency principle with the other principles of the *Child Protection Act 1999* has the potential to lead to confusion by departmental officers in terms of how an intervention progresses; whether steps will be taken to support parents and achieve permanency with a child's birth parents, or the parents will not be given the opportunities and supports they need for the child to be returned to their care. Our concern is based on our experience of departmental practices. While practices may not necessarily reflect the intent of the legislation, and while the ultimate decisions will be made by the Court on application by the DCPL, the reality is that many of the minor day to day decisions made by departmental officers, will impact significantly on the progress of a child protection intervention. This will be exacerbated if parents are not legally represented. In this regard, our experience has been that some officers' tend to "police" parents and to regard

themselves as “rescuing” children who may otherwise be supported within their birth family, with adequate supports in place.

We are mindful of the experiences and generational trauma experienced by Stolen Generation children and families and the legacy of loss of culture, of family and community and the lack of parental role models.

In our submission a repeat of this experience for modern day parents must be avoided by providing parents with appropriate support, even if this means extending the support beyond the children being in out of home care for 2 years.

s.51B

It is submitted that the language of “permanency” used in the context of case planning is misleading and even naïve. “Permanency” has negative connotations such as “permanent solution” and suggests that the objective is to remove the children “permanently” or look for an end to the parental relationship, irrespective of the intent of the legislation.

It is the experience of ATSIWLSNQ that many of our clients have unusually difficult life challenges, and notwithstanding their intention to work towards return of their children, are suffering from a deep sense of loss and guilt. Use of permanency language is unlikely to be helpful, particularly for parents with dysfunctional coping mechanisms such as addictions.

We also have concerns that the language of permanency is inappropriate at early planning stages where parents are often in the early stages of addressing risk issues and the outcome may be far from clear and the use of permanency language is therefore confusing and unhelpful. If it is clear that the children are likely to be returned to their parents, it begs the question as to why they are not being supported to remain with their family.

It is submitted that a better guide to decision-making is provided in the UN “Guidelines for the Alternative Care of Children”, which clearly enunciates guidelines for decision making, including for example:

a) the recognition of the family as the “fundamental group of society (G3);
b) the fact that alternative care should only be considered where the family is unable to provide for the child even with supports (G5);
c) the importance of decisions being made on a “case by case” basis and grounded in the best interests and rights of the child (G6);
d) maintaining a child as close as possible to his/her usual place of residence (G11).

While it is acknowledged that many of these principles are embedded in the legislation, it is submitted that the language of permanency undermines any sense of a measured approach.

Provisions of s.59 and s.59A – Permanent Care Order

ATSIWLSNQ does not support the introduction of a Permanent Care Order for the reasons that :

a) It is irrevocable by parental application should circumstances change significantly; and
b) It largely removes a vulnerable child from scrutiny by departmental oversight.

It is noted that there are safeguard provisions built into the proposed amendments, such as the provisions of s.59(7A), setting out matters which the court must be satisfied of, and the provisions of s.59A in relation to Aboriginal and Torres Strait Islander children. In practice, however, there are limited safeguards for the child once in permanent care. While we support the child being told about the Charter of Rights (s.74A), it is submitted that this is hardly a safeguard where a child finds himself or herself in a relatively disempowered situation with limited external scrutiny.

It is extremely concerning that a Permanent Care Order may only be revoked by the Director of Litigation (assuming it comes to his or her attention) if the child has "suffered significant harm" (s.65AA)(2).

ATSIWLSNQ opposes the introduction of Permanent Care Orders as misconceived and lacking the capacity to achieve anything in terms of stability that cannot be achieved by a long term guardianship order with reviews. It is submitted that it is misconceived in so far as it perpetuates the myth that a child is necessarily safer from instability and abuse if placed with a person other than the child's parents, ignoring the high incidence of children within family, foster and adoption situations being abused by non-blood relatives.

It is further submitted that if a child is placed in "permanent care", the care placement should be subject to regular departmental review at a minimum, in order to avoid a child being placed in a potentially dangerous situation without scrutiny until the child suffers "significant harm".

Transition provisions

ATSIWLSNQ welcomes and supports the provisions for Transition out of care planning beginning when the child turns 15 years old and commends the amendments to provide children with support for up to the age of 25 years if required.