

Submission on the Child Protection and Other Legislation Amendment Bill 2020



The Amendments in response to recommendation 6(b) of the Deputy State Coroner Bentley's findings of inquest.

According to the explanatory notes, the objectives of the Child Protection and Other Legislation Amendment Bill 2020 (the Bill) are to:

- enhance the approach to permanency under the *Child Protection Act 1999*;
- clarify that adoption is an option for achieving permanency for children in care, as part of the suite of alternative long-term care options available; and
- clarify the importance of and promote alternative permanency options for children under a long-term guardianship order to the chief executive.

The Bill responds to recommendation 6(b) of Deputy State Coroner Bentley's findings of inquest.

The Bill also includes a technical amendment to the *Adoption Act 2009* to allow the chief executive of the Department of Child Safety, Youth and Women to apply for final adoption orders for a small number of children from overseas.

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Permanency amendments to the Child Protection Act 1999 & Adoption Act 2009

Overview

Hope For Our Children thank the Department for Child Safety for the opportunity to consult on the recently proposed amendments to the Child Safety Act 1999 and the Adoption Act 2009. The following document states the Department's amendments and then outlines Hope For Our Children's support or research regarding our recommendations.

Definition of wellbeing and best interest of the child

The *Child Protection Act 1999* is to be administered under principles in Part 2, Division 1 of the Act, including section 5BA. Section 5BA of the *Child Protection Act 1999* sets out principles for achieving permanency for a child and that for ensuring the wellbeing and best interests of a child, the action or order that should be preferred, is one that best ensures the child experiences or has relational, physical and legal permanency. Legal permanency may include a long-term guardianship order, a permanent care order or an adoption order for a child.

The UN Declaration on the Rights of the Child (to which Australia is a signatory) and all State legislation make it clear that the "child's best interest" is of paramount concern.

It is vital that a clear and evidence-based concept of the "child's best interest" informs all decision-makers in the child protection system. Findings from many robust research studies from prominent child development, psychology, paediatric and child abuse prevention organisations have demonstrated the impact of abuse on early childhood development. The community, politicians, family justice and social work professionals need to be informed of this research, mainly because it points to the importance of making timely decisions when children are suffering, or likely to suffer significant harm.

We believe that the 'best interests of the child' should be informed by research evidence concerning: child development, attachment theory, the longer-term impact of chronic neglect and maltreatment of children, and the primacy of the child in decision making (particularly vital when defending decisions at court).

The above amendment implies that the best interest of the wellbeing/best interest of a child is the decision-making processes that best ensures the child experiences or has relational, physical, and legal permanency. This definition needs to be supported by research and recorded in the Schedule 3 section of the Adoption Act 2009 and Child Protection Act 1999. Thus ensuring future decision-making for children at risk and in care, is made with their permanency in mind.

Discussion of biological parental consent

In 2015, during consultation meetings with Shane Bevis (Senior Policy Advisor to Minister Shannon Fentiman MP) held within the Department of Child Safety, we were told repeatedly and emphatically (by S. Bevis) that Queensland Department of Child Safety would never place a child in permanency placement (via Permanency Care Order or Adoption) without the biological parent's consent. The current legislation equips the use of permanency decisions to be made without parental consent. The utilisation of the legislation's success is governed by whichever approach is used by the current

decision-makers. Looking at the current figures of 10,976 children living out of home care, the need for parental consent will necessitate that very few children achieve secured permanency. However, if the legislation requests no parental consent, then 62% of children in care could be provided with a secured future through the following amendments.

Order or priority of permanency principles

The Bill will achieve its objective of enhancing the approach to permanency under the *Child Protection Act 1999* and clarifying that adoption is an option for achieving permanency for children in care by providing adoption is the third preference in the order of priority for deciding whether an action or order best achieves permanency for a child, except for an Aboriginal or Torres Strait Islander child.

Section 5BA(4) provides that for deciding whether an action or order best achieves permanency for a child, the following principles also apply, in order or priority: the first preference is for the child to be cared for by the child's family; 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 of the child, or another suitable person (this could include a child protection order granting long-term guardianship of the child or permanent care order); and the third preference is for the child to be cared for under the guardianship of the chief executive (such as under a child protection order granting long-term guardianship to the chief executive).

Queensland's *Adoption Act 2009* allows an adoption order to be made for a child who is subject to a child protection order and it is another option to provide permanency for a child. However, in order to clarify this position, the Bill amends the principles in section 5BA(4) of the *Child Protection Act 1999* to provide that for a child who is not an Aboriginal or Torres Strait Islander child, the third preference for deciding if an action or order achieves permanency for a child is for the child to be adopted under the *Adoption Act 2009*.

To clarify the importance of stability and continuity for children in care, and implement the intent of the Deputy State Coroner's recommendation 6(b), the Bill also provides that after adoption, the next (or last) preference for a child who is not an Aboriginal or Torres Strait Islander child is for the child to be cared for under the guardianship of the chief executive.

Hope For Our Children agree with the above-mentioned priority of permanency, however, we don't agree with the exclusion of ATSI children from said permanency. The inclusion of ATSI children is discussed further below.

Hope For Our Children are supportive of children in care, having a range of permanency options available to best suit their individual needs. Some children have experienced severe trauma and as a result, have high needs that require expensive therapy, both current and in the future. Offering high need children permanency options with financial and agency support would be a preventative measure against future placement breakdown.

Permanency options for Aboriginal and Torres Strait Islander children

Section 7 of the *Adoption Act 2009* provides that because adoption (as provided for in that Act) is not part of Aboriginal tradition or Island 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 stable care only if there is no better available option. The Bill aligns with this section by providing in section 5BA that in the order of priority for achieving permanency,

if the child is an Aboriginal or Torres Strait Islander child, the last preference is for the child to be adopted under the *Adoption Act 2009*. This is also because adoption has the potential to infringe upon the unique cultural rights of Aboriginal and Torres Strait Islander peoples, including connection with families, communities and cultures.

Permanency options for Aboriginal and Torres Strait Islander children remain restricted due to the ACPP. The 2016 UN Child Rights Progress Report identified that Indigenous children are twice as likely to be developmentally vulnerable as non-indigenous children, due to the impact of intergenerational trauma. This intergenerational trauma is verified by the recent gang rape of a 5-year-old boy in a remote Qld community (The Australian, 2020). The 2010 NT, Bath report, found there are fewer and fewer aboriginal families able to provide substitute care and more and more children likely to require a placement.

Research demonstrates the paramount importance of timely stability for maltreated children who cannot return home. Therefore, maintaining a default position of excluding Indigenous children from permanency options, including open adoption, is likely to perpetuate the disadvantage gap [12] [13].

UK MP Michael Grove stated it was outrageous to deny a child a chance of adoption because of a misguided belief that race or culture is more important than anything else [13]. Children of indigenous heritage have the same right as all other children to be free from violence, ensuring their right to full development. The Australian Government do not allow other cultural practices to take precedence of a child's safety; children in Australia are rightfully protected from cultural norms such as child sacrifice, female genital circumcision, child marriages or gendercide. Keeping children safe in policy and procedure ceases to apply when that child is Indigenous. When we allow any culture to trump a child's safety is not just dangerous but willfully negligent. As J.Sammut(2018) articulates,

The main reason indigenous children are seven times likelier than non-indigenous children to be the subject of a "substantiated" (proven) report of abuse and neglect — as the report released yesterday, Family, Domestic and Sexual Violence in Australia, has found — is that indigenous children are likelier to be left in harm's way because of misplaced "cultural" reasons.

The unintended consequences of the ACPP are that children whose parents have identified them as indigenous, who have been in placements, sometimes for years, 4-6 years, with non-indigenous carers are forced to relocate against their wishes to a carer that identifies as indigenous. It seems in the current system; culture trumps what research evidence says children need for healthy brain development and pro-social relational development.

We believe that the ACPP principle should be reviewed. We recommend maintaining **respect** for culture as an essential and influencing factor in placement decisions; however, child welfare must take precedence over cultural considerations. ATSI children (44% of children in OOHC) should not have their chance at a stable and permanent family minimised because of their race.

Case Planning

Section 51V of the *Child Protection Act 1999* sets out the requirements in relation to the review of a case plan for a child who is subject to a child protection order granting long-term guardianship of the child. A review must happen at least every six months and under section 51X a report about the review must be prepared. The report must include the goal for best achieving permanency for the child, how that goal has been achieved or is yet to be

achieved, and how the revised case plan gives priority to achieve permanency for the child. Section 51X also provides that for a child under a long-term guardianship order to the chief executive, the report must state the progress made in planning for alternative long-term arrangements for the child.

Where there is a substantiation of abuse and neglect, there needs to be a professional assessment of parental capacity to change [1] [2] [3, 4, 5]. Concurrent permanency planning should begin immediately so that if the parent is unwilling or unable to make transformative changes within a child-appropriate timeframe, even with intensive support services; the child can be permanently placed quickly with the least amount of disruption.

Research indicates that if parents do not make transformative changes within six months, they are unlikely to at all [6]. Permanency planning will decrease the cost of cumulative harm and ensure decisions are based on child development timeframes [7] [8, 9] [10, 11].

Policy needs to be reflective of the evidence. With such large numbers of children identified at very young ages, and with the uncontested evidence supporting the importance of timely permanence to ensure the child's best interests, the answer is clear. Permanent placement decisions through open adoption or another permanent order (such as the Permanent Care Order) must be made in a child-appropriate timeframe. Time-limits must be legislated as part of the restructure to prevent multiple placements causing children to drift in care, which further compounds harm (system abuse).

Hope For Our Children supports the amendments that ensure that children under long term guardian to the Chief Executive arrangements be reviewed every 6 months. Hope For Our Children do not support long term guardian to other, be reviewed every 6 months, as this order already supports the child with a long term placement, unless the child indicates that they wish to be adopted.

Children currently on Long Term Orders

The number and proportion of children in the child protection system subject to a long-term child protection order has increased substantially in recent years. However, this increase has largely been in orders granting long-term guardianship of a child to the chief executive. This is the last priority for achieving permanency for a child in Queensland's existing permanency hierarchy.

The Bill will achieve its objective of clarifying the importance of and promoting alternative permanency options for children subject to a child protection order granting long-term guardianship order to the chief executive by inserting new section 51VAA that requires the chief executive to review the case plan for a child two years after the order was made. This review must consider whether permanency for the child would be best achieved by an alternative arrangement as provided for in section 5BA(4).

Hope For Our Children supports the proposed 2 year review to keep the permanency of children as a priority for children in care.

Estimated cost for government implementation

It is anticipated that there will be costs associated with operationalising amendments. Implementation costs associated with practice initiatives within DCSYW will be met from existing resources.

Non-government service organisations

It is imperative that non-government service organisations be accountable for the long-term impacts of practice. Given that there is minimal research evidence to demonstrate secondary family intervention services work to keep children safe. Future funding should be withdrawn where services do not improve child outcomes.

Ineffective social services provided to families has led to thousands of children being damaged through minimising perceptions of violence against children. Abuse and neglect of children have been re-interpreted as mere family dysfunction. Chronic exposure to often multiple forms of maltreatment for extended periods, often results in **lifelong** permanent impairments to learning, behaviour, physical and mental health —at a massive cost to thousands of individual children, their community and the economy.

The NSW *Their Futures Matter: A New Approach* strategy allows the Government to finally find out what works and what doesn't to keep kids safe at home. A recent NSW independent review concluded that despite significantly increased government expenditure, the number of children and young people in out of home care has doubled over the past ten years, and continues to increase. Moreover, the system is failing to improve long-term outcomes for children and to arrest the devastating cycles of intergenerational abuse and neglect. Outcomes are particularly poor for Aboriginal children, young people and families [17].

Not-for-profit charities will no longer receive a blank cheque from taxpayers and be allowed to practice 'family preservation' no matter the long-term cost to kids and the budget.

If support services do not keep kids safe at home as promised, then funding can be removed. Clarification of these expectations to NGO's is crucial. The tragic yet likely truth is that dysfunctional parent, often the product of the current preservation system, stay damaged and damage their children [15, 18, 10, 6, 17].

Implement a strategy like *Their futures matter* where High-quality data is collected to demonstrate the long-term success of family intervention services as well as life outcomes for children known to child safety [16] [10] [19]. Immediate needs are closely tied to long-term outcomes, and as such, any expansion of definition must reflect this reality.

Support moving forward from permanency

After a child has achieved permanency (through any of the previously stated orders), the family may wish to disengage from a close relationship with the Department of Child Safety. The family, however, still requires strong support around them to help prevent placement breakdowns. This support is where NGO's can be supportive in linking families with existing support groups. International Adoption has existing parent groups that support placements and educate parents on

trauma behaviours, attachment parenting and mentors. When children can experience permanency, access to groups such as the Intercountry Adoption Communities is invaluable for the children involved. NGO's can assist families in applying for NDIS support to ensure that children receive all therapeutic support possible.

Improved Judicial Training

Legal practitioners and members of the judiciary, making legal decisions concerning children being permanently placed or adopted from out of home care should be provided with appropriate professional development to set the context for their decision-making.

Child development education and the paramount importance of timely permanency must become a mandatory part of judicial and child safety staff professional development. To ensure decisions are made in a child's best interests, those making decisions must be informed of what scientific research has demonstrated is in the child's best interests.

Given the long-term and critical impact of these decisions on the child (parents and carers, but especially children) lawyers and judges must be continually aware of the context within which they are operating.

Introduce better education programs for judicial staff, similar to those proposed by the Victorian Cummins Review. These including 1) understanding of abuse, neglect and trauma, 2) understanding of physiological issues and long-term (permanent) damage due to harm and 3) cumulative harm risks arising from chronic abuse and neglect.

Education in Childhood Development

There is an ideologically driven, family preservation culture in the social work area. This may in part be due to the tone and content of training currently provided to social workers. Social work courses are currently outweighed with post-modern theories of society rather than the vital understanding of child development and the cognitive damage that accrues through abuse and neglect.

Many organisations such as Barnados, The University of Sydney and CIS, highlight a pervasive anti-adoption and family preservation ideology present in agencies across Australia due to a wide range of beliefs and customary practices.

Basing university education, as well as ongoing professional development and training, on evidence-based best practice, informing those involved in child protection of the cumulative harm and permanent developmental impacts of abuse and neglect could help to shift the pervasive family preservation culture among social workers. This has been effective in the UK, so we would suggest following their lead.

The NSW Government has recently introduced workshops to give frontline workers and managers the knowledge, skills and confidence to consider open adoption or another permanent care order. Workshops such as those are imperative for this success of permanency for children in Queensland. Hope For Our Children, located in the South West Region of Child Safety, have had contact from carers who have had their teenage foster children (Long Term to Chief Executive) asking for permanency, only to be refused by their CSO's any discussion of the Permanency Care Order.

Introduce more comprehensive professional development, education and training of social workers, including at an undergraduate degree level. Study and continuing professional development should focus on evidence best practice, brain development, the neurobiology of trauma, as well as the need for timely stable attachments for optimal pro-social development.

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