ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited

Response to Child Protection and Other Legislation Amendment Bill 2020

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Submission to Amend the Adoption Act 2009 and Child Protection Act 1999

Introduction

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) welcomes the opportunity to provide input into the response to Child Protection and Other Legislation Amendment Bill on behalf of the Minister for Child Safety, Youth and Women's Aboriginal and Torres Strait Islander Stakeholder Group (Stakeholder Group) and the Secretariat of National Aboriginal and Islander Child Care (SMAICC). Whist QATSICPP has attempted to faithfully incorporate their significant contributions to this submission, any errors or omissions are our own.

We note that the stated 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.

We note particularly that the act allows for the following principles to apply for deciding whether an action order best achieves permanency for child and the order of their priority.

Clause 8

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.
6. 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.

Outlined in this submission are key positions related to adoption and permanency planning for Aboriginal and Torres Strait Islander children. The key principles guiding our submission are drawn from the both the evidence and perspectives of our Aboriginal and Torres Strait Islander leadership about the most appropriated ways to support stability for our children.

This is grounded in our unique cultural rights for self-determination including the right to our cultural identity that is driven from our connection with family, kin, culture and country.

Adoption is a contentious issue for Aboriginal and Torres Strait Islander communities. Our past experiences of state intervention in our 'best interests' has consistently resulted in policy that has resulted in extreme trauma, cultural dislocation and long lasting negative outcomes including poor health, mental health, economic disadvantage, increased incarceration and the removal of our children from our families and communities.

We believe that Aboriginal and Torres Strait Islander children and families and communities have special rights under United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and upholding these rights should be of the upmost priority in any proposed changes that affect our lives.

This, alongside the poor national and international evidence that exists into the ability of adoption to create stability for children in the long term without substantive costs for children's social and emotional wellbeing, frames our recommendations within this submission.

In our view, Aboriginal and Torres Strait Islander children should not be adopted out under the Child Protection Act 1999 at all and any justification for adoption for Aboriginal or Torres Strait Islander children should not be linked to the Mason Jet Lee inquest. Mason was neither Aboriginal or Torres Strait Islander and he was not placed in, and never was placed in, out-of-home-care (OOHC).

Historical Experiences of Adoption by Aboriginal Communities

The Bringing them Home report released in 1997 detailed the forcible removal of Aboriginal and Torres Strait Islander children from their families. The practice was widespread and systematic and whilst the destruction and failure to keep records has not enabled detailed numbers to be identified the BTH report estimated that:

> *between one in three and one in 10 Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970. In certain regions and in certain periods the figure was undoubtedly much greater than one in 10. In that time not one Indigenous family has escaped the effects of forcible removal... Most families have been affected, in one or more generations, by the forcible removal of one or more children.* [1]

Children were moved to institutions run by churches and non-government organisations, adopted by non-Indigenous families, or placed with non-Aboriginal households to work as domestic servants and farm hands.

Many jurisdictions outlined in policy and legalisation how they believed these practices were undertaken in the '**best interests'** of the child. This view is now discredited, and all states and territories have issues apologies that recognise that these actions were not in the best interest of the children involved. Premier Peter Beattie issued an apology on behalf of the Queensland parliament on the 26th of May 1999. In this address he recognised alongside the harm and trauma caused the critical importance to have a "total commitment to equal respect in the future."

Many children suffered very harsh, degrading treatment limited or no contact with families, and were frequently indoctrinated to believe in the inferiority of Aboriginal and Torres Strait Islander people and culture. Many children

1 BTH Report

despite enormous efforts never saw their mothers again, and many have not been able to find their families or country due to the destruction of records.

Since the Bringing them Home Report many Stolen Generations survivors have continued to detail the harm that forcible removal including adoption has resulted in.

> "I've only got a few photos of my mum. It's enormously frustrating when people say to me, I'm like my mother. I don't know what that means. It puts into perspective where you fit in. Or don't fit in as the case may be," he said. "The hard part of this is I didn't meet any of them until I was in my twenties. You've only known each other as adults. "It will be the same for anybody who's been through this experience, the thing that's the most confronting, the one that you live with every day. That you've had to start a relationship as an adult. How do you create those relationships? How do you make them work?"
>
> Over the years, moving forward has had its own challenges, especially in finding a way of getting on with things. "When I say heal, for me, I don't think you get over it, you just get used to it. It's how I get by."
>
> I have largely made peace with my past, but it's more like a cessation of hostilities than a lasting peace. "There are days when sometimes it just gets to me. I get this overwhelming sense of sadness. And I know exactly what it is. It's that 'where do I fit in'. [2]

The majority of Queensland's Aboriginal and Torres Strait Islander people have experienced the consequences of these practices, either personally or through their extended families.

The BTH report detailed the harm caused including by adoptions and it had significant recommendations to prevent repetition of the past, including the implementation of self- determination approaches to the well-being of Indigenous children and young people and addressing contemporary separation, with national standards legislation to ensure compliance with the Indigenous Child Placement Principle.

Aboriginal and Torres Strait Islander Commitment to Stability and Permanency

The Department has continuously outlined that the changes to the bill holds as one of its most significant goals, the achievement of safe and stable care.

Aboriginal and Torres Strait Islander families and communities have been working across generations to fight for their children to achieve safe and stable care. Our communities have repeatedly outlined in evidence and research the importance of addressing intergenerational trauma, creating stronger families and communities and strengthening kinship care support and training to ensure our children and families can heal as the primary means to achieve this.

However western theories of attachment and stability continue to underpin many permanency planning reforms. Much of this has focused on the strength of the relationship and bond between a child and a caregiver. Aboriginal and Torres Strait Islander people have challenged this focus on stability occurring through a singular connection between a child and a carer within one household.

In the case of an Aboriginal and Torres Strait Islander child the best interests of the child include the need to maintain a connection to the lifestyle, culture and traditions of their people. As highlighted recently in the Final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory, connecting

2 Healing Foundation Bringing them Home 20 years on – An Action Plan for Healing 2018

an Aboriginal child or young person to the relationships with their land and kin is not just a 'factor' to be considered but intrinsic to their best interests.

The trap is that considerations of the "best interests of the child" and the importance of connection to kin culture and country is being decided on "modern Anglo-European notions of social and family organisation"[3]

The importance of connection to kin and culture for a child has been explained as:

> "… even more so than the Australian community generally, many Aboriginal people have cultural responsibility to raise, or assist in raising, children who are not their own."15
> "It is a traditional practice and role of Grandparents or Aunties and Uncles to also care for and raise children…"16

> "For us culture is about our family networks, our Elders, our ancestors. It's about our relationships, our languages, our dance, our ceremonies, our heritage. Culture is about our spiritual connection to our lands, our waters. It is in the way we pass on stories and knowledge to our babies, our children; it is how our children embrace our knowledge to create their future. Culture is how we greet each other and look for connection. It is about all the parts that bind us together. It is the similarities in our songlines."17

In short ensuring the cultural identity and connection of Aboriginal and Torres Strait Islander children is essential for their well-being.

New evidence emerging in the neuroscience field is now also outlining the importance of intergenerational care and input for healthy development of infants attachment, development and contribution to building strong social skills and resilience.[4]

Our agencies have been leading the way in developing solutions including in 2016 collaborating with SNAICC on the development of a position paper: Achieving Stability for Aboriginal and Torres Strait Islander Children in Out of Home Care. As this paper outlines:

> To date, mainstream notions of stability have not adequately examined what stability is from the perspective of an Aboriginal or Torres Strait Islander child, nor the most appropriate ways to support that stability for our children. While stability is important for all children, stability for Aboriginal and Torres Strait Islander children is grounded in the permanence of their identity in connection with family, kin, culture and country.

This paper (Attachment A) sets out a strategy for improving stability for our children in a culturally safe way including.

1. Aboriginal and Torres Strait Islander children have rights of identity that can only be enjoyed in connection with their kin, communities and cultures.
2. Permanent care for Aboriginal and Torres Strait Islander children should only be considered where the family has been provided with culturally appropriate and ongoing intensive and targeted family support services.

[3] Donnell & Dovey (2010) FLC 93-428 focused upon the traditional mainstream constructs of family that are sometimes inappropriately applied to cases involving a child of Aboriginal and Torres Strait Islander heritage. In that case, the trial judge made the comment that if a 'suitable parent' was available to care for the child, they should be preferred over the child's older sister due to the 'significance of the tie between children and their biological parents'. It was held on appeal that this preference for a biological parent was inappropriate, and that the current provisions in the Family Law Act were enacted to avoid cases being decided on "modern Anglo-European notions of social and family organisation".

[4] ARACY 2020

3. Traditional adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.
4. Decisions to place an Aboriginal and/or Torres Strait Islander child in permanent care, including adoption decisions, should only be made with the appropriate and timely review of the child's individual circumstances, and with informed support for the decision from an appropriate Aboriginal and Torres Strait Islander community-controlled agency.
5. Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services, and to make decisions regarding the care and protection of children and young people in their own communities.
6. Permanency and adoption should never be used as a cost saving measure in lieu of providing Aboriginal and Torres Strait Islander families and communities with adequate and appropriate support. The burden of care held by Aboriginal and Torres Strait Islander families and communities should be adequately resourced, whether placements are temporary or permanent.
7. Aboriginal and Torres Strait Islander communities and their organisations must lead the development of legislation and policy for permanent care of their children based on an understanding of their unique kinship systems and culturally-informed theories of attachment and stability.
8. Where Aboriginal and Torres Strait Islander children are permanently removed from their parents, genuine cultural support plans must be developed and maintained (including with regular review) on an ongoing basis in partnership with an appropriate Aboriginal and Torres Strait Islander community controlled organisation and family with cultural authority for that child.

Evidence base for Adoption

Adoption is a particularly politicised and contentious area of public policy. It is often viewed within a narrative of positivity and providing children with a happy ever after experience. This has been increasingly fuelled by many celebrities adopting children and promoting its cause.

However multiple national and international studies have increasingly outlined the negative cost of adoption on children, birth families and social service systems.

In 2016 the British Association of Social Workers commissioned an enquiry into the role of the social workers in adoption. Adoption in Britain and the statutory childcare system of which it is part, has long been a practice to create stability and safety for children in this jurisdiction.

The Enquiry sought the views and experiences of those affected by and concerned about adoption – including children, birth families, adoptive families, professionals, policy makers, educators and researchers – across all four nations of the UK. It explored the complex realities of adoption including non-consensual adoption and outlined the mixed outcomes and experiences.

Concerningly the inquiry concluded that:

> "There is a dearth of information and meaningful longitudinal research to inform policy and social work practice on adoption. Very little information is collected or known about the social and economic circumstances, the lifetime costs and benefits, and long-term outcomes of the promotion of adoption of children from care.
>
> For example, there is no comprehensive data on the number of children who are returned to care after adoption and the reasons why, nor sufficient research into the longitudinal outcomes into adult life of those who are adopted.

> Without this information, the arguments made for adoption in its current form and current policy are insufficiently evidenced."[5]

Australian research has grown substantively in adoption over the past 20 years. It also outlines many mixed results for birth families, adoptees and adopted children. In 2012 the Australian Institute of Family Studies completed the National Research Study on the Service Response to Past Adoption Practices. [6]

In this research more than 1,500 individuals took part, comprising: 823 adopted persons; 505 mothers; 94 adoptive parents; 94 other family members; 12 fathers; and 58 service providers.

Findings from this study highlighted the long-lasting effects on not only mothers and fathers separated from a child by adoption, but also on the now adult children who were adopted as babies. The most common impacts of forced adoption were found to be psychological and emotional, and included mood disorders, grief and loss, PTSD, identity and attachment disorders, and personality disorders.

The voices of children who had been adopted were most concerning with around 70 per cent of adopted individuals who participated in the study agreeing that being adopted had a negative effect on their health, behaviour and/or wellbeing while growing up, regardless of whether the experience with their adoptive families was positive or negative.

Associate Professor Phillip Mendes in his submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into Barriers to Local Adoption 2018 outlined that in his research experience that:

> "adoptive placements do not necessarily produce better outcomes than long-term foster care, and can just as easily break down given that children traumatized by abuse and neglect may exhibit difficult and challenging behaviour that places carers under enormous stress"

Professor Darryl Higgins from the Australian Institute of Child Protection Studies in his submission to the same inquiry outlined:

> While I am absolutely committed to the need for children in out of home care to have stability, the permanency orders available can address these needs.
>
> I believe it is the capacity of the system to recruit, train and support permanent carers in their role that is the biggest challenge to the system, and better efforts to support parents to continue to care for their children, while having access to treatment, parenting supports, respite, and 'mirror families' where highly trained carers and mentors provide in-home or out-of-home care placements to entire families, not just removing children at risk, is what is needed.

In conclusion the evidence base to support adoption for children in out of home care as a positive means to create safety, stability and permanence is poor. Most concerningly the voices of children who have previously been adopted continues to outline that whilst their stability needs were met the experience has had life-long costs on their physical and mental health.

5 2016 The role of the social worker in adoption – ethics and human rights: An Enquiry
Professor Brid Featherstone Professor Anna Gupta Sue Mills: BASW

6 Higgins, D. J. (2014, August). Past adoption practices: Implications for current interventions. InPsych: The bulletin of the Australian Psychological Society, 36(4), 8-11.

Response to proposed amendments

1. Adoption should be removed as an option for Aboriginal Children

Adoption is a significant and serious step. It is not an arrangement just for the care of the child, it is the creation of an entire new family for a child and the removal of the child's previous family from that child's life. It is a legally binding Order that a child is no longer a member of its birth family but is, upon the adoption, legally recognised as a member of a different family. **As such we call for Adoption to be removed as an option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.**

As outlined by the Queensland Government both in its explanatory notes to the bill and presentation by departmental staff at the parliamentary committee hearing on the 24th of July 2020, the Department had introduced significant reforms to improve permanency options for children involved in the child protection systems by way of previous legislative amendments to the Child Protection Act 1999.

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). As noted, "Queensland's policy position is focused on promoting positive long-term outcomes for children in the child protection system through timely decision making and decisive action towards either reunification with family or alternative long-term care."

The substantive and continued removal of Aboriginal and Torres Strait Islander children in the child protection system persists in fracturing families and causing ongoing disruption to children's cultural continuity. Despite all policy changes, poor case work practice, an overburdened child protection system and under resourced Aboriginal and Torres Strait Islander early intervention system continue to see our children removed at 8.5 times the rate of non-Indigenous children.[7]

It is our belief that if adoption was included as an option and utilised it would only serve to create further damage and trauma. Ultimately, we believe the cultural costs for our children would be too great.

Given the significant effect of even Long Term Guardianship orders on Aboriginal and Torres Strait Islander children when they are placed outside kin, community and culture the ramifications of further adoption orders (to people who, of necessity are not family) would be expected to be significant and even worse.

Adoption of Aboriginal or Torres Strait Islander children also overlooks the significant disadvantage that Aboriginal or Torres Strait Islander adoption, kinship and foster carer applicants may face due to statistical over-representation and increased contact with government systems such as Child Safety, intolerant education systems, and police and criminal justice systems, and their lack of trust of fairness from these systems. This significantly increases the chance that Aboriginal or Torres Strait Islander children in any form of care will be cared for by non-indigenous people.

The Aboriginal and Torres Strait Islander Child Placement Principle is embedded within the Child Protection legislation (section 5C). It was included in recognition of the need to ensure a focus on supporting and maintaining the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures as a priority. It was long overdue recognition of the incredibly harmful outcomes of past policies and was

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a means to enshrine the rights of Aboriginal and Torres Strait Islander children to their cultural identity and recognition that children's identity is strengthened and supported when their families and communities are strong.

In line with this commitment in both legislation and policy to the maintenance of cultural and community connection, any form of permanent care arrangement, including adoption, that severs these connections is inappropriate and undermines the commitment by the Department to the full implementation of the Aboriginal and Torres Strait Islander child placement principle

Whilst Queensland has made progress on implementation of the Aboriginal and Torres Strait Islander child placement principle, there remains significant concern about the level of implementation and the impact of poor practice in adherence to the Aboriginal and Torres Strait Islander Child Placement Principle. Routinely services have reported that there is widespread misunderstanding of how to apply the Child Placement Principle across the child protection continuum and poor cultural competency of Child Safety Staff which effects the ability of the department to seek out placements within the child's family and community.

Despite provision of funding for Family Participation Programs (FPP) and Family Wellbeing Services (FWB) across the Aboriginal and Torres Strait Islander community sector they continue to be inadequately funded to meet demand, based on number of eligible families and the trauma burden that Aboriginal and Torres Strait Islander families carry.

Other practice concerns that were highlighted by QATSICPP in a recent review of implementation of the child placement principle highlighted

- Child Safety expectations and case plan requirements for families are not in alignment with what is available within the social services system to meet these expectations. Services do not often exist to refer families to and, if they do, many are not culturally capable to support healing for families.
- Often departmental staff that have multiple demands and severe time constraints are not able to meet the requirements of critical time frames within the case planning system. This means that processes that are clearly articulated in practice manuals and guidelines are not adhered to and timeframes are not reconsidered where they could be. This impacts on children's rights to have active efforts engaged to support their reunification to their family and cultural heritage.
- Where this occurs, family led decision making meetings may be held in the final month of an order which does not provide adequate time to influence decision making. The meeting purpose becomes instead to inform ongoing intervention rather than to reunify children with family, even where there are no remaining child safety concerns.
- The sector reports a lack of long-term planning for children from their first point of contact with the department, with Child Safety staff not making active efforts to support, or understand the importance of, family placement and family contact.

This is demonstration of a child safety system that is increasingly under pressure with high numbers of children being placed in out of home care. In our view the systemic issues surrounding placing such high numbers of children unnecessarily in out of home care are in urgent need of addressing.

Once children are placed in out of home care, our further concern is the adoption of children in OOHC would be used as a way of reducing the numbers of Aboriginal and Torres Strait Islander children in the system. This may not only lead to a false impression that the number of Aboriginal and Torres Strait Islander children in the system are decreasing, it also would mask the increasing numbers of children being placed in out of home care by a system that has not addressed the systemic factors leading to over-representation.

It is of significant concern that for adoption to not be appropriately utilised as an option it relies on vastly improved practice, training and policy implementation of current reforms available to the Department of Child Safety, Youth and Women.

Our evidence would suggest that this is already a struggle for the department and many of our families are experiencing a system that is not focused on upholding their rights. This has the potential for overstretched case workers to utilise adoption as default option for permanence rather than working more substantively with families to create the conditions for reunification.

In our view there is an urgent need to address the systemic issues within the system to reduce the number of Aboriginal and Torres Strait Islander children entering the system.

The Child Protection Act of 1999 outlines in section 5A that the paramount principle that governs the act 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". For Aboriginal and Torres Strait Islander children decisions therefore have to consider not their just their physical safety but their cultural safety including maintenance of their cultural identity and connection, recognising that decisions made in the present have long lasting impacts into the future.

This is reinforced by the United Nations Committee on the rights of the child which within in its general comment noted:

> "When state authorities...seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group...the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way."

The current legislation reforms proposed do not have any protections inbuilt to ensure that the Aboriginal and Torres Strait Islander community can provide input to the final decision on adoption, this will rest with the Chief Executive of the Department. This is also only a policy position and not enshrined in legislation so leaves the Aboriginal and Torres Strait Islander community with no legal redress if they disagree with the decision that is being proposed.

The fact that connection to family, community and culture cannot be assured once an adoption is finalised presents a major risk for the identity and ongoing development of Aboriginal and Torres Strait Islander children and is a transgression of human rights issues that cannot be mitigated. To further protect these rights, **we recommend that the proposed Section 5BA(4) (b) be redrafted to read as follows:**

(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;
(c) the third preference is for the child to be cared for under the guardianship of another suitable person;

As we have outlined the past impact of forced adoptions in the best interests of Aboriginal and Torres Strait Islander children has resulted in overwhelming trauma and mental health issues and social disadvantage that have impacted and continue to impact on children, their families and their communities. This enormous cultural cost cannot continue to be sanctioned by government legislation.

2. The need to strengthen safeguards and oversights for Aboriginal and Torres Strait Islander Children within the bill

The Bill highlights the importance of the Aboriginal and Torres Strait Islander Child Placement principle and notes the additional responsibilities required to adhere to this in administering the Adoption Act 1999.

> Clause 8 also includes a note under new section 5BA (4) to highlight the additional principles that apply for administering the Child Protection Act 1999 in relation to Aboriginal and Torres Strait Islander children, including the Child Placement Principle. A note is also included to reference the principles for administering the Adoption Act 2009 (sections 6 and 7 of the Adoption Act 2009), which include additional principles for Aboriginal and Torres Strait Islander children.

Currently there is no departmental data available that tracks compliance by the DCSYW in adherence to the ABTSICPP. As we have outlined there are significant concerns by Aboriginal and Torres Strait Islander leaders and agencies about the departmental capacity and understanding of applying the ABTSICPP.

Poor practice means that many children do not have substantive case plans and very poor cultural care plans, and many are not reviewed regularly nor are families adequately supported to achieve case plan objectives – thus there is a real fear that Aboriginal children will fail their way to adoption due to poor planning poor engagement with Aboriginal and Torres Strait Islander families.

Present reunification practices are inadequate for the needs of the Aboriginal and Torres Strait Islander child in out of home care.

Circumstances vary widely, however the deadline of two years for a parent to address issues of concern may be for many too short a time and an unrealistic expectation depending on their individual circumstances, especially those involving intergenerational trauma. The shortened timeframe pays no regard to how intergenerational trauma and the historic legacy of dispossession and failed policies flow onto specific, relevant case work issues such as slower (or no) building of trust.

The shortened timeframe also implicitly disadvantages people residing away from major centres, a greater proportion of whom are Aboriginal or Torres Strait Islander people. More remote centres have limited access to services which directly impacts prospects of reunification.

Most importantly, it is not necessarily in the best interests of the child for such a short time to be set.

Where the parents are not in a position to resume care of the children, we are aware of numerous instances where the department has claimed they are unable to locate suitable kin carers for the children where they do not appear to have consulted sufficiently with family and community.

Failure to properly identify suitable kin carers is then made irrevocable as adoption or other arrangements will result in severing or damaging the child's connections.

In our view, the department should not be able to determine that they are unable to locate suitable kin carers unless there has been full and proper formal consultation with the family and community leaders.

We note that in her presentation to the public hearing of the bill at the legal affairs and health services committee of the Queensland Parliament, the Director General Deidre Mulkerin outlined that there would have to be significant operational changes by the Department to support implementation of the amendments. This included:

- Review of permancy reform
- Review of Implementation of the ABTSICPP
- Appointment of a Permancy Officer

- Review of all case plans for children who are aged 1-3 years and have been in care for over 3 years
- Review with carers and kin of children who have been in care for over 2 years to look at stability

There were no special provisions outlined for how Aboriginal and Torres Strait Islander leadership would be involved to ensure that a cultural lens is applied to these processes and data, and that the rights of our children are protected.

Thus, to ensure appropriate safeguards are implemented to protect against this we recommend:

a) ***A statutory report should be delivered by Queensland Family and Child Commission annually on departmental implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. This should include provision by the Department of Child Safety, Youth and Women for independent access to departmental data. To ensure objectivity and accountability this report should be presented to directly to the Parliamentary Speaker and tabled in parliament***

b) ***Independent Aboriginal and Torres Strait Islander advice be provided to both the Director General and the courts about any Aboriginal or Torres Strait Islander child that is recommended for Adoption to ensure that the application of the child placement principle has occurred to the standard of active efforts***

Free and Informed Consent

Free and informed consent is a fundamental human right and the cornerstone to self-determination. We know that many of our families within the Child Protection system are not afforded the right information in a timely way to enable them to participate fully in decisions about their children.

This includes ensuring translators are available for families who speak their own language. Our communities have also reported significant gaps in being able to access culturally safe legal representation. Our own Aboriginal and Torres Strait Islander legal services have sustained substantive cuts over the past 10 years and to adequately provide Child Protection advice, need to have the resources to build internal legal expertise in this area.

This is increasingly important as even though Queensland legislation allows for an independent entity to attend court to support Aboriginal and Torres Strait Islander families, there is no funding to educate this group on legislation, legal rights and redress, court processes or the how to support a family through a legal process adequately. This leaves our families increasingly vulnerable to continued transgressions of their rights and with limited power or capacity to ensure that the Department has fulfilled their accountability under the act and challenge unfair decision making. To address this, we request:

c) ***Substantive additional funding for Aboriginal and Torres Strait Islander families to seek legal representation when their children are removed into the care and protection of the Department.***

d) ***Improved funding and implementation of the Family Participation Program to increase the numbers of Aboriginal and Torres Strait Islander children and their families that are participating in making decisions for their children's safety, including increasing the numbers of families referred prior to notification to prevent entry into the child protection system.***

3. Addressing the underlying factors that contribute to the over-representation of Aboriginal and Torres Strait Children in the child protection system

It is unjust that the devastating outcomes of colonisation, the resulting disconnection, trauma and disadvantage have had and continues to have on Aboriginal and Torres Strait Islander peoples as evidenced by poor social and economic outcomes is made the responsibility of individual children and families through intervention by the Child Protection system.

Our own research and evidence across disciplines has repeatedly outlined the need to address the impacts of intergenerational trauma to prevent the ongoing negative social impacts for Aboriginal and Torres Strait Islander children, families and communities.

This has included calls for increased investment in early intervention and prevention services that will provide healing for families, support Aboriginal and Torres Strait Islander services to develop our own intensive family support and ultimately create strong families and communities for our children to be raised within culture.

Despite these calls over the past 30 years the Family Matters report of 2019 outlined that in 2017-2018 only 17% of overall of overall child protection funding across the country was invested in support services for children and their families while 83% was invested in child protection services.

We cannot drive down the over-representation of Aboriginal and Torres Strait Islander children in the child protection system until this investment is reversed. There is an urgent need to provide systemic reform across education, employment, health, mental health, and justice to address these factors and uphold people's human rights.

The Our Way Strategy recognises that in Queensland many Aboriginal and Torres Strait Islander children do not have the same opportunities as other children. It outlines how if current trends continue, Aboriginal and Torres Strait Islander children and young people will account for more than half of all Queensland children in out-of-home care within five years despite being only 8% of the childhood population in Queensland.

The latest Changing Tracks Action Plan 2020-2023 recognises the need to promote and drive increased early intervention supports for Aboriginal and Torres Strait Islander family's needs to be increased and proportional investment in early intervention compared to out of home care.

We urge attention to these actions as a matter of priority. Investment in this important work will ensure that our children can grow up in their families and communities and the need for departmental intervention in their lives will no longer be required.

Contact Details

[redacted]

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ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited

www.qatsicpp.com.au

30 July 2020

Committee Secretary Legal Affairs and Community Safety Committee
Parliament House George Street Brisbane Qld 4000

RE: Support of Aboriginal and Torres Strait Islander Peak and Stakeholders in response to Child Protection and Other Legislation Amendment Bill

Dear Legal Affairs and Community Safety Committee,

As signatories to 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, and the leaders of this campaign in Queensland, we are writing to express our united support for the submission of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) and other Aboriginal and Torres Strait Islander leaders and stakeholders.

We join with QATSICPP in calling for removal of adoption as an option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices. We call on government to uphold their commitment in legislation to implementing in full the *Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)*. The ATSICPP is primarily focused on ensuring that Aboriginal and Torres Strait Islander children are supported to grow up safely in the care of their family, community and culture, which is the primary focus of the Our Way Strategy.

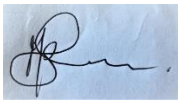
Aboriginal and Torres Strait Islander children and families have repeatedly experienced the negative impacts of departments not meeting their obligations to actions outlined within legislation, policy and procedure. Our annual Family Matters Reports provide evidence of this in every state and territory.

We therefore support the call by QATSICPP and Aboriginal and Torres Strait Islander leadership that additional safeguards are required to ensure that any legislative and policy changes focused on improving stability and permanency for Aboriginal and Torres Strait Islander children, are primarily accountable to upholding their cultural rights and identity as a priority.

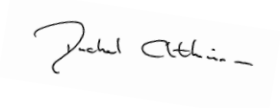
We agree with QATSICPP and partners that:

- Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services, and to make decisions regarding the care and protection of children and young people in their own communities.
- That independent accountability measures should be introduced to ensure the Department of Child Safety, Youth and Women is responsible for active efforts in the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

On behalf of the Queensland Family Matters leadership group,



Michael Currie
Queensland Family Matters Co-Chair



Rachel Atkinson
Queensland Family Matters Co-Chair

Paul Testro,
Consultancy Services

Lois Haywood,
Cairns member of
Family Matters Qld

Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

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SNAICC

National Voice for our Children

Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care

SNAICC POLICY POSITION STATEMENT

JULY 2016

Researched and written by Wendy Hermeston, James McDougall, John Burton, Fleur Smith, and Emma Sydenham.

With direction and input from the SNAICC Policy Sub-Committee: Garry Matthews (Chair), Sharron Williams, Rachel Atkinson, Natalie Lewis, Tim Ireland, and Lisa Thorpe.

With input and submissions by SNAICC members and stakeholders. Particularly, SNAICC acknowledges Aboriginal and Torres Strait Islander community-controlled organisations across Australia that provided submissions and papers to inform this statement, including: Aboriginal Child, Family and Community Care State Secretariat (AbSec) (NSW); Aboriginal Legal Service of Western Australia (WA); Danila Dilba Health Service (NT); Wuchopperen Health Service (Qld); and Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council (NPY Women's Council) (SA, WA & NT), and the Victorian Aboriginal Child Care Agency (VACCA) (Vic). SNAICC also acknowledges other individuals who provided significant review and input to the development of the paper, including especially Julian Pocock, Teresa Libesman, and Simon Schrapel.

With research on legislative provisions and trends provided pro bono by King & Wood Mallesons.

SNAICC thanks all organisations and individuals that provided input to the development of this Policy Position Statement.

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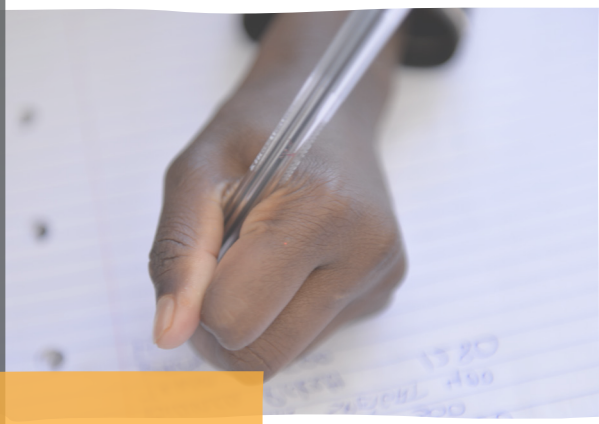

OVERVIEW

Like all children, Aboriginal and Torres Strait Islander children have the right to live in safety, free from abuse and neglect, and in stable and supportive family and community environments. Each child's wellbeing and ongoing best interests should be the priority of those who care for them. **For Aboriginal and Torres Strait Islander children who are harmed or at risk of harm and in need of alternative care, their protection is our priority.**

For children who are placed in out-of-home care, stability of relationships and identity are vitally important to their wellbeing and must be promoted. In recent years, state and territory child protection authorities have increasingly used a range of case management measures that seek to promote stability through longer-term care arrangements for children. These vary in detail in each jurisdiction but are often broadly described as *permanency planning*. A number of jurisdictions have sought to entrench these measures in legislation. The overt rationale for reform has been to provide children in care with "safe, continuous and stable care arrangements, lifelong relationships and a sense of belonging." [1]

While SNAICC supports an agenda to improve stability for Aboriginal and Torres Strait Islander children in out-of-home care, we have significant concerns that current and proposed permanency planning measures will not achieve this. Without significant improvement to their design and further safeguards, they will likely cause more harm to children and exacerbate inter-generational harm to families and communities. We believe that current approaches are not sufficiently flexible or attuned to the reality that, **for an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and country.**

KEY RECOMMENDATIONS
TO ADVANCE STABILITY FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN INCLUDE:

1. Child protection legislation, policy and practice guidelines and decision-making are reviewed (periodically) to ensure effective and differential recognition of the unique rights of Aboriginal and Torres Strait Islander children to safe and stable connections to kin, culture, and community.
2. Mechanisms are established to enable Aboriginal and Torres Strait Islander community-controlled agencies, families and children to participate in all decisions relating to the care of Aboriginal and Torres Strait Islander children, particularly those relating to longer-term or permanent care.
3. All governments invest appropriately to provide access to early intervention, intensive family support and healing services for Aboriginal and Torres Strait Islander families to prevent abuse, neglect and removal of children to alternative care, and to promote family restoration where children have been removed.

PERMANENCY PLANNING TRENDS

Each state and territory has a child protection order available in legislation that transfers exclusive parental responsibility to a person, other than the child's biological parents, until the child is 18 years old. While these orders are not new in child protection legislation, in recent years there have been strong trends in policy and legislative reform to increase the focus on, and expedite timeframes for, the use of these orders by child protection authorities and the courts. Over the last two years permanency-focused legislative reform has been undertaken in New South Wales, Victoria, and the Northern Territory, and tabled in discussion papers on legislative reform priorities in both Queensland and Western Australia.

Legislated timeframes for permanency planning have been recently introduced in Victoria and New South Wales, and are provided for in Tasmania. These provisions seek to limit the time during which reunification (also known as *restoration*) of children with their biological parents is pursued. Victorian legislation requires the application of a permanent care objective where a child has been in out-of-home care for a cumulative period of 12 months or 24 months in exceptional circumstances.[2] In New South Wales, the Children's Court is required to make a determination as to whether a plan that pursues restoration is appropriate within 6 months of an interim out-of-home care order for a child under 2 years of age, and 12 months for a child over 2 years of age.[3] In Tasmania, the Magistrates' Court must consider a long-term guardianship order where a child has been in out-of-home care for a continuous period of 2 years.[4] Only in Victoria are permanent care orders coupled with restrictions on the child's contact with their birth parents, which is limited to 4 times per year.[5]

A range of safeguards are legislated to varying degrees to protect the best interests of Aboriginal and Torres Strait Islander children in respect of permanency planning. All jurisdictions have general provisions regarding the maintenance of cultural identity and connection, including a form of the *Aboriginal and Torres Strait Islander Child Placement Principle*, but there are variations on the extent of requirements and how they are implemented. For example, in Victoria a court must not make a permanent care order unless an Aboriginal agency recommends the making of the order,[6] whereas Queensland and South Australia have more general provisions requiring that an Aboriginal agency be given the opportunity to participate in the decision. Other jurisdictions have less prescriptive requirements to consult with or receive submissions from Aboriginal and Torres Strait Islander people, rather than an independent agency. In all states and territories parents have either the right to appeal the making of a permanent care order, or to apply for a revocation or variation of the order, or all of these – except the Northern Territory, where parents cannot apply for a revocation or variation of the order.[7]

The Northern Territory introduced permanent care orders in 2015 and is the only jurisdiction not to place any restrictions on the making of such an order beyond general pre-requisites and principles in the relevant Act. The Northern Territory Act lacks safeguards commonly present in other jurisdictions, such as provision for parental contact, parental rights to apply for revocation of an order, and restrictions on permanent placements for Aboriginal children in non-Indigenous care.

Note: A comparative table of relevant legislative provisions prepared by King & Wood Mallesons is available accompanying this position statement on the SNAICC website.

ABORIGINAL AND TORRES STRAIT ISLANDER CONCEPTS OF PERMANENCE

Permanency in the care and protection sector has been defined as comprising three key aspects, "relational permanence (positive, caring, stable relationships), physical permanence (stable living arrangements), and…legal arrangements."[8] Recent state and territory reforms have tended to focus on the latter two. SNAICC believes that this has been to the detriment of key aspects of relational permanence that are central to the wellbeing and lifelong outcomes of Aboriginal and Torres Strait Islander children.

The theory underpinning many permanency planning reforms asserts that the sooner an enduring attachment with a carer can be established, the greater stability can occur, and that this is a better outcome for a child's wellbeing.[9] Aboriginal and Torres Strait Islander people commonly question this narrow construct of attachment theory that centres stability on the singular emotional connection between a child and a carer. This has been described as "inconsistent with Aboriginal and Torres Strait Islander values of relatedness and child-rearing practices."[10]

Modern applications of attachment theory allow for attachment to both parents and also with grandparents and other relatives and care-givers.[11] This less fixed, more dynamic understanding is also reflected in the *best interests principle* in international child rights law that calls for consideration of the particular circumstances of each individual child.

Reflecting research and the knowledge of Aboriginal and Torres Strait Islander communities, SNAICC asserts that stability for Aboriginal and Torres Strait Islander children does not rely exclusively on developing particular bonds with a single set of parents or carers, or on living in one house. There are differences in family life across Nations, groups and families, but many long-practiced Aboriginal and Torres Strait Islander models of child rearing hold that "…children are part of a system of care…described as *intermittent flowing care* (Wharf 1989), (with) different kinship relationships with various members of extended families and often move between…or indeed outside it."[12] Stability for children within these systems stems from being *grown up* and cared for within extended family and kin networks that form "the foundations of their identity, culture and spirituality."[13]

Canadian research has directly linked a lack of continuity of personal identity for First Nations young people to increased rates of youth suicide.[14] The research has connected the individual wellbeing of young people to the cultural continuity of their communities, finding that where a set of cultural connection, practice, and self-governance factors are present, suicides for First Nations young people reduce to zero.[15] In the Australian context, Pat Anderson AO, has described the connections that underpin stability of identity for Aboriginal and Torres Strait Islander people:

> "OUR IDENTITY AS HUMAN BEINGS REMAINS TIED TO OUR LAND, TO OUR CULTURAL PRACTICES, OUR SYSTEMS OF AUTHORITY AND SOCIAL CONTROL, OUR INTELLECTUAL TRADITIONS, OUR CONCEPTS OF SPIRITUALITY, AND TO OUR SYSTEMS OF RESOURCE OWNERSHIP AND EXCHANGE. DESTROY THIS RELATIONSHIP AND YOU DAMAGE – SOMETIMES IRREVOCABLY – INDIVIDUAL HUMAN BEINGS AND THEIR HEALTH."[16]

Thus, **permanence for Aboriginal and Torres Strait Islander children is identified by a broader communal sense of belonging; a stable sense of identity, where they are from,**[17] **and their place in relation to family, mob, community, land and culture.**

"EARLY INTERVENTION SUPPORTS ARE REQUIRED TO PREVENT CHILDREN ENTERING CARE"

OUR CONCERNS

SNAICC BELIEVES THAT CURRENT POLICY AND REFORMS THAT SEEK TO EXPEDITE PERMANENT CARE ARE NOT APPROPRIATE TO ACHIEVE STABILITY FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT-OF-HOME CARE, AND WILL CAUSE MORE HARM.

Further, SNAICC believes that mainstream notions of stability implicit within permanency measures have not adequately examined what stability is from the perspective of an Aboriginal or Torres Strait Islander child, nor the most appropriate ways to support that stability for children.

Regardless of the intentions that underpin permanency measures, **the permanent removal of Aboriginal and Torres Strait Islander children from their families presents harrowing echoes of the Stolen Generations** for Aboriginal and Torres Strait Islander communities. Permanency measures tend to reflect an underlying assumption that a child in out-of-home care experiences a void of permanent connection that needs to be filled by the application of permanent care orders. This understanding is flawed in its failure to recognise that children begin their out-of-home care journey with a permanent identity that is grounded in cultural, family and community connections. This is not changed by out-of-home care orders. Inflexible legal measures to achieve permanent care may actually serve to sever these connections for Aboriginal and Torres Strait Islander children, in breach of their human rights, and break bonds that are critical to their stability of identity while they are in care and later in their post-care adult life.

This section details a number of our specific concerns regarding the design and application of permanency measures.

(A) LIMITED COMPLIANCE WITH THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The Aboriginal and Torres Strait Islander Child Placement Principle has been developed to support and maintain the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures. Research has confirmed that the history and intent of the Principle is about far more than a decision about where and with whom a child is placed.[18] Its purpose and key elements require early intervention supports to prevent children entering care; supports for children to maintain and re-establish cultural connections in out-of-home care; efforts for reunification; and ensuring that Aboriginal and Torres Strait Islander families, communities and organisations are involved in decision making, service design and service delivery.[19]

There remains inconsistent and ineffective implementation, and in some settings misunderstanding, of the Principle across jurisdictions,[20] which has significant implications for permanency planning. Practical concerns include failures to identify Aboriginal and Torres Strait Islander children and inadequate efforts to consistently look for placement options in consultation with family and community at each stage of the management of a child's care arrangements. Lack of culturally appropriate kinship carer identification and assessment processes have also been identified as significant concerns.

In this context, permanent care orders risk severing cultural connections in circumstances where children are in placements that are disconnected from their families and communities. Where permanent care orders contain no requirements for the ongoing maintenance of cultural connections, the risk is even greater.

(B) INADEQUATE PARTICIPATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN DECISION MAKING

SNAICC notes the lack of effective consultation with Aboriginal and Torres Strait Islander organisations and people independent of government agencies in child protection decision-making that has been recognised repeatedly in state and territory child protection systems inquiries over the last 10 years.[21]

The failure to include Aboriginal and Torres Strait Islander perspectives in decision-making means that many decisions are made without adequately addressing the cultural needs of the child, and without identifying the safe care options that exist within families and communities. Roles for Aboriginal and Torres Strait Islander agencies to participate in child protection decision-making have been established state-wide in Victoria and Queensland, and to a lesser extent in South Australia. However, these services have been inadequately resourced and enabled to consistently and effectively influence decision-making.[22] Such services have not been supported in other parts of the country.[23] Aboriginal and Torres Strait Islander Family-led Decision Making facilitated by independent community agencies has also been recognised as a valuable model for engaging families to identify and establish safe care options. However, this model has only been implemented state-wide in Victoria, and trialled in limited locations in New South Wales and Queensland.

In a context where Aboriginal and Torres Strait Islander participation in decision-making is limited, expediting permanent care options will contribute to progress poor, ill-informed decisions to become irreversible decisions that can harm children.

(C) INSUFFICIENT SUPPORT TO PRESERVE AND REUNIFY FAMILIES

A lack of adequate focus on family support services and on reunification across jurisdictions is another major concern in the context of permanency planning. Service system responses remain reactive rather than preventative, with only $719 million (or just 16.6 per cent of total child protection expenditure) invested in supporting families, compared to $3.62 billion in child protection and out-of-home care, in the 2014-15 financial year.[24] There must be greater efforts to ensure the provision of intensive and targeted family support services that recognise and address intergenerational trauma as family members struggle with their own health and wellbeing issues at the same time as providing care and support for their children. SNAICC members have also highlighted that a lack of service availability and delays in service provision for families, including waiting lists for housing and other critical services, limit capacity for families to reunify within mandated timeframes. These concerns are particularly evident in remote and isolated locations.

We must still acknowledge the ongoing damage caused by a history of separation from culture in the context of decision-making about long-term care of Aboriginal and Torres Strait Islander children.[25] A lack of investment to heal and rebuild families and communities should never be used as justification for the use of permanency planning measures that can further devastate them.

Given the lack of support available to vulnerable families, both before and after children are removed to alternative care, there is a significant risk that a focus on permanent care planning could consolidate inter-generational family and community breakdown. SNAICC believes that promoting and supporting the preservation and restoration of Aboriginal and Torres Strait Islander families to provide safe care for their children must be given priority over permanency planning approaches.

(D) ONGOING SUPPORT FOR KINSHIP AND FOSTER CARERS

SNAICC is concerned that permanency planning will be used as a measure to shift responsibility for addressing serious care issues to individual carers. Governments bear responsibility for a fully funded and effective alternative care system that complies with human rights and moral obligations to children. In its review of long-term guardianship orders in New South Wales, the Aboriginal Child, Family and Community Care State Secretariat (AbSec) has highlighted the lack of service supports provided to carers when permanent orders are made, despite the high therapeutic care needs of many children in out-of-home care who are impacted by trauma.[26] Similar experiences have been reported in other states.

Aboriginal and Torres Strait Islander families provide a large proportion of out-of-home care in Australia, caring for over half of all Aboriginal and Torres Strait Islander children in care. Research has highlighted the additional strain on Aboriginal and Torres Strait Islander families and communities that results from providing high-levels of additional care while also experiencing higher-levels of poverty and disadvantage.[27] This strain is compounded by lower-levels of support provided to kinship carers as compared to foster carers.[28] If permanent care measures are utilised to further reduce the financial and/or practical supports available to kinship and foster carers, this will negatively impact children and the communities that are already extending their resources to care for them.

"FOR CHILDREN WHO ARE PLACED IN OUT-OF-HOME CARE, STABILITY OF RELATIONSHIPS AND IDENTITY ARE SO VERY IMPORTANT TO THEIR WELLBEING AND MUST BE PROMOTED. FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN, WHAT WE NEED TO REMEMBER IS THAT STABILITY IS GROUNDED IN THE PERMANENCE OF THEIR IDENTITY IN CONNECTION WITH FAMILY, KIN, CULTURE, AND COUNTRY."

(E) LAW AND POLICY CONTRARY TO HUMAN RIGHTS

SNAICC believes permanency measures have also been developed without sufficient attention to the international child rights framework with its knowledge base of policy and principles drawn from comprehensive research and best practice. This framework includes obligations under the United Nations Convention on the Rights of the Child (UNCRC); the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) and the insights of the United Nations Committee on the Rights of the Child's General Comments on Indigenous Children (No.11) and the Best Interests Principle (No.14).

Without reference to such a framework, there is a high risk that permanency planning will primarily serve the interests of governments in avoiding risk and obligations of support, and increase the likelihood of practices that will cause or continue individual, community and inter-generational harm rather than protecting children.

SNAICC calls for permanency measures to comply with our international human rights obligations. In particular we note that Article 3(1) of the UNCRC provides that "in all actions concerning children…the best interests of the child shall be a primary consideration." The *best interests* principle calls for consideration of the individual circumstances of each child in all relevant decisions. In the context of child protection decision-making the UNCRC requires that a child not be separated from their parents unless such separation is necessary in the best interests of the child, that parents and all interested parties participate in proceedings, and that children have the right to maintain contact with their parents (Article 9). Children's participation in the decisions that affect them is also required by Article 12. Article 25 of the UNCRC holds governments responsible to provide a child placed in care with the right to periodic review of their circumstances.

Prescriptive permanency measures that limit ongoing consideration of the best interests of the child or periodic review of their circumstances, or that exclude the views of children and parents from consideration, or that place mandatory limits on parental contact, are contrary to these rights.

In its General Comment 11, the United Nations Committee on the Rights of the Child has also noted that:

> "WHEN STATE AUTHORITIES…SEEK TO ASSESS THE BEST INTERESTS OF AN INDIGENOUS CHILD, THEY SHOULD CONSIDER THE CULTURAL RIGHTS OF THE INDIGENOUS CHILD AND HIS OR HER NEED TO EXERCISE SUCH RIGHTS COLLECTIVELY WITH MEMBERS OF THEIR GROUP…THE INDIGENOUS COMMUNITY SHOULD BE CONSULTED AND GIVEN AN OPPORTUNITY TO PARTICIPATE IN THE PROCESS ON HOW THE BEST INTERESTS OF INDIGENOUS CHILDREN IN GENERAL CAN BE DECIDED IN A CULTURALLY SENSITIVE WAY."

The importance of participation in decision-making for Indigenous peoples is also well established in international law including the Universal Declaration on the Rights of Indigenous Peoples. Thus, **when permanent care decisions are made without representative consultation with the child's Aboriginal and/or Torres Strait Islander community, they violate the best interests principle for that child.**

Aboriginal and Torres Strait Islander children have rights under the UNCRC to practice and enjoy their cultures (Article 30), and for due regard in decisions about out-of-home care to the desirability for continuity of their cultural background (Article 20(3)). Permanent care decisions that do not make adequate provision for actively maintaining a child's cultural connections are inconsistent with the child's rights.

These international principles should underpin the approach to child protection decision-making for Aboriginal and Torres Strait Islander children. The case for care and attention to these principles must also acknowledge the circumstances of our recent history in child protection decision-making. This includes recognition of the ongoing impact of the past policies of child removal in terms of personal tragedy and damage to the cultural and collective rights of so many Aboriginal and Torres Strait Islander communities and people.

"IN ALL ACTIONS CONCERNING CHILDREN...THE BEST INTERESTS OF THE CHILD SHALL BE A PRIMARY CONSIDERATION."

OUR SOLUTIONS

(A) PRINCIPLES FOR STABILITY AND PERMANENCY PLANNING

IN ORDER TO ADDRESS THE CONCERNS RAISED IN THIS PAPER, SNAICC CALLS FOR POLICY AND PRACTICE IN STABILITY AND PERMANENCY PLANNING TO RECOGNISE THE FOLLOWING HUMAN RIGHTS-BASED PRINCIPLES:

1. **Aboriginal and Torres Strait Islander children have rights of identity that can only be enjoyed in connection with their kin, communities and cultures.** In accordance with the *Aboriginal and Torres Strait Islander Child Placement Principle*, their rights to stay connected with family and community must be upheld and the child, their families and communities enabled to participate in decision-making regarding their care and protection. There must be consistent and comprehensive consideration of the hierarchy of placement options, culturally appropriate kinship carer identification and assessment, and regular review to give priority for placement with a child's family and community before considering permanent care.

2. **Permanent care for Aboriginal and Torres Strait Islander children should only be considered where the family has been provided with culturally appropriate and ongoing intensive and targeted family support services,** and there has been an appropriate independent assessment that there is no future possibility of safe family reunification.

3. **Traditional adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children,** except as it relates to traditional Torres Strait Islander adoption practices.

4. **Decisions to place an Aboriginal and/or Torres Strait Islander child in permanent care should only be made with the appropriate and timely review of the child's individual circumstances, and with informed support for the decision from an appropriate Aboriginal and Torres Strait Islander community-controlled agency.**

5. **Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services,** and to make decisions regarding the care and protection of children and young people in their own communities.

6. **Permanency should never be used as a cost saving measure in lieu of providing Aboriginal and Torres Strait Islander families and communities with adequate and appropriate support.** The burden of care held by Aboriginal and Torres Strait Islander families and communities should be adequately resourced, whether placements are temporary or permanent.

7. **Aboriginal and Torres Strait Islander communities and their organisations must lead the development of legislation and policy for permanent care of their children based on an understanding of their unique kinship systems and culturally-informed theories of attachment and stability.**

8. **Where Aboriginal and Torres Strait Islander children are on long-term/permanent orders, genuine cultural support plans must be developed and maintained (including with regular review) on an ongoing basis.**

(B) PRIORITIES FOR REFORM

SNAICC proposes the following **PRIORITIES FOR THE DEVELOPMENT OF LEGISLATION AND POLICY** across all state and territory jurisdictions that will reflect a human rights-based approach to ensuring stability for Aboriginal and Torres Strait Islander children in out-of-home care:

1. Child protection legislation, policy and practice guidelines and decision-making are reviewed (periodically) to ensure effective and differential recognition of the unique rights of Aboriginal and Torres Strait Islander children to safe and stable connections to kin, culture and community.
   This review should address:
   - the effective implementation of all elements of *the Aboriginal and Torres Strait Islander Child Placement Principle*, accompanied by an evaluation framework that is nationally agreed and monitored with regular annual review;
   - the effective application of the *best interests* principle for each child through ongoing assessment of their individual circumstances; and
   - the development, implementation and review of cultural support plans for all placements, with particular attention to longer-term and permanent orders and with reference to an evaluation framework that is nationally agreed and monitored with regular annual review.

2. Mechanisms are established to enable Aboriginal and Torres Strait Islander community-controlled agencies, families and children to participate in all decisions relating to the care of Aboriginal and Torres Strait Islander children particularly those relating to longer-term or permanent care. In particular, the delegation of guardianship to a community-controlled agency, as has been trialed in Victoria, models of representative community agency participation, and models of Aboriginal and Torres Strait Islander Family-led Decision-making, should be considered for broader implementation.

3. All governments invest appropriately to provide access to early intervention, intensive family support and healing services for Aboriginal and Torres Strait Islander families to prevent abuse, neglect and removal of children to alternative care, and to promote family restoration where children have been removed.

4. All governments resource Aboriginal and Torres Strait Islander organisations to support reunification of children with family.

In the short-term SNAICC recommends a number of specific **priorities for immediate legislative reform** to support implementation of these recommendations, including:

5. That expedited timeframes for permanency planning be amended to provide greater flexibility for the use of a variety of more holistic measures to achieve stability for children, and in particular that the more inflexible provisions of Victorian legislation be repealed, including prescriptive limitations on parental contact which violate the United Nations Convention on the Rights of the Child (Art 9(2)).

6. That governments currently undertaking relevant legislative reform processes, for example in Queensland and Western Australia, respect the principles for permanency planning outlined above, and include the participation of independent Aboriginal and Torres Strait Islander agencies in the design of reforms.

7. That all governments review safeguards to maintain and support cultural connections for Aboriginal and Torres Strait Islander children for whom permanent orders are made or considered, particularly the Northern Territory, which provides manifestly inadequate protections.

SNAICC proposes the following **PRIORITIES FOR RESEARCH:**

8. In seeking to better understand the needs of Aboriginal and Torres Strait Islander children, research the causes and factors leading to placement stability and instability and *drift* in care, as well as solutions to improve stability.
9. Consult and engage with Aboriginal and Torres Strait Islander peak bodies and lead agencies in order to co-design models for planning that promote stability as understood for Aboriginal or Torres Strait Islander children.
10. Follow and support research into models for engaging and supporting Aboriginal and Torres Strait Islander families and communities in planning and decision-making processes to identify safe and stable care options for children (including current QLD Aboriginal and Torres Strait Islander Family-led Decision-Making trials).

"WE ARE DEEPLY CONCERNED ABOUT RECENT PERMANENCY PLANNING MEASURES ACROSS MANY AUSTRALIAN JURISDICTIONS MAY IN FACT UNDERMINE STABILITY FOR AND DEEPEN HARM TO CHILDREN, AND EXACERBATE INTER-GENERATIONAL TRAUMA TO FAMILIES AND COMMUNITIES. WE NEED TO URGENTLY INVEST IN EARLY INTERVENTION SERVICES TO PREVENT ABUSE, NEGLECT AND REMOVAL OF CHILDREN IN THE FIRST PLACE, ENSURE OUR PEOPLE ARE INVOLVED IN ALL KEY DECISIONS REGARDING OUR CHILDREN AND THAT ALL CHILD PROTECTION LEGISLATION, POLICY AND PRACTICE GUIDELINES RECOGNISE THE UNIQUE RIGHTS OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN TO SAFE AND STABLE CONNECTIONS TO KIN, CULTURE AND COMMUNITY."

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SNAICC

National Voice for our Children

SNAICC OFFICE
Suite 8, First Floor, 252-260 St Georges Road
North Fitzroy VIC 3068
P: 03 9489 8099 | F: 03 9489 8044
E: info@snaicc.org.au | www.snaicc.org.au