

3 August 2020

Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4001

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

Dear Committee Members

Child Protection and Other Legislation Amendment Bill 2020

Thank you for the opportunity to provide a submission in relation to the *Child Protection and Other Legislation Amendment Bill 2020* ('the Bill').

About QCOSS

QCOSS (Queensland Council of Social Service) is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

We work closely with other peak bodies in Queensland. For the purpose of this submission we especially acknowledge and recognise the expertise of PeakCare Queensland Inc and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak ('QATSICPP').

QCOSS is a member of the Queensland Leadership Group of Family Matters, Australia's national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. As a signatory to the Family Matter's letter to you, QCOSS endorses the submission made by QATSICPP in relation to the Bill.

QCOSS' position

QCOSS does not support the passage of the Bill.

We have used the *Human Rights Act 1999* ('the Human Rights Act') to assess the Bill, together with limited feedback from our sector obtained during a workshop on 31 July 2020.

The Bill will result in unjustifiable limitations of the human rights of Queenslanders, in particular the rights of children and families.

The unspeakably tragic death of Mason Jet Lee has caused our state to reflect on our failure to keep all children safe in Queensland. Complex social issues, together with systems failures, mean that we cannot be confident that all children in Queensland are safe.

It is clear we must do better.

The social services sector, the community and Queensland Government must work together. We can keep children safe, secure and with their identity intact in a way that the rights of children and families are subject to less erroneous limitations of human rights than what is proposed in the Bill.

Summary of recommendations

General

1. The Bill should not be passed.

Aboriginal and Torres Strait Islander children¹

2. Adoption should not be an option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.
3. The government must uphold their commitment to properly implementing the *Aboriginal and Torres Strait Islander Child Placement Principles* ('ATSICPP').
4. Safeguards must be put in place to ensure the ATSICPP is adhered to, including through:
 - a. an independent statutory authority should be tasked with reporting to the Queensland Parliament on the Department of Child Safety, Youth and Women's adherence to the ATSICPP and
 - b. independent Aboriginal and Torres Strait Islander advice must be used to inform permanency decisions regarding Aboriginal and Torres Strait Islander children.

Amendments to the Child Protection Act 1999

5. The *Child Protection Act 1999* should be amended to include a requirement that the Department prove that adequate resources and support were provided to biological families (including extended family) when making an application for an order that would lead to removing a child from their family.
6. The *Child Protection Act 1999* should be amended to give greater weight to the views and wishes of children when decisions are made about them, including when orders are made by the Court.

Alternative approaches

7. Alternative models of permanency planning that do not sever the child's right to have a connection with their birth family should be explored.
8. Further consultation and engagement with the social services sector and the community is required to develop better solutions to keeping children safe and ensuring they have lives characterised by stability, while preserving their identity.

Compatibility of the Bill with the Human Rights Act

If passed, the Bill is likely to lead to adoption being more routinely pursued as an option for children who are subject to child protection orders.

The Bill engages the following rights, protected by the Human Rights Act:

¹ These recommendations are an endorsement of the position taken by QATSICPP.

- recognition and equality before the law
- protection of families as the fundamental group unit in society
- rights of the child to special protection, in their best interests
- cultural rights
- cultural rights specific to Aboriginal peoples and Torres Strait Islander peoples
- privacy and reputation.

A result of limiting these rights is an adoption order, which severs the legal relationship between the child and their birth family – parents, siblings, grandparents, aunts and uncles and their entire biological family. Adoption creates a new identity for a child – including a changed birth certificate. There is no legal recourse for biological parents or any members of the extended biological family if the adoptive parents decide that the adopted children will not have a relationship with their biological family.

According to section 13 of the Human Rights Act, these limitations will be compatible with the Act where “*it can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.*”

The very serious limitations on rights proposed by the Bill are only justified if it can be **demonstrated** that there are no other less restrictive and reasonably available ways to achieve the purpose, that is if the purpose is indeed legitimate.

Our view is that limitations to the human rights of Queenslanders proposed in this Bill are not compatible with the Human Rights Act because:

- The purpose of the Bill is not legitimate. It is difficult to see how the recommendations made by the Deputy State Coroner in the *Inquest into the death of Mason Jet Lee* would have addressed the complex social issues and systems failures that are detailed in the report.
- The Bill is unnecessary. Adoption is already an available option for children who are subject to child protection orders.
- There are less restrictive ways to achieve the objective of stability (or permanency) for children who are subject to child protection orders.

Less restrictive measures

On 31 July QCOSS held a workshop “*Human Rights Act in Action: Impact of Changes to the Child Protection Act*” with 228 participants, primarily people working in the social services sector.² Among other things, the workshop explored whether there are less restrictive ways to achieve the objective of stability for children who are subject to child protection orders.

We note the very short consultation period related to the Bill. More fulsome consultation about how the objectives of safety, stability and preserving the identity of children can be achieved would result in solutions that can be developed in partnership with the community and the social services sector.

Examples of less restrictive measures, which were discussed during our workshop are outlined below.

² Not all participants participated in the polling referenced in this submission.

1. Support for biological families

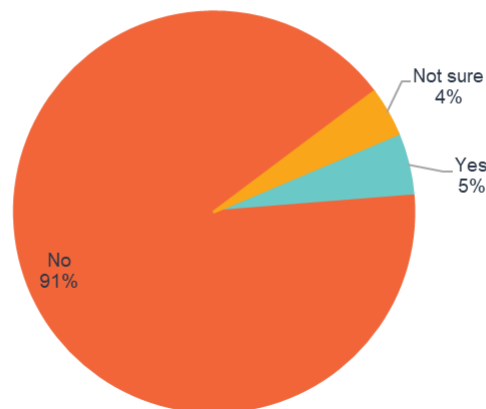
The Statement of Compatibility to the Bill acknowledges that “*there is extensive evidence to suggest that families who receive adequate support when needed are far more likely to be able to safely care for their children.*”

It goes on to say that,

“Resourcing issues may mean that inadequate support is provided to biological families. In that context, it may be difficult to assert that there is no less restrictive reasonably available options to achieve permanency for children in care where it may be the least restrictive alternative would be to ensure appropriate support is provided to all families who require it with the view to keeping families together.”

A poll of the participants in our workshop demonstrated the following:

Do you believe that a sufficient amount of resources is being invested in supporting families to look after their children?



A lack of resources should not be the reason that children are irreversibly severed from their biological family and their identity.

As a participant in our workshop stated:

“If the child protection system was better resourced with sufficient staff in Child Safety Service Centres and...sufficient support for families ... if the work has been done and it is demonstrated that the parents are not willing or able and there are no other family around... only then should adoption be an option to create (stability) for these children.... but there has to be a lot of quality work that needs to be mandated before it gets to this point - including listening to children as they vote with their feet.”

When a child is interacting with the child protection system their family should be provided with adequate support and assistance to improve their ability to safely care for their child/ren.

The *Child Protection Act 1999* should be amended to include a requirement that the Department prove that adequate resources and support were provided to biological families (including extended family) when making an application for an order that would lead to removing a child from their family.

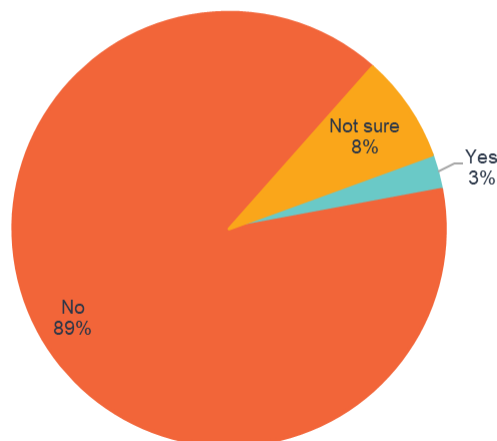
The preferences of the child

Children often have very clear views about whether they would like to be adopted. When a child is able to express a clear preference this should be given significant,

and even determinative weight to a decision related to permanency planning for a child.

A poll of participants in our workshop demonstrated the following:

Do you think children are given a sufficient voice in the child protection system?



The *Child Protection Act 1999* should be amended to give greater weight to the views and wishes of children when decisions are made about them, including when orders are made by the Court.

2. Other permanency options

Unfortunately, some children do need to be permanently cared for outside their biological family. During our forum there was significant interest in exploring other models of joint guardianship and open adoption. These alternatives to traditional adoption allow the child to have the security with an adoptive family while maintaining their identity and right to have a connection with their birth family.

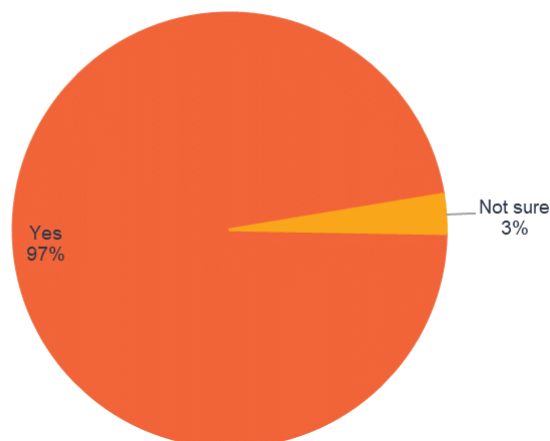
Alternative models of permanency planning that do not sever the child's right to have a connection with their birth family should be explored.

3. Improved practice, including more involvement of the community and community services sector

We are all responsible for keeping children safe. The *Inquest into the death of Mason Jet Lee* demonstrated that we need to do things differently and that the community, the social services sector and the Queensland Government should work together to develop better practices and systems to keep children safe and ensure they are able to experience stability, while preserving their identity.

A poll of participants in our workshop demonstrated the following:

Can the community services sector play a bigger role in supporting kids and families?



Further consultation and engagement with the social services sector and the community is required to develop better solutions to keeping children safe and ensuring they have lives characterised by stability, while preserving their identity.

Conclusion

The death of Mason Jet Lee was an unspeakable and avoidable tragedy.

However, the Bill is not compatible with the Human Rights Act, will not prevent similar tragedies occurring in the future and should not be passed.

QCOSS and the social service sector in Queensland are committed to working with the Queensland Government to ensure that children are safe, have lives characterised by stability and where their identity is preserved.

The Human Rights Act should be used as the framework for developing solutions so that human dignity, equality and freedom are our starting point.

Thank you again for the opportunity to provide our submission to the Committee.

Yours faithfully

Aimee McVeigh
Chief Executive Officer