

Child Protection and Other Legislation Amendment Bill 2020

Submission by Legal Aid Queensland

Child Protection and Other Legislation Amendment Bill 2020

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee on the Child Protection and Other Legislation Amendment Bill 2020.

LAQ's specialist child protection lawyers provide a range of child protection legal services including legal advice and representation to parents whose children are the subject of child protection proceedings, separate representation of children and direct representation of children.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ seeks to offer policy input that is constructive and based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

Submission

Adoption is already available under section 5BA of the *Child Protection Act 1999* (CPA) Permanent care orders, which provide that children may be 'adopted' without having their relationships to their biological parents and siblings extinguished have recently been legislated. We are concerned about the speed with which the response to Deputy State Coroner Bentley's recommendations has occurred, as compared the time taken for the implementation of the recommendations of the Queensland Child Protection Commission of Inquiry. We note that some of the recommendations from the Carmody Inquiry still have not been implemented. The proposed amendments to the CPA appear to contradict the legislated principles for the administration of the CPA.

In the experience of LAQ's child protection lawyers, kinship care options are often not explored. Potential kinship carers appear to be held to higher standards, for example criminal offences in their past are often given disproportionate weight and are not properly considered against their current circumstances and their ability to meet the children's needs. There appears to be a lack of nuanced understanding of the fact that a pre-existing relationship exists between the putative kinship carer and the parent, and the mere fact of the relationship is often used as a reason that kinship care is not an appropriate placement for the child. We are concerned that the proposed amendments would result in the disproportionate favouring of adoptions over kinship care options. We suggest that further attention could be given to improving the kinship care system,

which may provide unexplored options for permanency while maintaining a child's connections to family and kin.

We note that while the Explanatory Notes to the Bill indicate that the Department of Child Safety, Youth and Women will meet any implementation costs from within its existing resources, we are concerned about funding implications for entities other than the Department. For example, legal assistance funding may be required for children and parents who seek legal assistance in relation to adoptions.

We repeat our submission made in 2017 that it is the experience of LAQ's child protection lawyers that child protection reforms aimed at ensuring that families have better and more intensive support to address child protection concerns have yet to be meaningfully and consistently implemented. We suggest that section 59 of the CPA should be amended to implement the Queensland Child Protection Commission of Inquiry's recommendation 13.20 (that before granting an order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family). A requirement for the court to be satisfied of the matters recommended in 13.20 would provide an important balance to the amendments regarding both the duration of child protection orders and the proposed new permanent care orders.

We also note that achieving legal permanency for a child will have little practical meaning in the child's life if the child does not have stable living arrangements while in out-of-home care, which in our lawyers' experience remains an aspirational goal for many children.