



Submission to the

Queensland Parliament
Legal Affairs and Community Safety Committee

*Child Protection and Other Legislation
Amendment Bill 2020*

3 August 2020

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INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the Queensland Parliament – Legal Affairs and Community Safety Committee’s invitation for submissions in relation to the *Child Protection and Other Legislation Amendment Bill 2020*.

ABOUT PEAKCARE

PeakCare is a not for profit peak body for child protection and related family support services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has around 60 members which are a mix of small, medium and large, local, statewide and national non-government organisations that provide prevention and early intervention, generic, targeted and intensive family support to children, young people, adults and families who are at risk of entry to, or who are in the statutory child protection system. Member organisations also provide foster and kinship care and residential care services for children and young people and associated support for their families.

A network of registered supporters made up of individuals and other entities with an interest in child protection and related services, and who are supportive of PeakCare’s policy platform around the safety, wellbeing and connection of children and young people, also subscribe to PeakCare.

ABOUT PEAKCARE’S SUBMISSION

PeakCare’s primary concern is child protection and related services, and as such PeakCare has an interest in reforms relating to the findings and recommendations of the Deputy State Coroner Bentley’s inquest into the death of Mason Jet Lee.

PeakCare’s response addresses the proposed legislative amendments to the *Child Protection Act 1999* in relation to improving stability and permanency for children in care with particular attention to the amendments which are designed to ensure adoption is “routinely and genuinely considered” as an option for achieving permanency for children in care.

PEAKCARE’S RESPONSES TO THE PROPOSED BILL

There are a significant number of complex matters relating to adoption which need more detailed consideration to ensure any legislative, policy and practice changes are in the best interests of Queensland’s children. The following highlights some of these in response to the proposed provisions in the Bill and their apparent intentions.

Adoption is one option in a suite of permanent care options

PeakCare shares concerns about the adverse consequences of multiple out-of-home care placements experienced by many children in long-term care, and the delays in the decision-making processes, which are long-standing and common across jurisdictions. There are, however, different views about how increased stability and security for children can be achieved.

While PeakCare supports adoption being one of a suite of permanent care options (as it already is in Queensland), because it may be the best option for some children, there is concern that legislative and policy changes to drive a strong preference for permanence via adoption has the potential to be extremely harmful, as individual children require case by case solutions best suited to their particular needs and circumstances.

The suite of options for permanency in Queensland currently include–

- family preservation – supports and services to prevent a child entering care
- reunification – supports and services to enable a child to be safely restored to their family after entry to care
- long term guardianship to the Chief Executive
- long term guardianship to a to a relative or other suitable person (usually a kinship or foster carer)
- permanent care order – similar to long term guardianship to another person, without departmental case review or capacity for parents to apply to revoke the order
- adoption
- additional to child protection permanency options, Family Court orders can also provide for permanency

PeakCare proposes that adoption is not an end in itself, rather it is the means. “The end” is life-long permanency, stability, security and connections for a child, either with their family or in an alternative care arrangement for those who cannot live with their parents, and it encompasses legal, physical and relational permanency, rather than just placement type. The most suitable permanency option for each individual child’s needs and circumstances is not determined by a hierarchy of options, nor by an ideologically directed priority placed on adoption as a solution, but should be determined by the most suitable permanency option for each individual child’s needs and circumstances.

Rather than a “hierarchy”, each permanency option could have criteria developed about what should be considered and taken into account relevant to each option, essentially what works best for children in which circumstances and when is one option clearly preferable than another, to support decision making about which option is most suitable for a child’s specific needs and circumstances.

An alternative type of adoption, called ‘simple adoption’ has been proposed by some as a solution which proports to address some of the concerns related to full adoption. This form of adoption is used in some countries and while vesting parental responsibility with the adoptive parent, it does not result in the termination of the legal relationship between the adopted child and their birth family. Whether this option is substantially different to existing third party guardianship options is not clear. Further investigation and analysis of the potential benefits, or otherwise, of this type of adoption and its applicability, or not, to the Australian context is needed.

Ethical considerations and human rights

Central to the contention surrounding adoption is that it legally removes and replaces a child's existing parents, siblings (both born and yet to be born) and extended family with new parents and extended family. Adoption results in a change of identity for the child or young person with a new birth certificate that names the adoptive parents as the 'birth' parents, which has been a barrier to understanding identity and family history for some adult adoptees, as highlighted by the Senate Committee Inquiry into the Commonwealth Contribution to Former Forced Adoption Policies and Practices¹ and other research. After considering the legal and technical issues of an adopted child having two birth certificates, the Committee recommended that all jurisdictions adopt 'integrated birth certificates'. The idea is that in a single certificate, details are recorded about the birth family, adoptive family and the adoption.

The permanent reconfiguring of relationships between a child and their family generally no longer means a complete break from the child's birth family, as in 'closed adoption', but may involve some ongoing contact between adopted children and their parents and the exchange of information about the child. These changes are designed to address the identity issues for adopted children and prevent or minimise future difficulties for these children and their families, avoiding the legacy of past adoption practices highlighted by the 'Stolen Generations', 'Forgotten Australians', and all those affected by 'forced adoptions'.

However, while Queensland's adoption legislation encourages open adoption practices, it is not legally mandated. Queensland has an 'adoption plan' system to negotiate contact and information exchange between the birth and adoptive families before the adoption. While data about the type of contact agreed to is collected for some adoptions, contact data in relation to known child adoptions (for example, adoption by relatives or carers) is not collected².

Concerns have been raised about contact plans, made at the time of the adoption order, not being able to be reviewed and adjusted to meet children's changing developmental stages and needs. Additionally, for both adoptive and birth parents, and for children, contact can also bring up a complex range of emotions, which may result in contact plans not being enacted or sustained after the adoption is finalised³. Hence some caution is to be applied as to what "open" adoption actually means in practice and in subsequent outcomes for adopted children regarding ongoing birth family connection and identity formation.

A study in the United Kingdom highlighted long-standing concerns about the impact of adoption on marginalised sections of society. Wider policy issues including inadequate social housing and welfare benefits, reduction in support services, unemployment and such, have resulted in increasing numbers of children and families living in poverty, experiencing considerable adversities, and consequently facing significant barriers when seeking to care safely for their children. Evidence has shown children living in poverty are more likely to be removed from their birth families⁴. Similar

¹ Senate Community Affairs References Committee Inquiry into the Commonwealth Contribution to Former Forced Adoption Policies and Practices, Commonwealth of Australia 2012

² Australian Institute of Health and Welfare 2019. Adoptions Australia 2018–19. Child welfare series no. 71. Cat. no. CWS 71. Canberra: AIHW p27

³ Luu B, Conley Wright A & Cashmore J 2019. Contact and adoption plans for children adopted from out-of-home care in New South Wales. *Australian Social Work* 72(4):404–418

⁴ Featherstone, Brid, Gupta, Anna, Mills, Sue (2018) The role of the social worker in adoption – ethics and human rights: An Enquiry, British Association of Social Workers

issues in the Australian child protection system can be seen, particularly the over-representation of Aboriginal and Torres Strait Islander children and the high numbers of children from families experiencing multiple socio-economic disadvantages.

The same study reflected that the promotion of adoption by governments impacted on workers' abilities to take a situated ethical approach that reflected the complexities of individual children and their families' circumstances.

Further to this were ethical issues raised in relation to adoptive parents being left caring for traumatised children without adequate support and help, potentially a significant issue in Queensland if adopting children from the child protection system, who are likely to have trauma histories, without appropriate long term post-adoptive support throughout the various developmental stages for children and their families. Lessons from the United Kingdom are relevant here in that adoption support has focused on providing support services in the first few months and years of an adoptive placement, which is important, however supports for teenagers and for adopters parenting teens has been an urgent need not widely available⁵.

Other research from the United Kingdom indicates that pursuing a strong preference for permanency via adoption also raises concerns about this choice being driven by the need to reduce state expenditure on the "in care" population and may turn alternatives like third party guardianship, or foster and residential care, into second class options, although good quality placements of this kind may be the best choice for some children. In addition, the concentration on adoption may encourage a fragmentary approach to the child welfare field rather than embracing an integrated view of the available choices so that the best plan is made for each individual child⁶.

Issues have been raised about the level of non-consensual adoptions and the obvious implications from a human rights perspective and the subsequent impact on the future 'openness' of adoption to benefit children's identity development. For carer (known child) adoptions in Australia finalised in 2018–19, consent from one or both parents occurred in only 21 percent of cases. With the majority (nearly 80 percent) of adoptions consent was dispensed or not required⁷.

The push for more timely decisions as to whether to place children in a secure long-term 'family for life' is often at odds with the time that parents need to make the changes required to become a 'good enough' parent. This tension is exacerbated where rehabilitative and support services for parents are hard to access in a timely manner, as is the case across Queensland, and more so in regional and remote areas.

A range of issues in the literature relate to the intrusiveness of adoption as a permanency option, when compared to other options available, and concerns about some adoption practices being incompatible with human rights generally, and specifically not in keeping with the United Nations Convention on the Rights of the Child or the Declaration on the Rights of Indigenous Peoples.

⁵ Ross, Nicola and Cashmore, Judy (2016) Adoption reforms New South Wales style: A comparative look, 30 Australian Journal of Family Law

⁶ Rushton, Alan (2004) A Scoping and Scanning Review of Research on the Adoption of Children Placed from Public Care, *Clinical Child Psychology and Psychiatry* 1359–1045 (200401)9:1 SAGE Publications (London, Thousand Oaks and New Delhi) Vol. 9(1): 89–106

⁷ Australian Institute of Health and Welfare 2019. Adoptions Australia 2018–19. Child welfare series no. 71. Cat. no. CWS 71. Canberra: AIHW p32

Evidence base for adoption from care

In considering the adoption reforms in New South Wales, researchers stated

The most important measure in terms of outcomes should not simply be ‘durability’ and legal and physical permanency but children’s sense of emotional security — their sense of belonging to a family for life, and feeling loved and cared for. How this is best achieved is an empirical question, and one that needs to be properly addressed in the current context to prevent or minimise future difficulties for these children and their families, in stark contrast with the ‘Stolen Generations’ and ‘Forgotten Australians’, and all those affected by ‘forced adoptions’. The decisions associated with children’s adoption must be made in the ‘best interests of the child’, protecting and giving effect to children’s right to identity, to know their origins, and to be cared for in a family environment, in line with the United Nations Convention on the Rights of the Child. These decisions must also be informed by the best available socio-legal research evidence⁸.

This paper also describes a number of factors from research cited that affect the stability and quality of care outcomes for children in adoption and long-term foster care, including how old children are at placement, carers’ preference and expectations, the child’s history and stability prior to their placement, the severity and duration of abuse and neglect, the child’s emotional and behavioural problems, the age of the carer, and their commitment and resources, the child’s wishes and reaction to their placement, the presence of other children including siblings and other foster or adopted children. The authors state the research evidence is not conclusive that adoption necessarily provides for better outcomes for children of *all ages* than long-term stable foster care per se though there is evidence that it does provide greater emotional security and is less likely to disrupt. Adoptions were most likely to break down when children were in their teenage years, when support services were less available.

As a recent review of adoption research in England and Wales concluded: *Both adoption and long-term foster care can provide children with security and permanence. However, the disruption rate of foster placements is higher than that of adoptive placements, although this may be explained in terms of the children’s age at placement rather than the nature of the placement itself. Most of the children in stable placements reported a strong sense of belonging and permanence, but some in foster care expressed more uncertainty about their future relationship with carers. . . . However, few differences were found between children’s levels of emotional and behavioural difficulties, and participation and progress in school, for those in stable long-term foster care and those in adoptive placements⁹.*

As indicated above, a number of commentators have stated that comparisons between adoption and fostering outcomes are complicated by the fact that populations taking these different routes may be different in other significant ways, such as in age, background and abuse histories, meaning

⁸ Ross, Nicola and Cashmore, Judy (2016) Adoption reforms New South Wales style: A comparative look, 30 Australian Journal of Family Law

⁹ Thomas, C. *Adoption for Looked After Children: Messages from Research: An Overview of the Adoption Research Initiative*, BAAF, London, 2013, p 31. Cited in Ross, Nicola and Cashmore, Judy (2016) Adoption reforms New South Wales style: A comparative look, 30 Australian Journal of Family Law

simple comparisons can be misleading and new studies with large samples are needed in order to control for differences in the populations¹⁰.

Research findings cannot determine how an individual case should be decided, including what is proportionate and in a particular child's best interests. However, decisions in children's cases necessarily involve prediction and risk and research findings can and should inform these judgments.

PeakCare is concerned that a robust, ethical, evidence-informed base, from a children's rights perspective, is not yet available to contemplate promoting adoption as a permanency option for children in Queensland unable to live with their families due to child protection concerns. Further research on adoption of children from the child protection system, particularly in the Australian context, is needed to provide a longitudinal focus on the lived experiences of children, birth parents, and adoptive parents, especially in understanding whether such practices can best promote children's development and wellbeing.

Less intrusive permanency options – increased support to enhance family preservation, reunification and kinship care

PeakCare is concerned about the impact of government promoting adoption without adequate consideration of the wider context of responses to children's needs and family difficulties.

While acknowledging recent government investment in prevention and early intervention services in Queensland, there continues to be a vast imbalance in resourcing prevention and early support services as opposed to tertiary child protection responses. The evidence base for shifting Government investment from the tertiary end of the child protection system to primary prevention has received longstanding recognition from all State and Territory Governments and featured as a cornerstone of the *National Framework for Protecting Australia's Children* that was endorsed by the Council of Australian Governments (COAG) in 2009. Despite the active commitments made by all States and Territories, the system has largely remained intransigent with tertiary service responses continuing to swallow the greatest share of child protection budgets.

PeakCare has continued to advocate for increased funding for existing initiatives or new programs to provide earlier support for children and families well before engagement with the statutory child protection system is required. Provision of primary prevention and early support of families (both *early* in a child's life and at the *early* stages of a problem emerging) is one of the major strategies used to improve outcomes for children and families who, for various reasons, may be experiencing vulnerability. This must include place-based responses for families living in rural and remote communities and must encompass specific funding for Aboriginal and Torres Strait Islander community-led programs to meet core principles of self-determination and community control.

Dedicated reunification services are limited and need to be enhanced to provide a sharpened focus and adequate resources for this area of work. There is a lack of information and data about reunification planning and efforts as Queensland did not provide complete statistics for the latest

¹⁰ See for example, Rushton, Alan (2004) A Scoping and Scanning Review of Research on the Adoption of Children Placed from Public Care, *Clinical Child Psychology and Psychiatry* 1359–1045 (200401)9:1 SAGE Publications (London, Thousand Oaks and New Delhi) Vol. 9(1): 89–106

Australian Institute of Health and Welfare national child protection data collection¹¹ which is of concern.

Kinship care is an important and growing form of care in Australia. Nationally at 30 June 2019, the proportion of children in out-of-home care who were placed with relatives or kin was 52.3 per cent, with Queensland having one of the lowest proportions at less than 40 per cent¹².

There is an opportunity to grow and develop specific programs dedicated to family mapping, family finding and family support for kinship families to assist in their caring role, as early successes in investing resources in this area of work in Queensland through recent pilot programs would testify. For all children, but particularly for Aboriginal and Torres Strait Islander children, stability exists in their relationships and connections to community, culture and country. Being with family and being raised by family in culture is at the heart of an Aboriginal child’s perception of permanence, belonging and identity development.

Adoptions by relatives are generally discouraged, as they might confuse and distort biological relationships. For example, if a child was adopted by their grandmother, the child’s parent would legally become the child’s sibling. Transfer of parental responsibility and guardianship are preferred in these circumstances.

Third-party parental responsibility orders, which are already in operation in Queensland, which are a less intrusive option than adoption, transfer all duties, powers, responsibilities, and authority to which parents are entitled by law to a nominated person(s) whom the court considers appropriate. The nominated person might be an individual, such as a relative. Third-party parental responsibility orders aim to provide an opportunity for the child to develop a stable, caring relationship with nurturing caregivers, without severing the tie with the biological family. Unlike adoption, permanent care orders do not lead to the issuing of a new birth certificate for a child, and in Queensland, allow carers to access financial assistance from the government to help with caring expenses.

Specific considerations for Aboriginal and Torres Strait Islander children

Of the 126 Aboriginal and Torres Strait Islander child adoptions over the past 25 years, only 41% were by Aboriginal and Torres Strait Islander Australians¹³.

In 2018–19, 12 Aboriginal and Torres Strait Islander children had adoption orders finalised in Australia, the highest number of finalised adoptions of Aboriginal and Torres Strait Islander children in the past 25 years (equal to the number recorded in 1994–95) Of these children, one was adopted by Aboriginal and Torres Strait Islander Australians, and 11 were adopted by other Australians. All 12 Aboriginal and Torres Strait Islander children in 2018–19 were adopted by either their step-parent, another relative, or their carer¹⁴. This data is not detailed further about the adopter’s relationship to the child or on a state/territory basis.

¹¹ Report on Government Services 2020, Child Protection Services 16.35

¹² Report on Government Services 2020, Child Protection Services 16.22

¹³ Australian Institute of Health and Welfare 2019. Adoptions Australia 2018–19. Child welfare series no. 71. Cat. no. CWS 71. Canberra: AIHW p36

¹⁴ Australian Institute of Health and Welfare 2019. Adoptions Australia 2018–19. Child welfare series no. 71. Cat. no. CWS 71. Canberra: AIHW p52

While the numbers nationally of Aboriginal and Torres Strait Islander children subject to third party guardianship orders has also continued to rise each year¹⁵ (578 in Queensland as at 30 June 2019¹⁶) there is no data available about the Indigenous status of guardians or whether the guardians are relatives or carers.

These high proportions of Aboriginal and Torres Strait Islander children continuing to be adopted by non-Indigenous people, and the lack of data about the third party guardians for Aboriginal and Torres Strait Islander children, is of significant concern in relation to potential ongoing lack of compliance with the Aboriginal and Torres Strait Islander Child Placement Principal, despite the principal now being adopted by all states and territories in legislation and policy.

Given this situation, PeakCare can not have confidence that the intended “safeguards” for Aboriginal and Torres Strait Islander children in the proposed Bill and accompanying operational and policy announcements are sufficient to protect Aboriginal and Torres Strait Islander children from the likely long term adverse impacts of adoption. Connection to family, community, culture and country cannot be assured once an adoption is finalised which presents a major risk for the positive development of identity, connections, belonging and the long-term wellbeing of Aboriginal and Torres Strait Islander children.

PeakCare supports the submission from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, and particularly in light of Queensland’s recent legislative commitments to self-determination for Aboriginal and Torres Strait Islander peoples, does not support adoption for Aboriginal and Torres Strait Islander children, except as it relates to supporting traditional Torres Strait Islander adoption practices.

Thank you for the opportunity to provide submissions on aspects of the *Child Protection and Other Legislation Amendment Bill 2020*. Of note, however, is the short timeframe available to adequately investigate and consider various aspects of the proposed Bill, particularly given its significant life-long implications for vulnerable children and families in Queensland. Any further opportunity for key stakeholders to more fully consider and develop options for such an important policy change, to ensure the best available permanency options for children in Queensland, would be welcomed.

Yours sincerely



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Executive Director
PeakCare Queensland Incorporated

¹⁵ Australian Institute of Health and Welfare 2020. Child protection Australia 2018–19. Child welfare series no. 72. Cat. no. CWS 74. Canberra: AIHW.p63

¹⁶ Australian Institute of Health and Welfare 2020. Child protection Australia 2018–19. Child welfare series no. 72. Cat. no. CWS 74. Canberra: AIHW.p59