

Submission to Inquiry into the Child Protection and Other Legislation Amendment Bill 2020

Legal Affairs and Community Safety Committee

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AASW

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Australian Association
of Social Workers

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The Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, discrimination, and matters that influence people's quality of life.

The social work profession

Social work is a tertiary qualified profession recognised internationally that pursues social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

Social work & Child wellbeing and protection

Social workers are employed in a broad range of areas relating to the health and wellbeing of children and families, including in Child Protection, in Aboriginal Community-Controlled Organisations (ACCOs), hospitals, school support and family support services, and in undertaking research and social policy development within different levels of government and in non-government services. Social workers consider the wellbeing and protection of children within the broader social and political context and strive to promote the best interest of children, demonstrating their unwavering commitment to the Convention on the Rights of the Child (CRC).

Responding to, and working in partnership with children, young people and families requires an understanding of the inter-related nature of child wellbeing, abuse and neglect with issues such as poverty, domestic violence, drug and alcohol misuse, disability, colonisation and the ongoing impacts of the Stolen Generation, homelessness, education, health and mental health. No other professional discipline is so immersed in the areas of knowledge that are essential for quality relationship-based child protection practice. As a result, social workers are recognised throughout the world as the core professional group in child protection policy, management and practice.

The AASW acknowledges, in line with the United Nations' Convention on the Rights of the Child¹ (applicable to individuals 18 and under), that "the child for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." For most children, this is the family into which they were born. In line with Article 9 of the Convention on the Rights of the Child, the AASW accepts that there are circumstances where the state may intervene to separate children from their parents.

Children are adopted for numerous reasons. For some it can be a result of parental abuse and neglect, resulting in the need for state intervention. Children who come into the care of the state are among the most vulnerable members of society. It is the position of the AASW that governments have a responsibility **in the first instance** to concentrate efforts on creating environments in which children and families are supported and assisted so that the various factors that contribute to the need for intervention by the state is substantially reduced.

Our submission

The AASW welcomes the opportunity to provide a submission to the Committee on the Inquiry into the Child Protection and Other Legislation Amendment Bill 2020. The AASW opposes the Bill. In our submission we want to comment on the following areas:

- Amendment of s 5BA (Principles for achieving permanency for a child)
- Insertion of new s 51VAA
- General comment on how the Queensland government can improve the outcome for children-in-care

Recommendations

- That the Queensland government repeal the amendment of s 5BA so that adoption should only be considered as one of a suite of possible responses after all other options for achieving the child's safety are sufficiently explored, which involves access to appropriate supports, case planning and casework.

¹ Convention on the rights of the Child. Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- That the Queensland government repeal the insertion of new s 51VAA to ensure that all children and their families, in particular Aboriginal and/or Torres Strait Islander children and families, can have sufficient time to receive the necessary support and access to service to prevent children being in care or remaining in care
- That the Queensland government undergo a comprehensive review of other jurisdictions in Australia and across the world in the area of Adoptions before proposing further amendments
- That the Queensland government invest in prevention and early intervention concurrently
- That the Queensland improve staff resourcing to provide holistic and comprehensive case planning, and develop a knowledgeable, well trained, accredited, and supported child protection workforce.

Amendment of s 5BA (Principles for achieving permanency for a child)

The AASW submits that this amendment can and will cause unintended damage on children and their families.

We suggest that adoption **is currently already an option** for children in care in Queensland. This is in addition to the introduction of reforms to improve permanency outcomes for children in October 2018. These reforms included new permanency principles, case planning requirements including early planning for permanency, a limit on the making of successive short-term child protection orders that extend beyond two years unless it is in the child best interests, and the introduction of a new child protection order – a Permanent Care Order (PCO).

AASW members emphasise that the wellbeing of a child is not safeguarded once they are adopted out of the state care system. There is no current departmental oversight on the wellbeing of adopted children, compared to long-term protection orders. Current child protection long-term orders retain a level of oversight by the Department of Child Safety, youth, and Women (the Department) yet adoption does not. It is important to reflect on the lessons of the Forde Inquiry and Royal Commission into Institutional Abuse of Children where we have heard from adults saying that they were placed in settings where they were supposed to be safe and never heard from child protection workers again. The lack of ongoing support and an external set of eyes to monitor and ensure their safety resulted in significant abuse and neglect for many children. The lack of any oversight from the Department is of concern, given the lessons from the past that are still significantly affecting many people today.

In addition, the amendment might convey a confusing message to foster parents that foster-caring has become a 'pathway to adoption'. Under a child protection order, there is still the requirement for family contact – an adoption means this is severed. Prospective adoptive parents might take on foster caring with the aim of adopting a child, which raises significant ethical issues. In particular, the extent to which genuine effort and work towards reunification can take place if foster carers are 'looking for a prospective child'. The unintended consequences of this require careful thought and

consideration to avoid unnecessary placement breakdowns and lack of focus on working with the family towards reunification because a family has been identified.

The AASW is also concerned about the QLD government's vision of adoption as being 'risk-free' and/or a 'ultimate' solution without considering the underlying risks within adoption. Adoption does not necessarily mean stability. In fact, permanent placements of all kinds are vulnerable to disruption or breakdowns². Poor parenting including child abuse can occur in first families, out-of-home care and adoptive families. All parties in adoption (children, adopted adults, families, adoptive families) need support and appropriate services across the lifespan.

Furthermore, painting adoption as the one-size-fit-all solution to children in care disregards our history of forced adoption and the right for children to connect with their family and kin. The current legislation does not focus on the needs of children and families from diverse backgrounds in terms of ethnicity, culture and religion. There is no explicit requirement for connection to culture with this diverse group. There is a strong evidence base indicating that as children grow, they seek their biological families, seeking their sense of belonging and connection³. We respectfully draw the Queensland Government's attention to the findings from the *Commonwealth Contribution to Former Forced Adoption Policies and Practices*, and the importance of learning from this inquiry. Once a child is adopted there is no oversight or assurance that connection with family and kin is going to be continued, which can lead to another generation of traumatised children and adults. The evidence around permanency and stability, particularly for the first 1000 days of a child's life is compelling and significant. However, the other compelling body of evidence around the implications for children in care and their need to seek their identity also needs to be recognised equally. We need a more nuanced and integrated approach that recognises the importance of relational stability, of connection and belonging if we are to avoid the mistakes of our recent past.

The AASW is also concerned that adoption can compound the trauma of children and their families. AASW members often witness the trauma experienced by children in a permanent care order, even by very young children placed in care. The trauma can manifest as they grow as we have seen with very young children placed in foster care as they grow and enter their teenage years. Understanding of potential trauma and access to trauma informed care is necessary to support the child and their carers. The idea that adoption is a risk-free option for children has been challenged by researchers and the experiences of the UK where evidence shows re-traumatisation of children⁴. The grief and loss experienced by a parent when they lose a child to adoption can impact their ability to care for other children who may be in their care, or for future children. For example, where a newborn is taken into care because of their age, but older children are left with the parent/s, the ensuing grief and loss can impact the whole family; the parent's ability to care for their children appropriately

² Fronek, P., & Cuthbert, D. (2016) Submission into the Inquiry into Local Adoption, House of Representatives Standing Committee on Social Policy and Legal Affairs. Submission 6

³ Von Korff, L., & Grotevant, H. D. (2011). Contact in adoption and adoptive identity formation: the mediating role of family conversation. *Journal of Family Psychology*, 25(3), 393.

⁴ BASW. (2018). The Response of the British Association of Social Workers (BASW) to the Report by Professors Brid Featherstone and Anna Gupta. Retrieved from Birmingham, UK: <https://www.basw.co.uk/adoptionenquiry/docs/BASW%20adoption%20response.pdf>

because of their own distress along with whatever other complex issues exist; the loss and grief for the other children of losing their sibling, which would be compounded if the child is placed in adoption because of the lack of expectations around connection. The trauma that this can create for a whole family is significant and needs to be considered. We would see this as a responsibility of the government to assure the best interests of the child.

Insertion of new s 51VAA

The AASW submits that the insertion of new S51VAA might, in fact, expediate adoption instead of securing the best interest of children.

We agree that the insertion imposes an unreasonable expectation for very young parents and Aboriginal and/or Torres Strait Islander children and families. Our members recognise that for very young parents it can take more time to address issues and support them to become parents, particularly as they themselves continue to work through their own developmental changes. This is made more complex for a very young parent who themselves has experienced abuse or neglect as a child, and so has that trauma to work through. Expecting a young person to work through their own trauma, grief and loss, within 2 years, while learning to become a parent, may be unrealistic.

For Aboriginal and/or Torres Strait Islander children and families, the concern we have is that a two year timeframe to address what are most often systemic, and intergenerational issues associated with trauma, dispossession and structural inequality fails to recognise the complexity involved and indeed continues to punish families for the results of colonisation and oppressive policies and practices⁵. It is, in our view, unreasonable that adoption be considered after two years, particularly when we take into consideration the issues of workload and resourcing within the Department, the limited number of Aboriginal and/or Torres Strait Islander workers to ensure culturally appropriate practices; and the lack of culturally appropriate services which is still an ongoing issue, particularly in regional and remote locations. We need to avoid another stolen generation and therefore require a robust process to ensure that Aboriginal and Torres Strait Islander children and families receive the necessary support and access to services to prevent children being in care or remaining in care.

The proposed insertion also ignores the complex issues faced by parents whose children are subject to a long-term guardianship order. Our members suggest that many parents have not received the appropriate supports and services within the specified period. For others, the period has not been sufficient to address their concerns. If this were to result in the child being removed permanently, it could create a 'narrative' about the parent as unwilling or unable to care for their child safely. For example, a parent with complex mental health issues can recover sufficiently with time, however they have already been deemed 'incapable' parents by the child protection system. This can then result in denying the parent the opportunity to parent into the future, when we know that people can change, particularly with the right support.

⁵ Cuthbert, D. & Quartly, M. (2012). Forced adoption in the national story of apology and regret. *Australian Journal of Politics and History*, 58(1), 82-96

We are also concerned about the potential for this insertion to introduce the need for long term orders after 24 months. This has in fact led to more children being placed on long term orders. Our concern is that the 2-year period is insufficient when the actual resources required to support the family are not available. Funding continues to be inadequate to provide the comprehensive services that families with complex needs, as was evidenced with Mason Jet Lee's family. Intergenerational trauma, abuse, and neglect requires significant support and when this is not provided children will revolve through the child protection system.

General comment on how the Government can improve the outcome for children-in-care.

Increasing the investment to family support services

The government is committed to promoting positive long-term outcomes for children in the child protection system, which requires investment and appropriate supports being put in place to support families to better care for and protect their children. Timely decision making needs to take into consideration of the availability and access to appropriate services to support what are commonly highly complex issues. Our members observe that there are a number of situations where adequate supports have not been available to the family/parents or work has not progressed as it should have in identifying and providing the appropriate supports to families, and/or unreasonable case plan goals are put in place, resulting in families in effect being set up to fail. Australian research and evaluations of services that support families demonstrate that with the right interventions and level of support, parents can and do improve their capacity to parent⁶. Without addressing this, we are concerned that families will be unfairly judged when they in fact did not have the appropriate support provided to them. For families living in communities and regions where there are limited services, this becomes even more pronounced.

Therefore, AASW encourages the government to increase resourcing for the professional development of child protection workers. Staff resourcing to provide holistic and comprehensive case planning and case work continues to be an issue, as highlighted by Coroner Bentley's report, lack of qualified and experienced staff, coupled with gaps in supervision and support of inexperienced staff, who were making complex decisions, and large workloads were all present. While we recognise that the Department has reported addressing many of these issues, we are concerned that this is not always the case. Reports highlighted from the Together Union, along with personal members' stories suggests that resourcing remains an issue.

Learning from the experiences from other jurisdictions

⁶ Levey, E. J., Gelaye, B., Bain, P., Rondon, M. B., Borba, C. P. C., Henderson, D. C., & Williams, M. A. (2017). A systematic review of randomized controlled trials of interventions designed to decrease child abuse in high-risk families. *Child Abuse & Neglect*, 65, 48-57. doi:<https://doi.org/10.1016/j.chiabu.2017.01.004>

The AASW also encourages the Queensland government to understand the learnings from other jurisdictions in Australia and other countries in the area of adoption. While the NSW model has been identified in the explanatory notes as a benchmark, we need to be acutely mindful of the mistakes and issues that have arisen⁷.

The lessons from overseas jurisdictions identified the following issues: limited investigations that have not adequately contacted or assessed extended family or kinship options; adoptions during parental illness; inappropriate adoptive families approved due to inadequate processes including time constraints; the lack of consideration of sibling rights and relationships resulting in separations⁸. In fact, the Council of Europe suggests that it is not enough to show that a child could be placed in a more beneficial environment for its upbringing to remove a child from his or her parents and even less to sever family ties completely⁹. Only three countries in the EU allow adoption from care without consent. Indeed, consent for adoption has been identified as critical in the research. Fronek and Cuthbert state that in the current political economic legal context, support and preventative services are a much lesser priority than investigation and validation which results in a failure to engage families which, in turn, diverts vulnerable families from seeking help adding to existing problems¹⁰.

The AASW directs the QLD government to some positive examples overseas. For example, the government should consider the suitability of introducing Indigenous-led child welfare and child protection services based on the notion of self-determination as is the case in the USA and parts of Canada prior to the introduction of adoption. Examples include Active Efforts which include affirmative, active, thorough, and timely efforts to ensure maintenance and reunification to a child's family¹¹. This must be done as soon as a child enters the care of the Department of Child Safety, Youth, and Women.

Developing an appeal process for adoption

The AASW encourages the QLD government to ensure there is a strong "right to appeal process" for biological family particularly where there is evidence that appropriate case work was not undertaken (due to systems or resource issues) within the 24-month period outlined. This adds weight to our concerns about many families not having access to appropriate case work. *The Child Protection Act 1999 (QLD)* must have rigorous protections in place with regards to the potential

⁷ Fronek, P., & Cuthbert, D. (2016) Submission into the Inquiry into Local Adoption, House of Representatives Standing Committee on Social Policy and Legal Affairs. Submission 6

⁸ Ibid.

⁹ Council of Europe (2015) Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States. <http://assembly.coe.int/nw/xml/XRef/XRef-DocDetails-EN.asp?FileId=21567>

¹⁰ Fronek, P., & Cuthbert, D. (2016) Submission into the Inquiry into Local Adoption, House of Representatives Standing Committee on Social Policy and Legal Affairs. Submission 6, p.6

¹¹ Secretariat of National Aboriginal and Islander Child Care. (2019) THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE: A GUIDE TO SUPPORT IMPLEMENTATION. Retrieved from https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf

adopting parents and adopted children, and as we have argued, a strong safety net to support all involved including the need for connection and identity.

Conclusion

The rights and the best interests of a child must be at the forefront of decision making in relation to out of home care and adoption. We urge the Queensland Government to uphold the paramount principle of the *Child Protection Act*, which 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

The AASW thanks the Queensland Government for the opportunity to participate in this Inquiry and look forward to working with all appropriate services and sectors to achieve better outcomes for children, young people and their families.



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