



# Submission to the Legal Affairs and Community Safety Committee:

## Child Protection and Other Legislation Amendment Bill 2020.

August 2020

CREATE Foundation





## About CREATE Foundation

CREATE Foundation is the national consumer body representing the voices of almost 50,000 children and young people in the out-of-home care system, as well as those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential, in line with our mission to:

**CONNECT** children and young people to each other, CREATE and their community; to

**EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard; to

**CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

At CREATE, we believe that to improve the care system, we need to listen to the people who have experienced the system firsthand. Everything we do is shaped by the voices of children and young people with a care experience.



## Introduction

CREATE welcomes the opportunity to comment on child protection legislation in Queensland, and amendments to the *Child Protection Act 1999* and *Adoption Act 2009* (Qld) through the Child Protection and Other Legislation Amendment Bill 2020 (the Amendment). When considering permanency options for children and young people, CREATE is committed to ensuring that relevant policy, legislation, and practice changes occur with consideration of the lived experiences of children and young people with an out-of-home care experience who can be regarded as experts.

It is important for children and young people in out-of-home care (OOHC) to achieve stable, safe long-term care arrangements. It is widely recognised that a stable home environment supports children to develop healthy relationships throughout their lives and is an important predictor of their wellbeing and development (Patalay & Fitzsimons, 2018; Bethell et al., 2017). Whilst permanency options are important for the development and life outcomes of children and young people, government intervention to legally sever a child's ties with their family should be a response of last resort where there is no less extreme way that their care or permanency needs could be met. Adoption, whilst relevant in limited circumstances, establishes a new identity for a child and provides little ongoing protection or oversight for their care and wellbeing, especially in relation to contact with biological and extended family and current and future siblings.

CREATE notes that the stated objectives of the Amendment 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 Amendment outlines the following principles to apply for deciding whether an action order best achieves permanency for child and the order of their priority.


### Clause 9

1. (a) the first preference is for the child to be cared for by the child's family;
2. (b) 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;
3. (c) if the child is not an Aboriginal or Torres Strait Islander child—the next preference is for the child to be adopted under the *Adoption Act 2009*;
4. (d) the next preference is for the child to be cared for under the guardianship of the chief executive;
5. (e) 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 submission is informed by the voices of children and young people with a lived experience of the care system. CREATE's research with children and young people, has shown that adequate efforts are not always made to seek the views of children and young people in child protection matters, and that too often children and young people do not feel that they have been involved in fundamental decisions. As such, we would suggest that legislation requires that "active efforts"<sup>1</sup> be made to seek the views of children and young people in adoptive matters, and that these efforts are required to be demonstrated before the court. To ensure the Court is supported to make a determination in the "best

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<sup>1</sup> Definition of active efforts can be found in [https://www.snaicc.org.au/wp-content/uploads/2019/06/928\\_SNAICC-ATSI CPP-resource-June2019.pdf](https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSI CPP-resource-June2019.pdf)



interests” of the child or young person, it is imperative that appropriate resourcing is committed to ensure timely, child-centred, and thorough pre-adoptive assessments. Such assessments would necessitate active engagement with the child or young person and a process to ensure that all kinship options have been explored.

In recent years, CREATE has consulted with children and young people on the issue of adoption and permanency and received a range of diverse and varied responses. Whilst it is clear that children and young people want to grow up in a stable, safe, and loving home, the meaning of stability varies greatly among young people, as does their thoughts about permanency and the best ways to achieve it. This diversity demonstrates that a one-size-fits-all approach to permanency is inappropriate, and a tailored approach where children and young people are part of the decision making process is imperative. CREATEs position paper on adoption (2014a) reflects these diversity and states:

CREATE advocates for measures facilitating stability of placements in out-of-home care and permanence in the relationships experienced by children and young people who are not able to live with their birth parents. Permanence can be achieved by reunification with family, legal guardianship, and adoption (Akin, 2011 in CREATE Foundation, 2014a). If adoption is chosen as the most appropriate course of action in an individual case, CREATE supports the view that the decision must be based on what would be in the best interests of the child or young person (Cuthbert & Quartly, 2010 in CREATE Foundation, 2014a).

(CREATE, 2014a, p. 1)

## Participation

CREATE notes neither the Amendment nor the Statement of Compatibility (prepared in accordance with Part 3 of the Human Rights Act 2019) acknowledge nor enshrine the child’s participation or expression of views in this process. The participation of children and young people in decisions that relate to them including their immediate circumstances, day-to-day care and support, and their long-term care needs is a right under the United Nations Convention on the Rights of the Child, Article 12 (United Nations, 1989). Actively participating in decisions that affect one’s life is not a privilege, but rather, an important developmental process, which enables children and young people to have a sense of agency in relation to their own care and lives (Davies, 2011). Thus, for adoption to be genuinely considered, the child or young person needs to be fully informed and supported, be part of the decision-making process, and consent to adoption (in line with age of the child/young person) before it proceeds. This reiterates the importance of children and young people having an inherent right to have their opinions heard and considered (G-Force, 2013).

It is important to consider the long term needs of children and young people when making permanent decisions that will have an impact on their lives (positive or negative) potentially for years to come. However, there is evidence that young people are often not included in important decisions. For example, only 44% of children and young people are aware of their case plan (McDowall, 2018). This indicates the importance of individualised decision-making and the inclusion of young people in order to understand what they need to feel stable, and when making decisions related to permanency. Ensuring young people are involved in decision-making processes must be a priority.

### CREATE recommends:

- Children and young people should be included in decisions about their lives. This is especially critical in permanent decisions such as adoption;
- The child or young person should be fully informed about the legal implications of adoption and supported to make an informed decision;
- In the case of young children under three where they do not have the capacity to be involved in such a significant decision, adoption should only be considered as a last resort, in exceptional circumstances, and in collaboration with the child’s family and other support systems;

- Principles for permanency should include and call for children and young people to be part of the process.

### Time frames

CREATE is concerned that the stipulation of a 24 month maximum period by which permanency decisions should be made may create undue emphasis and drive toward meeting targets, rather than addressing the needs and best interests of the child and/or family. There is extensive evidence to suggest that families who receive adequate support when needed are far more likely to be able to safely care for their children (CREATE Foundation, 2019). In line with prevention and early intervention strategies, increased investment and early support for families is important and *permanency with family* should also be a legitimate goal that is adequately considered, supported and invested in.

In 2019, CREATE conducted a consultation with 31 young people with a care experience regarding their thoughts on permanency and stability. This consultation was conducted as part of the *Supporting Families Changing Futures* reform program, and the introduction of Permanent Care Orders as part of the *Child Protection Reform Amendment Act 2017*.

In this consultation, young people felt concerned about the maximum two-year duration on short-term orders and that it may not be long enough to assess and/or support parents for reunification (CREATE Foundation, 2019).

*Depending on the issues like drugs and alcohol or domestic violence, it may take longer than two years for rehab for the reunification process (Young Person A)*

*Only having two years seems like a short amount of time to prove that they're capable (Young Person B)*

### CREATE recommends:


- Adoption is only considered when evidence indicates that it is highly unlikely that parents will be able to provide adequate parenting and on a case-by-case basis, guided by the needs and wishes of young people and not prioritised due to time frame or administrative pressures;
- Increased investment is directed to early intervention and support services for families.

### Family and sibling contact

According to the UN Universal Declaration of Human Rights, the family is “the fundamental group unit of society” (UN General Assembly, 1948). It is a principle of international and domestic law that family based care offers the best opportunities for children to grow and reach their potential and *is one of the strongest and most consistent predictors of child well-being and resilience* (Newland, 2014, p. 1). Every jurisdiction in Australia, including Queensland, aims to restore a child or young person in out-of-home care with their biological family unit (Australian Institute of Family Studies, 2018a; 2018b).

CREATE’s national report into sibling placement and contact in out-of-home care (McDowall, 2015) showed it is essential for governments to better accommodate the needs of siblings in care, including ensuring co-placement whenever possible (i.e., where harm is not a concern and carer capacity is available), and regular ongoing contact between siblings when co-placement is not possible (CREATE Foundation, 2014b).

CREATE’s 2013 report card found that contact with biological family members is very important to children and young people and contact with siblings are especially critical (McDowall, 2013). Research suggests that young people who experience strong sibling relationships while in care have greater levels of social support, self-esteem, potential income, and continuing adult sibling relationships than those who do not have such childhood relationships. In addition, children placed in sibling groups also experience more stability and fewer disruptions in care than those who are separated (Drapeau, Simard, Beaudry, & Charbonneau, 2000). In the case of Aboriginal and Torres Strait Islander children



and young people, sibling relationships are particularly important not only for family connection, but as part of ongoing connection with community and culture (McDowall, 2015).

One young person highlights the challenges of remaining connected to siblings:

*I was brought into care with three of my siblings, but I was one of NINE. Who is going to adopt nine children to keep the siblings together? Adoptees mostly sign up for one or two children, how would you keep the all family members connected, and really connected not a few visits each year. More like time spent together weekly, provide siblings with shared memories like other families are privileged too. If there were nine adoptive households involved with just my family, it would be impossible to keep us connected and have strong and quality relationships. I don't know if being adopted could have changed my path but one thing I know for certain, my siblings would be strangers to me and most likely would not even know I had biological siblings.*

(Family and Sibling Contact)

### *Kinship care*

Kinship care is the informal or formal placement of children with extended family. Kinship care is a preferred option for child protection placements and offers a range of advantages including the preservation of family, connection to cultural identity, and decrease of separation trauma (Boetto, 2010). The success of a placement often depends on the degree to which a young person feels a sense of love and belonging (QATSICPP and Griffith University, 2017) and perceived feeling of security. In a study completed by the Australian Institute of Family Studies, children and young people identified positive experiences of living in kin placements including feelings of safety, belonging, and happiness (COTA National Seniors, 2003; Higgins et al., 2005; Hislop et al., 2004; Mason et al., 2002; cited in Boetto, 2010).

Considering the undeniable benefits of kin care placements, kinship care options including family tracing and support, should be strengthened as part of permanency planning, recognising that stability for children and families exist in their relationship to family, community, and culture (QATSICPP and Griffith University, 2017). CREATE is concerned that children and young people may be considered for adoption in situations where there may be a viable family member willing and able to care for them. CREATE suggests that an independent agency that specialises in ancestry may be able to assist the Department to identify family members where these members are unknown to the child, the parents, and other significant people.

The amendment to adoption laws poses a risk of severing these important relationships with both current and future siblings and kin relations, and therefore should be considered only as a last resort. Open adoptions where family contact is offered is more appropriate than closed adoptions; however, this would require strong systems of support and oversight to ensure that these relationships are maintained and positively supported. CREATE recommends the government consider Simple Adoption (as implemented in France) rather than Plenary Adoption that is enforced here in Australia<sup>2</sup>.


A worker in the sector who also has a lived care experience reflected on this:

*I work with children in OOHC; most have big families and because there is an agency ensuring there is contact, these children have relationships with most of their family members and it really does help them achieve in many aspects of their lives.*

*Do we really want to be alternately separating families, leading a country to create generations of disconnections, separations and mental health issues due to identity and family relationship*

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<sup>2</sup> Discussion of Simple Adoption and Plenary Adoption can be found here <https://theconversation.com/adoption-law-should-be-reformed-to-give-children-legal-connections-to-both-of-their-families-heres-why-127521>



*losses? A repeat to the harm caused to our Indigenous people. None of this aligns with the paramount principal “in the child’s best interest”. Children have the right to have a connection and relationship to family, culture, community and a sense of belonging. Child Safety cannot remove children without the evidence to justify the action.*

Young people consulted for the NSW legislation amendments submission (CREATE Foundation, 2013) also had the following concerns regarding adoption:

*Adoption isn't necessary, stability can be made just by the agencies aiding the carers more with the upbringing of a child. Also adoption is very messy when it comes to the birth families, a lot of hatred and upset will be fuelled if a child is adopted without consent. (Female 16)*

*The thing about foster care and adoption is that in foster care, DoCS is still actively involved. They still control a lot of what goes on. With adoption, they hand it over and you're done. You can't go “Oh shit, I want to move house. This guy's insane.” Once you're handed over, you're handed over. It all just depends it's like a lotto. It depends who you get. (Male 15)*

In CREATE's *Permanency and Stability* consultation (2019), young people were concerned about family visitations with respect to the introduction of Permanent Care Orders (PCOs). Young people felt that the support provided by the Department was important and valuable and wanted this support to continue if they were placed on a PCO. Under proposed adoption laws, the Department would have no legal duty of care to a child, which would leave a gap in oversight and support for maintaining family contact.


Given the importance of family and sibling relationships, **CREATE recommends:**

- Wherever possible that siblings are placed in the same foster, kinship, or if necessary adoptive placement unless the safety or wellbeing of any of the siblings would be negatively impacted;
- In case of siblings that are not in the same placement/home, frequent visitations are facilitated and supported by an external agency or body, guided by the needs and wishes of the children/young people;
- Likewise, if a child or young person is considered for legal adoption, that the family and child is involved in this decision and robust planning for biological family contact is developed and supported by an external agency or body;
- Family tracing systems are strengthened to identify potential kinship placements for children and young people as part of permanency planning;
- An external system is developed to monitor and oversee permanency options in Queensland, including adoption monitoring and maintaining contact with family of origin.

## **Conclusion**

Children and young people are the experts when considering their own lived experience, and can provide critical insights regarding the meaning and different components of permanency and stability. It is essential that we listen to their perspectives to inform legislative, policy, and practice changes that are occurring in this area. If we are to effectively support the permanency needs of each individual child and young person in OOHC, we must listen to their voices and invite their meaningful participation in planning and decision-making.

Adoption remains a contentious issue as it takes parental rights from one family and places it with another. Risks of adoption include loss of identity, culture, and lifetime connections with extended family including current and future siblings. There are contemporary issues regarding historical forced adoptions where the rights of children and parents were negated under government policy. CREATE acknowledges that adoption without consent of the biological parent(s) and/or the child has been and continues to be a traumatic experience in the Australian community and Australia's stolen generations continue to suffer trauma due to forced family separation.



CREATE acknowledges that the amendments to legislation are only part of the process and it is the implementation of these changes that will have the most impact upon the lives of children and young people. We strongly encourage the Queensland government to actively consult and include the voices of children and young people in developing and refining the implementation strategy for the new legislation.


Thank you again for the opportunity to provide comment on the proposed amendments. Please contact [REDACTED] if you require any additional information.





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