



Office of the
Director-General

Department of
Child Safety, Youth and Women

Mr Peter Russo MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Mr Russo

Thank you for the opportunity to respond to the three additional submissions received by the Legal Affairs and Community Safety Committee (the Committee) regarding the Child Protection and Other Legislation Amendment Bill 2020 (the Bill).

Please find enclosed for your consideration the Department of Child Safety, Youth and Women's response to these further submissions, which complement the response provided on 7 August 2020 to earlier submissions.

I trust the information provided is of assistance to the Committee, however, if you require any further information or assistance in relation to this matter, please do not hesitate to contact Ms Susie Pedersen, Cabinet Legislation and Liaison Officer for my department on 3097 8635 or Susie.Pedersen@csyw.qld.gov.au.

Yours sincerely

Deidre Mulkerin
Director-General

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Legal Affairs and Community Safety Committee

Written submissions regarding the Child Protection and Other Legislation Amendment Bill 2020

Between Friday 7 August 2020 and Monday 10 August 2020 the Legal Affairs and Community Safety Committee published three additional submissions regarding the Child Protection and Other Legislation Amendment Bill 2020. The Department of Child Safety, Youth and Women (the department) has responded to the three additional submissions from the below submitters:

36. Office of the Public Guardian (OPG)	37. Legal Aid Queensland (LAQ)	38. Aboriginal and Torres Strait Islander Womens Legal Services NQ (ATSIWLSNQ)
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This response should be read in conjunction with the department's prior response published by the Legal Affairs and Community Safety Committee on Friday, 7 August 2020 (the departmental response).

Note: the submission numbering above reflects the numbering on submissions as provided by the Legal Affairs and Community Safety Committee.

Issue	Submitter No. and Submitter	Clause of Bill	Relevant section of Act	Issues or comments from submitters	Departmental response
Order of priority for deciding whether an action or order best achieves permanency for a child					
Amended order of priority (general)	36. OPG	8	<i>Child Protection Act 1999</i> (CP Act), s 5BA(4)	The Bill creates a risk of permanent removal of children from parents with impaired decision-making capacity where the original removal of the child was based solely on the parent's disability rather than evidence of harm or inability to parent	<p>The Bill does not change the availability or obligation for support to be provided to families to help them to care safely for their child or the threshold for statutory child protection intervention.</p> <p>The CP Act provides for statutory intervention for children in need of protection. Under section 10 of the CP Act, a child in need of protection is a child who:</p> <ul style="list-style-type: none"> • has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and • does not have a parent able and willing to protect the child from harm. <p>There are existing protections and safeguards in the CP Act and the <i>Adoption Act 2009</i> to protect the rights and interests of parents with impaired decision-making capacity.</p>
Adoption as the third preference for achieving permanency for children other than Aboriginal or Torres Strait Islander children	37. LAQ	8	CP Act, s 5BA(4)	<p>Other options for permanency, including permanent care orders and long-term guardianship orders, are preferable to adoption as they provide permanency without severing a child's legal, biological, and familial identity.</p> <p><i>Note: This is also addressed at page 8 of the previous departmental response.</i></p>	<p>The department agrees the preference for a child who requires long-term care will continue to be the child being cared for by a guardian who is a member of their family or another suitable person. This will remain unchanged in new section 5BA(4).</p> <p>The Bill, if passed by Parliament, will amend the CP Act to explicitly reference adoption as the third preference for achieving permanency for children other than Aboriginal or Torres Strait Islander children. The first preference is for the child to be cared for by the child's family; and the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent, or another suitable person (a long-term guardianship order to a suitable person). A permanent care order is one type of a number of long-term care arrangements available.</p>

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	37. LAQ	8	CP Act, s 5BA(4)	Adoption is already available as a permanency option. <i>Note: This is also addressed at page 4 of the departmental response.</i>	The department agrees that adoption is already available as a permanency response for a child who requires long-term care. The amendment clarifies when in the hierarchy of actions or orders for achieving permanency for a child that adoption may be considered as the preferred approach. The best option for an individual child will always be based on their individual circumstances and needs. Under section 5A, the main principle for administering the CP Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.
	37. LAQ	8	CP Act, s 5BA(4)	Legal permanency will have little practical meaning if the child does not have stable living arrangements while in care. <i>Note: This is also addressed at page 5 of the departmental response.</i>	<p>The department agrees that permanency for children is broader than legal permanency and includes ongoing positive relationships with persons of significance for the child including parents, siblings, extended family members and carers; stable living arrangements with connections to community that meet the child's developmental, educational, health, intellectual and physical needs; and the legal arrangements for the child. This is reflected in section 5BA(2) of the CP Act.</p> <p>The department continues to aim to provide stable living arrangements for a child while in care, and a number of ongoing operational reforms are underway to improve support for foster and kinship carers to achieve this aim.</p>
	38. ATSIWLSNQ	8	CP Act, s 5BA(4)	It is not clear how adoption enhances the child's protection as opposed to any other permanency option.	<p>The Bill clarifies that adoption is an option for achieving permanency for children requiring long-term care, as part of the suite of alternative options available.</p> <p>The best option to provide long-term stability and emotional security for an individual child is based on their individual circumstances and needs.</p>

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Adoption for Aboriginal and Torres Strait Islander children	38. ATSIWLSNQ	8	CP Act, s 5BA(4)	Does not support adoption as an option for Aboriginal and Torres Strait Islander children. <i>Note: This is also addressed at page 14 of the departmental response</i>	<p>The department recognises that adoption, especially for Aboriginal and Torres Strait Islander children, is a controversial issue. The Bill acknowledges the ongoing impact of historical practices and ongoing need for cultural safety for Aboriginal and Torres Strait Islander children by proposing to amend the CP Act to make it clear that if a child is an Aboriginal or Torres Strait Islander child, the last preference for achieving permanency is for the child to be adopted under the <i>Adoption Act 1999</i> (Adoption Act).</p> <p>There are also additional principles in section 5C of the CP Act that apply to the administration of the Act. These embed each of the five elements of the Aboriginal and Torres Strait Child Placement Principle in the Act, and include that Aboriginal and Torres Strait Islander peoples have the right to self-determination.</p> <p>The note in the Bill also expressly refers to the principles for administering the Adoption Act. Section 7 of the Adoption Act provides that because adoption is not part of Aboriginal tradition and Islander custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term care only if there is no better available option.</p>
	38. ATSIWLSNQ	8	CP Act, s 5BA(4)	<p>Introducing adoption as a permanent care option will disproportionately affect Aboriginal and Torres Strait Islander children.</p> <p>Entrenched misunderstandings about Aboriginal and Torres Strait Islander child-rearing practices (such as collective child-</p>	<p>The department remains committed to addressing the disproportionate representation of Aboriginal and Torres Strait Islander children who are involved in the child protection system. This includes ongoing commitment to the Our Way strategy and to delivering the actions in the Changing Tracks Action Plan.</p> <p>The <i>Respectfully Journey Together Aboriginal and Torres Strait Islander Cultural Capability Action Plan</i> that is available on the department's website sets out the department's approach and commitment to growing our cultural capability and building our capacity to better support vulnerable Aboriginal and Torres Strait</p>

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				rearing and shared parenting) may lead to children entering the child protection system and staying long enough to be adopted.	<p>Islander peoples, partner more inclusively with key organisations and engage genuinely with communities.</p> <p>The first preference for achieving permanency for a child will remain the child being cared for by their family.</p>
	38. ATSIWLSNQ	8	CP Act, s 5BA	<p>The impact of the Bill will violate or limit the human rights of Aboriginal and Torres Strait Islander people as expressed in the United Nations Declaration on the Rights of Indigenous Peoples.</p> <p>The stated objectives of the Bill do not provide sufficient justification for breaching human rights or limiting sections of the <i>Human Rights Act 2019</i>.</p> <p><i>Note: This is also addressed at page 10 of the departmental response.</i></p>	<p>The department remains committed to working with Aboriginal and Torres Strait Islander children, families, kin and community to achieve the best possible outcomes for children who come into contact with the child protection system. The Bill does not change the additional principles for Aboriginal and Torres Strait Islander children that continue to apply in relation to all case work and decision-making for First Nations children.</p> <p>The Bill is accompanied by a Human Rights Statement of Compatibility as required by the <i>Human Rights Act 2019</i>. The Adoption Act is underpinned by a human rights framework, including the United Nations Convention on the Rights of the Child.</p>

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Requirement for review of case plans for children under the long-term guardianship of the chief executive					
Chief executive must review the case plan within six months of the order reaching two years, to consider whether an alternative order would be more appropriate in achieving permanency	38. ATSIWLSNQ	9	CP Act, new s 51VAA, s 5BA(4)	Support provided reviews consider all options including reunification of the child with family.	<p>The proposed amendment in the Bill to insert a new section 51VAA in the CP Act provides the review must consider whether permanency for the child would be best achieved by an alternative arrangement mentioned in section 5BA(4).</p> <p>This includes the first preference for the child to be cared for by their family, and the second preference for the child to be cared for by a person who is a member of their family or another suitable person.</p>
Timeframes for review	38. ATSIWLSNQ	9	CP Act, new s 51VAA	The two-year timeframe for a review, after which the child may be adopted, presents a particular obstacle for Aboriginal and Torres Strait Islander families to achieve reunification.	<p>The Bill does not require that adoption be considered or expedited after two years of a child protection order granting guardianship to the chief executive. Rather, the Bill requires the chief executive to review the case plan for a child is subject to a long-term child protection order granting guardianship to the chief executive in these circumstances to consider whether there is a better way of achieving permanency for the child.</p> <p>If adoption was identified as an option for a child as part of this review, the <i>Adoption Act 2009</i> would apply, including all of the protections and safeguards for Aboriginal and Torres Strait Islander children.</p>
Proposals not contained in the Bill – reforms to Queensland’s child protection system					
Order of priority for achieving permanency	36. OPG	8	CP Act, s 5BA(4)	The Bill should be amended to ensure the rights of birth parents with disability are protected when decisions are made about permanency.	If the department determines that a child needs long-term care and adoption is the most appropriate long-term care option for a child, the requirements in the <i>Adoption Act 2009</i> will apply.

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				<i>Note: This is also addressed at page 12 of the departmental response.</i>	The consent of a child's parents and every person who is a guardian of the child must be given freely and voluntarily before the Childrens Court can make an order for a child to be adopted. The Adoption Act also requires the provision of specific information, pre-consent counselling and access to legal advice to a child's parents before they consent to the adoption of their child. The Adoption Act includes specific protections for ensuring parents have capacity to consent. The need for consent can only be dispensed by an order made by the Childrens Court in limited circumstances.
Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family	37. LAQ	N/A	CP Act, s 5B	<p>Section 59 of the CPA should be amended to implement the Queensland Child Protection Commission of Inquiry's recommendation 13.20 (that before granting an order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family).</p> <p><i>Note: This is also addressed at page 23 of the departmental response.</i></p>	<p>This suggestion is beyond the scope of the Bill.</p> <p>The CP Act includes the general principle that the preferred way of meeting a child's safety and wellbeing is through supporting the child's family. This principle applies to decision-making and the exercise of powers and functions under the Act by the department, the Director of Child Protection Litigation and the Childrens Court.</p> <p>Before making a child protection order, the Childrens Court must be satisfied that the child is in need of protection and the order is appropriate and desirable for the child's protection; there is a case plan for the child that is appropriate for meeting the child's assessed protection and care needs; and the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms.</p>
Kinship care	37. LAQ	N/A	CP Act, s 5B(h)	Improving the kinship care system may provide unexplored options for permanency.	A child being placed with family or significant others has in many jurisdictions been seen as a preferred permanency option. In Australia, kinship care has been recognised as the preferred placement arrangement for Aboriginal and Torres Strait Islander children, as per the Aboriginal Child Placement Principle.

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				<i>Note: This is also addressed at page 26 of the departmental response.</i>	<p>Research on the effectiveness of kinship care is still emerging with results being mixed and inconclusive. Some research suggests that kinship care can afford children increased stability and continuity; enhanced opportunity to develop their identity and feelings of belonging; better opportunity for family contact and ties; and buffer the effects of family separation. Although the evidence on the effectiveness of kinship care is not conclusive, it is a viable placement option for many children.</p> <p>The department is committed to identifying and fully exploring potential kinship care options for children in care, in line with section 5B(h) of the CP Act.</p> <p>As at 31 March 2020, the proportion of children in home-based care (foster or kinship care) placed with kin carers has increased to 50.3 per cent compared to 48.3 per cent as at 31 March 2019.</p>
Supports for carers	38. ATSIWLSNQ	Clause 8	CP Act, ss 5BA(4) and 83A	<p>Difficult to understand how clause 8 of the Bill achieves greater protection for children in the first two or three years of life, particularly in the absence of good training and wages for carers.</p> <p><i>Note: This is also addressed at page 29 of the departmental response.</i></p>	<p>Section 83A of the CP Act provides that before placing a child in care, the chief executive must give to the proposed carer information the chief executive has that the proposed carer reasonably needs to help them make an informed decision about whether to agree to the placement.</p> <p>Approved carers may be eligible to receive cost reimbursement paid directly by the department via the Fortnightly Caring Allowance, High Support Needs Allowance and Complex Support Needs Allowance in accordance with departmental policy.</p> <p>The department funds foster and kinship care services who are responsible for the ongoing training and development of carers, as well as providing them with support and supervision. The department also funds the Queensland Foster and Kinship Care</p>

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					<p>(QFKC) to provide advice, support and advocacy to all foster and kinship carers in Queensland.</p> <p>The department regularly engages with carers about how the department can better support them, both through region-led activities and the QFKC Oversight Group.</p> <p><i>Partners in Care: Working better with foster and kinship carers</i> (October 2017) was developed in partnership with QFKC and committed the department to a range of actions, the majority of which have been completed.</p>
Departmental practice and culture	36. OPG 37. LAQ	N/A	N/A	<p>Concerns about departmental practice, including disability being regarded as evidence of a parent's inability to care for their child, and kinship options not being explored.</p> <p><i>Note: This is also addressed at page 30 of the departmental response.</i></p>	<p>The concerns raised in the submission are noted and will be further considered by the department.</p> <p>The department has a complaints process that is best placed to respond to particular concerns in individual cases. Further information about the complaints management process is available on the department's website.</p>
Proposals not contained in the Bill – reforms to Queensland's adoption system					
Proposals for adoption reform which are out of scope of the Bill	36. OPG	N/A	Adoption Act, part 2, division 4	<p>Reforms to adoption legislation in relation to:</p> <ul style="list-style-type: none"> consistency with the Guardianship and Administration Act 2000 clarity about the role of a formal guardian for the matter of dispensation with parent consent 	These proposals for reform are out of the scope of the Bill and are policy matters for consideration by Government.

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				<ul style="list-style-type: none"> greater protections for the rights of parents with impaired decision-making capacity for matters of adoption and dispensation. 	
Oversight of adopted children	38. ATSIWLSNQ	N/A	CP Act, s 10	Adoption leaves children living with an adopted family without any departmental scrutiny.	<p>Adoption transfers legal parentage of a child from their parents to their adoptive parents. Following an adoption, the child's adoptive parents have full legal responsibility for the child. For this reason, assessments of people to become eligible to adopt a child in accordance with the Adoption Act are very comprehensive and adoption orders can only be made by the Childrens Court.</p> <p>An adopted child may be considered a 'child in need of protection' for the purposes of the CP Act if they have suffered significant harm, are suffering significant harm or are at risk of suffering significant harm and do not have a parent able and willing to protect them.</p>
Investment, training and implementation					
Early intervention and support for families	36. OPG	N/A	N/A	<p>Recommend mechanisms be changed to allow children and parents to remain together and receive funded support where it is safe for the child to remain at home with appropriate support.</p> <p>Parents must be able to access specialist supports to create a safe environment before adoption is considered.</p>	<p>The 2019-20 State Budget included \$1.3 billion in 2019-20 to support the child protection system through early intervention and continue the <i>Supporting Families, Changing Futures</i> reforms.</p> <p>The <i>Supporting Families Changing Futures</i> reform program is focused on delivering the right services at the right time to support families and keep children safely at home.</p> <p>The department works with parents to support them to access the National Disability Insurance Scheme (NDIS) either directly, through the support of another agency or through informal supports.</p>

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				<p>Where decisions are made based on risk of harm, parents should be allowed the opportunity to address the risk, with appropriate supports and safeguards.</p> <p>Parents may also require specialist support to care for a child with special needs.</p>	The department works with families, the National Disability Insurance Agency (NDIA), mainstream Queensland Government agencies and service providers to ensure children and young people with disability across all child protection phases have access to disability supports to meet their needs.
	37. LAQ; 38. ATSIWLSNQ	N/A	N/A	<p>Reforms aimed at ensuring that families have better and more intensive support to address child protection concerns have yet to be meaningfully and consistently implemented.</p> <p>More funding should be directed towards support services for children rather than child protection intervention and out-of-home care.</p>	<p>The 2019-20 State Budget included \$1.3 billion in 2019-20 to support the child protection system through early intervention and continue the <i>Supporting Families, Changing Futures</i> reforms. The <i>Supporting Families Changing Futures</i> reform program is focused on delivering the right services at the right time to support families and keep children safely at home.</p> <p>The family support system in Queensland includes Family and Child Connect services, Intensive Family Support services, Aboriginal and Torres Strait Islander Child and Family Wellbeing Services and domestic and family violence support services as well as help and support available through the health and disability support service systems.</p>
Support services for Aboriginal and Torres Strait Islander families	38. ATSIWLSNQ	N/A	N/A	Recommend a positive approach to addressing over-representation including improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering or in contact with the child protection system.	Under <i>Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2020–2022</i> , the department is committed to grow its investment in community-controlled Aboriginal and Torres Strait Islander organisations to better reflect the proportion of Aboriginal and Torres Strait Islander people accessing these services and in recognition of the growing evidence of their effectiveness in providing quality services and

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				The Bill represents a failure to invest in the futures of Aboriginal and Torres Strait Islander children in a meaningful way.	support to Aboriginal and Torres Strait Islander families experiencing vulnerability.
Funding for legal services	36. OPG 37. LAQ	N/A	CP Act, s 109; Adoption Act, s 233	Adequate funding for legal representation of birth parents is required due to the significant impact of adoption. The Bill has funding implications for entities other than the department. Legal assistance funding may be required for children and parents who seek legal assistance in relation to adoptions.	This suggestion is beyond the scope of the Bill and is a policy matter for Government.