# Submission Response:

## *Child Protection Reform Amendment Bill 2017 (Qld)*

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

**September 2017**



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# QATSICPP submission -

## Child Protection Reform Amendment Bill 2017 (Qld)

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) welcomes the opportunity to contribute to the proposed reforms and the development of a new legislative framework to support families and protect children in Queensland. As the peak body representing the interests of Aboriginal and Torres Strait Islander children and their families, we are aware that legislative reform is needed to profoundly impact Aboriginal and Torres Strait Islander children and families in a positive manner.

The Queensland Government has been proactive in pursuing the legislative reform required to enable transformational change for Aboriginal and Torres Strait Islander children and families in Queensland. QATSICPP has been consistently engaged in the consultation process, from the commencement of the review through to the drafting stage for the Bill. As such, the majority of proposed amendments and the corresponding policy intent, are supported by QATSICPP.

It should be noted for the purposes of this submission, QATSICPP has sought input from the Queensland Aboriginal and Torres Strait Islander Community Controlled Child Protection sector (‘Sector’) and have made all reasonable attempts to seek and incorporate a diversity of views, to the extent possible within the timeframe, to inform our position. QATSICPP has encouraged member organisations, and individuals who participated in consultation activities to provide independent submissions, particularly where divergent views exist.

QATSICPP's response to the *Child Protection Reform Amendment Bill 2017 (Qld)* (Bill) is framed by provisions and/or amendments set out in the Bill, with a particular focus on:

- the *safe care and connection of Aboriginal and Torres Strait Islander children* with their families, communities and cultures; and
- *permanency and stability* for children in out-of-home care, now and throughout their lives.

While we recognise the significance of the other amendments, we have largely focussed our attention and participation in consultation pertaining to those that most profoundly impact upon Aboriginal and Torres Strait Islander children, families and communities.

As a result of *Recommendation 14.1* of the Queensland Child Protection Commission of Inquiry, the Department commenced a review the of the *Child Protection Act*[1].
The review extended to consideration of the policy context and focussed on the development of a child rights centred legislative framework. This position and approach to reform was strongly advocated by QATSICPP during the Inquiry. While we recognise that the amendments proposed within the Bill reflect only an initial step towards this goal, we believe that the introduction of core legislative principles, (such as self-determination and the five (5) constituent elements of the Aboriginal and Torres Strait Islander Child Placement Principle) is significant, progressive and is absolutely fundamental in establishing a legislative framework that fully recognises and promotes the rights and best interests of Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander children are disproportionately represented at all levels of the child protection system in Queensland, and nationally.[2] Queensland's legislation, policies, programs and practices have been designed and executed in such a way that has undermined the goal, as articulated in the Carmody Report, of Aboriginal and Torres Strait Islander families assuming primary responsibility for the safety and wellbeing of their children. Interactions with a statutory system that is not equitable and does not fully

[1] *1999 (Qld).*
('Act').
[2] *Family Matters Report*, pp. 4-5.

recognise the significance of culture and the strength that exists within Aboriginal and Torres Strait Islander kinship structures, continues to produce poor outcomes for Aboriginal and Torres Strait Islander children, families and communities. Welfare responses and the conflation of poverty and neglect as core drivers for statutory involvement are primary areas for reform that are not remedied by legislative reform alone. These issues, unresolved, manifests not only to disproportionately higher rates of children entering the system, but conversely, significantly lower rates of reunification.

Generally, discussion of overrepresentation largely centers on the trajectory of loss and promotes a broad discourse about the continuing conditions of poor health, impermanence, and negative socio/cultural impacts upon Aboriginal people. While the disproportionate experience of disadvantage and the enduring experience of loss for our people cannot and should not be ignored, existing approaches to legislation, policy, practice and program responses must be reconceptualised. The current "deficit paradigm" where social pathologies are often the focus of research and media and the premise on which efforts to remedy "Indigenous issues" are based, needs to be transformed.

Unfortunately, for Aboriginal and Torres Strait Islander children ill-equipped State tools have led to an increase in child protection contact and system entrenchment.

Additionally, Queensland's existing *Child Protection Act*[3] does not support Aboriginal and Torres Strait Islander families and children in providing culturally appropriate and safe statutory provisions; thus, ensuring Aboriginal and Torres Strait Islander children are not safe in their culture and as far removed [and/or prevented] from entering the child protection system and eventually being placed in out-of-home care.

This is driven primarily by a lack of focus on self-determination, supports to actualise participatory rights and failure to recognise that cultural continuity as an integral component of a child's best interests.

The proposed amendments, discussed in more detail below, are an important and welcomed step in seeking to resolving these issues.

[3] *1999* (Qld).

# The safe care and connection of Aboriginal and Torres Strait Islander children within their families, communities and cultures

## Additional principles for Aboriginal and Torres Strait Islander children

### Self Determination

It is indisputable that Aboriginal and Torres Strait Islander peoples (inclusive of children and families) have an inherent right to cultural autonomy [separate from mainstream Australia] which requires a high degree of self-determination. International instruments (such as the *Convention*) recognise collective rights, intended for all people to both receive and enjoy. Accordingly, human rights, including self-determination, are rights of all Australians. The right to self-determination, together with the rights recognised in Article 25 of the ICCPR, may also be seen as relevant to issues of open and accountable government and to ensuring consultation with and appropriate participation in decision making for people affected by Government decisions.[4]

The inclusion of self-determination as proposed, should not be characterised as an "additional benefit" for Aboriginal and Torres Strait Islander children and families, but as an instrument to acknowledge the existence and entitlement to self-determination within the statutory child protection context and to establish equity in the exercise of this right. It demonstrates an intention for Aboriginal and Torres Strait Islander people to be able to enjoy (at least) a baseline level of human rights that is readily accessed and routinely exercised by non-Aboriginal peoples. The protection of the rights of children within the Bill and specific principles that support equitable access to and fulfilment of rights by Aboriginal and Torres Strait Islander people is a welcomed demonstration of a non-partisan commitment to all Queensland children.

Participation is perhaps the most powerful instrument for self-determination. The *Bill* places a positive obligation on statutory officers to enable the **full participation** of

[4] Australian Human Rights Commission, *'Right to self-determination'*, Available URL: https://www.humanrights.gov.au/right-self-determination, Accessed: 27 August 2017.

Aboriginal and Torres Strait Islander people in decisions that most profoundly impact upon our children, families and communities. Enabling participation creates agency and promotes responsibility. Additionally, the *Bill* recognises, and through proposed amendments, seeks to address the lack of equity in the administration of the current *Child Protection Act*[5] and the limited opportunities for the exercise of rights and sharing of responsibility for the wellbeing of Aboriginal and Torres Strait Islander children.

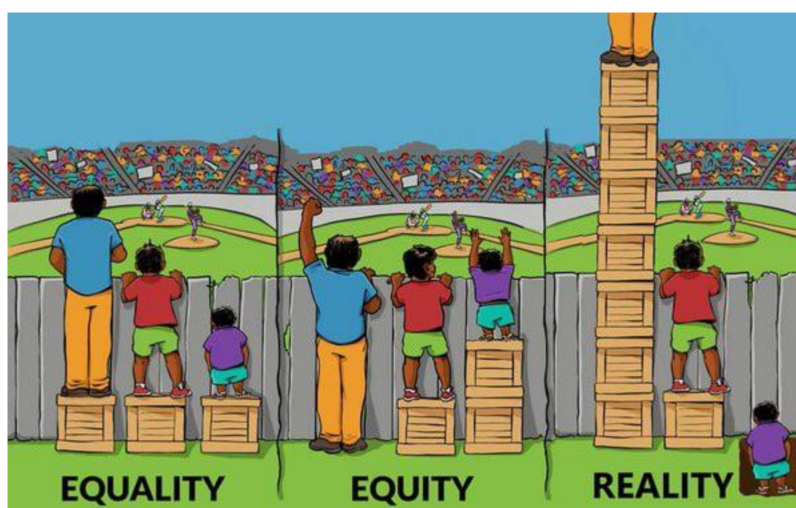
Self-determination and the indoctrination of human rights principles within the *Bill* has to be substantial and non-partisan. This is not about privileging first nations peoples' rights over those of any other Australians, but about acknowledging and redressing the inequity in the access to and exercising of fundamental human rights. While this inequity is largely a legacy of colonisation and historical discriminatory policy and societal constructs, the proposed amendments are neither compensatory or reparative. The proposed amendments are simply a clear statement that the past will not dictate our future. It is legislative acknowledgement of our obligations at international law, commitments that our Nation has made as signatories to multiple United Nations Conventions and Declarations and a testament to the values we hold as a state.

**It is simply about ensuring that, in matters regarding the safety and wellbeing of our children, Aboriginal and Torres Strait Islander people can access and freely exercise the same rights as all other Australians.**

[5] *1999 (Qld).*

*Figure 2: Equality versus Equity versus the current Reality*, demonstrates the positive impacts and potential for improved outcomes for Aboriginal and Torres Strait Islander children and families through first acknowledging the existing lack of parity (e.g. in participation and decision making) and actively working to establish equity.

*Figure 2: Equality versus Equity versus the current Reality*




QATSICPP's position is strongly underpinned by the *Convention on the Rights of the Child* and seeks to address key areas of focus – including the need to recognise self-determination and each of the five constituent elements of the Aboriginal and Torres Strait Islander Child Placement Principle as core legislative principles. It is the position of QATSICPP that these particular amendments are fundamental in order to give effect to the paramount principle – the safety, wellbeing and best interests of children. Importantly, QATSICPP is of the firm view that an Aboriginal or Torres Strait Islander child's right to cultural continuity is a significant consideration in the determination of the best interests of a child.

Culture is integral to the safety and wellbeing of children. The best interests of a child cannot be concluded exclusive of consideration of a child's fundamental need and recognised right to maintain their cultural identity. In the current statutory context, it is often a secondary consideration. Connection to culture is a strength, which promotes safety and wellbeing of our children and must be embedded in all decisions made that impact upon our children, families and communities.

Emphasis needs to be placed by all parties on understanding the safety and wellbeing of children in the context of their family, community and culture. Erosion of an Indigenous child's connection to culture, kin or country through one dimensional decision making processes or practice that does not reflect an understanding or appreciation of Aboriginal and Torres Strait Islander culture is **never** in the "best interests" of a child.

*Clause 7* introduces the principle of self-determination and, further provides for recognition of the enduring right of Aboriginal and Torres Strait Islander children to cultural continuity. Insofar, self-determination has been excluded from Queensland legislation and should be codified as per the *Convention of the Rights of the Child*, which was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 in 1989.[6]

The rights of an Aboriginal and Torres Strait Islander child should be at the forefront of child protection legislative framework and policies. The *Bill* defines this and is strongly underpinned by Article 8(1-2) of the *Convention* that enables an Aboriginal and Torres Strait Islander child their [inherent] right towards cultural identity and participating in decision-making processes that affect their life.

More notably, in the *Convention,* Article 8 states the following:

> *"1. State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized* [sic] *by law without unlawful interference.*
> *2. Where a child is illegally deprived of some or all of the elements of his or her identify, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."*[7]

[6] Convention of the Rights of the Child, Australian Human Rights Commission, Available URL: http://www.humanrights.gov.au/convention-rights-child, Accessed: 26 August 2017. ('Convention').
[7] Ibid 25.

- Article 9 of the *Convention of the Rights of the Child* also notes the best interests of the child being the primary consideration when a government intervenes in family life; and
- Articles 4 and 5 express governments respecting the providing support for the responsibilities, rights and duties of parents, extended family, or, where applicable, the community to provide direction and guidance in the exercise by the child of his or her rights.[8]

Further to these Articles, regarding children who are Indigenous to their country, the Convention states the following:

- Article 30: these children shall not be denied the right, in community with other members of the group, to enjoy their own culture; and
- Article 20: attention shall be paid to the cultural background of children in out-of-home care placements.

The right to self-determination is also a key feature in the *Changing Tracks*[9] Action Plan (supported by the 'Our Way strategy'[10]) ;
*"The strategy, at its heart, is about self-determination: empowering Aboriginal and Torres Strait Islander families to exercise opportunities to live well, according to Aboriginal and Torres Strait Islander values and beliefs and the* United Nations *Convention on the Rights of the Child".*

[8] Taken directly from QATSICPP: (2012) Information Paper: Commission of Inquiry – Culture and the best interest of the Aboriginal and Torres Strait Islander Children, p. 2.

[9] Queensland Government (2017) *'Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019*, Supporting families changing futures, Brisbane.
('Changing Tracks').

[10] Queensland Government (2017) *'Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037',* Supporting families changing futures, Brisbane.
('Our Way').

## The Aboriginal and Torres Strait Islander Child Placement Principles

The QATSICPP supports the *Bill's* inclusion of all 5 constituent elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), in line with the accepted definition within the National Framework for Protecting Australia's Children, Third Action Plan[11], as an insertion under *section 5C Additional principles for Aboriginal and Torres Strait Islander children*. The ATSICPP has five (5) elements which have been received in the *Bill* (i.e. placement, prevention, partnership, participation and connection), and it should be noted that the intent of the ATSICPP has been strongly accepted throughout the sector as both a fundamental framework for the safety and wellbeing of Aboriginal and Torres Strait Islander children, and importantly as practical mechanisms for self-determination. Thus, the inclusionary principle of participation embeds the right to self-determination and the ability for Aboriginal and Torres Strait Islander children and families to participate in the decision-making process.

The inclusion of ATSICPP within the Bill allows for embedment of best practice throughout the continuum of child protection. It allows for the best interest of children and young people to be at the forefront of any decision; supports the creation of genuine and substantial participation and partnerships; the right for family and community to be a part of decision making; children and young people are best placed with their family; and to ensure the connection to family, community, culture and country are adhered to at all times.

[11] COAG (2009) *'Protecting Children is Everyone's Business – National Framework for Protecting Australia's Children 2009-2020'* (An initiative of the Council of Australian Governments), Commonwealth of Australia: Canberra.

## QATSICPP supports;

**Clause 4 of the Bill** –

amending the paramount principle for administering the Act to refer to safety, wellbeing and a child's best interests through childhood and for the rest of the child's life

**Clause 7 of the Bill**–

- introduction of a new principle recognising the right to self determination;
- requiring the long term effect of a decision on a child's identity and connection to family and community must be taken into account;
- inserting all five 'principles' of the Aboriginal and Torres Strait Islander Child Placement Principle and ensuring their application to decisions made under the Act

However, to ensure that full and proper adherence to the 5 ATSICPP are being demonstrated in decision making processes, the QATSICPP recommend a minor amendment to section 59 of the Act to require evidence of the actioning of the ATSICPP. This would promote accountability for statutory adherence to the ATSICPP and reflect genuine engagement, partnership and participation between the Department and Aboriginal and Torres Strait Islander families and entities (as defined) in the interests of our children.

## Recommendation

QATSICPP recommends amendment to *Section 59* of the *Act* to require a sworn statement of adherence to and demonstration of application of the ATSICPP.

## Independent Aboriginal and Torres Strait Islander Entity

The QATSICPP endorses the concept of an Independent Aboriginal or Torres Strait Islander Entity and provisions to:

1. Expand the scope of an entity; and
2. Refocusing the function of the entity on facilitating the meaningful participation of Aboriginal and Torres Strait Islander children and their families in decision-making.

The QATSICPP accepts the expanded definition and provisions regarding the proposed role and functions of the Independent Aboriginal and Torres Strait Islander Entity, replacing references to the current Recognised Entity.

The emphasis on independence allows the empowerment for Aboriginal and Torres Strait Islander children and families to make decisions and shifts the current role of the Recognised Entity from being a resource for the Department to being a resource for children and families. The *Bill* effectively enables the transition of the role of the existing Recognised Entity to an Independent Aboriginal and Torres Strait Islander Entity. This moves beyond conceptualisation of such entities as a program or compliance mechanism developed to support the Department to meet it statutory obligations. The proposed role extends beyond the current practice of “cultural advice” and the “ticking of a box” approach to seeking advice from the Recognised Entity when a decision is being made regarding an Aboriginal and Torres Strait Islander child. The compliance approach to administration of the current Act is often passive, tokenistic and **not** consistent with the intent of the legislation nor the interests of Aboriginal and Torres Strait Islander children.

The proposed amendments aim to provide greater flexibility for Aboriginal and Torres Strait Islander children and families to access the supports that they require to fully participate in decision-making processes that directly impact upon them. Further, there is significant benefit in the Entity being able to work with families, independent of the statutory body, to ensure that they have access to the supports that they may need to ensure children can remain safely in the care of the families and communities and reduce the need for statutory involvement. It seeks to address the issue of equitable participation and empowerment of Aboriginal and Torres Strait Islander families and communities to retain primary responsibility for the safety and wellbeing of their children. Further, the shift places a positive obligation upon the Department and other entities involved in the administration of the Act to better support a child and their parents to participate in all decision-making processes, support families to access the assistance they need to meet the safety and wellbeing needs of their children.

The Independent Aboriginal or Torres Strait Islander Entity and the Department in this process will enhance opportunities for participation and decision making through the provision of appropriate supports at the discretion of the family.

While largely a matter for implementation, the entity should be the initial source of information and advocacy for families regarding their rights and the provision of support to proactively engage in the achievement of safety and wellbeing for their children. Consent *ongoing* engagement and involvement of an Independent Entity is the **right** of the family. Ensuring that consent given by a family is **fully informed** is the shared **responsibility** of the Department and the Independent Aboriginal or Torres Strait Islander Entity.

However, where families are not actively engaged in participatory and decision making processes, the Department is still required to adhere to the Principles, (5C) at all significant decision making points.

## Recommendation

During the consultations undertaken with member organisations, a consistent concern raised was the subjective nature of what constitutes the "full participation of the child and the family". While this may be a matter for policy, it is important to understand that a lack of clarity is likely to result in inconsistent interpretation and compromised implementation.

## QATSICPP supports;

**Clause 8** – defining independent Aboriginal or Torres Strait Islander entities, external to the Department, to replace current 'recognised entities', to fully facilitate the child's and family's participation in each significant decision made by the chief executive, litigation director and authorised officers, in an appropriate place that is appropriate to Aboriginal tradition or Island custom

**Clause 9** – reflecting the changes regarding entities providing cultural advice and better support for children and their families to participate in decision making, including in respect of the chief executive arranging for help and support to be offered to a pregnant woman whose unborn child may be in need of protection after birth, noting that the pregnant woman must consent to the entity's involvement

**Clause 17** - requiring a case plan for an Aboriginal or Torres Strait Islander child to include, consistent with the five principles, details about how the child will be supported to develop and maintain connections with their family, community and culture (i.e. a cultural support plan)

**Clause 21** – providing greater flexibility in how the department and other entities involved in administering the Act obtain and consider relevant cultural advice

**Clause 46** – amending section 83 of the Act to reflect the role of a child's Aboriginal or Torres Strait Islander entity and placement of a child with a member of the child's family group, and if that is not possible, in accordance with the placement hierarchy, in order with each lower order option only being considered if the higher order option is not practicable. This includes proper consideration of the views of the child and their family

**Clause 48** – enabling the chief executive to delegate some or all functions or powers under the Act in relation to an Aboriginal or Torres Strait Islander child who is in need of protection or likely to become a child in need of protection to the chief executive officer of a suitable Aboriginal or Torres Strait Islander entity with certain safeguards (e.g. chief executive officer is 'appropriately qualified', suitable, has a blue card, is an Aboriginal or Torres Strait Islander person, option for conditions on the delegation). The chief executive must have regard for the views of the child and child's family about the delegation, where safe or practicable to seek their views. The chief executive can still exercise a function even where it is delegated and the chief executive's actions prevail to the extent of inconsistencies. The chief executive can seek information from the delegate about the child and be responded to within a reasonably stated timeframe.

**Clause 49** – only allowing the chief executive to delegate the powers (i.e. not a delegate of the chief executive)

## Options for achieving permanency and stability for children and young people living in out of home care

Permanence for Aboriginal and Torres Strait Islander children is identified by a broader communal sense of belonging; a stable sense of identity, where they are from, and their place in relation to family, mob, community, land and culture. Like all children, Aboriginal and Torres Strait Islander children have the right to live in safety, free from abuse and neglect, and in stable and supportive family and community environments. Each child's wellbeing and ongoing best interests should be the priority of those who care for them.

For Aboriginal and Torres Strait Islander children who are harmed or at risk of harm and in need of alternative care, their protection is absolutely our priority. For children who are placed in out-of-home care, stability of relationships, cultural continuity and identity are vitally important to their wellbeing and must be promoted.

Permanency in the care and protection sector has been defined as comprising three key aspects, “relational permanence (positive, caring, stable relationships), physical permanence (stable living arrangements), and…legal arrangements.”8 Recent state and territory reforms have tended to focus on the latter two. QATSICPP believes that this has been to the detriment of key aspects of relational permanence that are central to the wellbeing and lifelong outcomes of Aboriginal and Torres Strait Islander children.
The theory underpinning many permanency planning reforms asserts that the sooner an enduring attachment with a carer can be established, the greater stability can occur, and that this is a better outcome for a child’s wellbeing.9

Aboriginal and Torres Strait Islander people commonly question this narrow construct of attachment theory that centers stability on the singular emotional connection between a child and a carer. This has been described as “inconsistent with Aboriginal and Torres Strait Islander values of relatedness and child-rearing practices.”10Modern applications of attachment theory allow for attachment to both parents and also with grandparents and other relatives and care-givers.11 This less fixed, more dynamic understanding is also reflected in the best interest’s principle in international child rights law that calls for consideration of the particular circumstances of each individual child.

QATSICPP is encouraged that the Bill contains an appropriate focus on all aspects of permanency and that the application of the ATSICPP, enables consideration of permanency in an appropriate cultural context as it relates to the determination of permanency goals and appropriate planning processes.

**QATSICPP supports**;

**Clauses 6 and 82** – providing a definition of permanency that is situated in the child’s experience of having relationships with people of significance in their life, stable living arrangements, and legal arrangements that provide the child with a sense of permanence and long term stability; and articulating permanency principles and a hierarchy of out of home care living arrangements where a child does not have a parent able and willing to care for them

**Clauses 36 and 37**– simplifying court processes for varying a long term guardianship order to the chief executive to transfer guardianship to a member of the child's family or another suitable person, or to revoke a long term guardianship order and make a permanent order in its place so as not to re-visit whether the child is in need of protection, but rather to consider the appropriateness of a less intrusive order, unless the court is of the view that it is in the child's best interests not to use the simplified process

**Clauses 17 and 24** – requiring case plans to contain goals and actions for achieving permanency; requiring transition from care planning to commence at 15 years and for this to form part of the child's case

**Clauses 22 and 23** – updating requirements on conveners of case plan meetings and the department to take reasonable steps to ascertain or make known at the meeting, the views of a 'relevant prescribed entity' or service provider

**Clause 41** – making assistance available, as far as practicable, to young people who have been in the custody or guardianship of the chief executive in their transition from care to independence, to 25 years, including help in accessing case records in the chief executive's possession or control about the person and their time in care

## Permanent Care Order

A number of jurisdictions have sought to entrench permanency measures in legislation. The overt rationale for reform has been to provide children in care with "safe, continuous and stable care arrangements, lifelong relationships and a sense of belonging." 1

While QATSICPP supports an agenda to improve stability for Aboriginal and Torres Strait Islander children in out of home care, we have significant concerns regarding the introduction of a permanent care order, (PCO). Without significant amendment and the introduction of further safeguards, they will likely cause more harm to children and exacerbate inter-generational harm to families and communities. We believe that the introduction of a permanent care order may produce adverse impacts, that undermine

efforts to duly consider the dimensions of, and available means for achieving permanency, that are embedded in practice reform as opposed to legislation. The PCO as proposed is not sufficiently flexible or attuned to the reality that, for an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and country.

Permanency measures tend to reflect an underlying assumption that a child in out-of-home care experiences a void of permanent connection that needs to be filled by the application of permanent care orders. This understanding is flawed in its failure to recognise that children begin their out-of-home care journey with a permanent identity that is grounded in cultural, family and community connections. This is not changed by out-of-home care orders. Inflexible legal measures to achieve permanent care may actually serve to sever these connections for Aboriginal and Torres Strait Islander children, in breach of their human rights, and break bonds that are critical to their stability of identity while they are in care and later in their post-care adult life.

The Aboriginal and Torres Strait Islander Child Placement Principle has been developed to support and maintain the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures. Research has confirmed that the history and intent of the Principle is about far more than a decision about where and with whom a child is placed.18 Its purpose and key elements require early intervention supports to prevent children entering care; supports for children to maintain and re-establish cultural connections in out-of-home care; efforts for reunification; and ensuring that Aboriginal and Torres Strait Islander families, communities and organisations are involved in decision making, service design and service delivery.19 QATSICPP is encouraged that the broad intent and definition, inclusive of each of the five constituent elements is acknowledged within the Bill.

There are a number of implementation issues that require attention, specifically with regard to the introduction of a PCO. We are unconvinced that the consideration required with regard to the application of the ATSICPP, sufficiently safeguards the very real risks of disconnection for Aboriginal and Torres Strait Islander. Largely there remains inconsistent

and ineffective implementation, and in some settings misunderstanding, of the Principle which has significant implications for permanency planning. Practical concerns include failures to identify Aboriginal and Torres Strait Islander children and inadequate efforts to consistently look for placement options in consultation with family and community at each stage of the child protection continuum.

The lack of culturally appropriate kinship carer identification, assessment and support processes continues to be a significant concern that is raised by the sector. To provide some context, almost half of the Aboriginal and Torres Strait Islander children in out of home care, are **not** placed in accordance with preferred options within the prescribed placement hierarchy nor in a manner consistent with the intent of the ATSICPP. The importance of Kinship Care as the primary option for Aboriginal and Torres Strait Islander children and young people is paramount is any decision regarding permanency.

A Permanent Care Order must not be able to be utilised to avoid the significant practice reform and improvements in organizational cultural capability that are necessary in order to ensure the safe care and connection of Aboriginal and Torres Strait Islander children.
In this context, permanent care orders risk severing cultural connections in circumstances where children are in placements that are disconnected from their families and communities. Where permanent care orders contain no requirements for the ongoing maintenance of cultural connections, the risk is even greater.

Regardless of the intentions that underpin permanency measures, the permanent removal of Aboriginal and Torres Strait Islander children from their families' presents harrowing echoes of the Stolen Generations for Aboriginal and Torres Strait Islander people and communities which has been echoed during our discussion with member organisations. The child placement principle evolved, in line with the recommendations of the Bringing Them Home report as the cornerstone of Australian child protection legislation to prevent this from happening again. The making of a PCO for an Aboriginal and Torres Strait Islander child **must** ensure that there has been explicit adherence to the ATSICPP and clear evidence presented to the court about this adherence. QATSICPP is of the opinion that where there is true adherence to and best practice implementation of the child placement principles, there

would likely never be the need to consider the making of a permanent care order for an Aboriginal or Torres Strait Islander child.

In relation to Clauses 34 and 35, QATSICPP does not support the limiting of the consecutive short term orders. A number of our concerns and concerns raised by the sector include but are not limited to:

- Access to culturally safe universal services
- Geographical location of parents limits their ability to access appropriate support and/or services
- The transient nature of our parents
- Cross jurisdictional - makes it difficult to work effectively with the family.

It is the view of QATSICPP that by limiting the making of short term orders this would not be in the best interest of the child and does not allow for parents to effectively address the child protection concerns that the Department may have.

## QATSICPP does not support:

**Clause 31** - the introduction of a Permanent Care Order or, at the least, its introduction without significant refinement and safeguards in respect of its use

**Clauses 34 and 35** - limiting consecutive short term orders so as not to exceed a total of two years

## Recommendation:

In the event that permanent care orders are introduced, we **recommend**, as a safeguard, a provision that allows the court to make a permanent care order only if recommended by an Independent Aboriginal and Torres Strait Islander Entity that has worked with the family to facilitate their participation in other significant decisions. This type of restriction currently

exists in Victorian legislation[i] and works to bring Aboriginal and Torres Strait Islander community cultural authority and control into decision-making to ensure a child's cultural needs and rights are taken account of in permanent care decisions, given their potential to gravely impact upon those rights. Such an approach is consistent with guidance of the United Nations Committee on the Rights of the Child which has indicated that significant decisions regarding a child's best interests cannot properly be determined without the input of that child's Indigenous community.[ii]

Furthermore, in the event that the limiting of consecutive orders is introduced, we recommend, the introduction of a safeguard to ensure that parents are provided adequate support to address the child protection concerns within the duration of the court order that is made.

[i] Section 323(2)(a) *Children, Youth, and Families Act 2005* (Vic).
[ii] United Nations Committee on the Rights of the Child, General Comment 11