



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

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Your Reference:

Our Reference:

10 August 2020

Legal Affairs and Community Safety Committee
Secretariat
By email: lasc@parliament.qld.gov.au

Dear Sir/Madam

RE: **Child Protection and Other Legislation Amendment Bill 2020**

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. ("ATSIWLSNQ") welcomes the opportunity to comment on the *Child Protection and Other Legislation Amendment Bill 2020* ("the Amendment Bill").

Aboriginal and Torres Strait Islander Women's Legal Services NQ

ATSIWLSNQ practices predominantly in areas involving families and children and a significant portion of our work involves child protection litigation. As the only community legal service in Queensland designated as an Aboriginal and Torres Strait Islander legal service for women, we have a particular interest in Child Protection matters which have impacted on the lives of Aboriginal and Torres Strait Islander women and their children disproportionately for generations.

Documents

Documents relating to the Amendment Bill and relied on in formulating this submission were:

1. *Child Protection and Other Legislation Amendment Bill 2020* ("the Bill")
2. Recommendations made by the Deputy State Coroner in the Inquest into the Death of Mason Jet Lee
3. Statement of Compatibility for the *Child Protection and Other Legislation Amendment Bill 2020*
4. Explanatory Notes *Child Protection and Other Legislation Amendment Bill 2020*

We have also read other documents referred to in the body of this submission and a number of the submissions made in response to the Amendment Bill. We support the submissions made by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak ("QATSICPP") and the Queensland Law Society ("QLS").

Amendment of Child Protection Act 1999 Clause 8

ATSIWLSNQ does not support the amendment of Clause 8, which amends section 5BA of the *Child Protection Act 1999*. We refer to the following reasons.

(a) **Policy objectives and reasons for them**

The rationale for the proposed introduction of adoption as a permanency option for children in out of home care is the findings of the Deputy State Coroner Bentley in relation to the Inquest into the tragic death of Mason Jet Lee¹.

The systemic failings of the child protection system were criticised by the Coroner:

...the handling of Mason's case was a failure in nearly every possible way by the relevant employees of the department to comply with their statutory obligations, their manual, their policies and procedures...

In spite of finding that the failings of individual employees were part of a collective failure of the Department of Child Safety Youth and Women ("the Department"), the Coroner's recommendations did not include better resourcing, better training or resourcing families to meet their children's needs.

The resourcing of families is significant in the circumstances that a high number of children are placed in out of home care due to neglect, which is closely linked to lack of resources and poverty. It is notable that a relatively small proportion of overall spending on child protection funding is directed towards support services for children, with the majority of resources going to child protection intervention and out of home care.²

Further, the coroner appears to have relied heavily on expert evidence which found that the first two or three years of life are likely to have the greatest impact on laying the foundations for healthy brain development and resilience.³ There was heavy reliance on *The Bucharest Early Intervention Project* in Rumania, which randomly removed children from institutions and placed them with foster carers who were well trained and provided with a good wage as a foster parent.⁴ It is difficult to see how introducing adoption under Clause 8, achieves greater protection for children in the first two or three years of life, particularly in the absence of good training and wages.

The *Child Protection Act 1999* ("The Act"), provides for children to be in short term custody for a maximum of 24 months. Where reunification is not an option and the options under Clause 8, s.5BA(4)(a) and (b) are not an option, it is not clear how adoption enhances the child's protection, as opposed to any other permanency option, if in fact a permanency option is appropriate for the child at all.

In this respect, the stated objectives contained in the Explanatory Notes⁵ do no more than state that adoption is an option for achieving permanency. This removes a child from the Child Protection system, but does not explain how it offers greater protection to the child, particularly for a child under 3 years old. Further, it imposes very serious consequences on the child, severing her or his connections with family and identity.

The risks to children in out of home care do not appear to have been given consideration. Adoption involves not only a severing of family relationships but also a loss of any departmental scrutiny. This leaves children exposed to living with an adopted family without any departmental scrutiny. The risks of out of home placement are demonstrated in the tragic homicide of Tiahleigh

¹ *Child Protection and Other Legislation Amendment Bill 2020 Explanatory Notes*, p.1

² The "Family Matters Report" 2016, reported spending of 17% of overall funding spent on support services for children in the 2014-15 year, although it should be noted that this was an Australia-wide figure.

³ *Findings of the Inquest into the death of Mason Jet Lee* p.107

⁴ *Ibid.*

⁵ *Child Protection and Other Legislation Amendment Bill 2020 Explanatory Notes*, p.2

Palmer.⁶ In the absence of any departmental scrutiny, there is even less likelihood of such tragedies being averted.

(b) Impact on Aboriginal and Torres Strait Islander children and their families

It is submitted that the impact of introducing adoption as a permanent care option will disproportionately affect Aboriginal and Torres Strait Islander children, taking into consideration the over-represented of Aboriginal and Torres Strait Islander children in the Child Protection system for a variety of reasons, including historical, intergenerational trauma and lack of cultural competency within the Department.⁷ As at 31 March 2020, Aboriginal and Torres Strait Islander children comprised 43% of children in care in Queensland⁸, although representing only about 4% of the population⁹.

The impact of the Bill will be to violate or limit the human rights of Aboriginal and Torres Strait Islander people as expressed in the UN Declaration on the Rights of Indigenous Peoples, in particular in relation to the right of self-determination¹⁰ and to potentially enforce assimilation or destruction of culture and removal from community.¹¹

We do not support adoption for Aboriginal and Torres Strait Islander children at all. In addition to loss of cultural rights, we maintain that the severing of family ties is an unjustifiable limiting of the right to privacy and reputation with irreversible impacts on the child.

Further, we agree with the submission of the Queensland Law Society in relation to the relevance of s.5C of the Act. Section 5C reinforces the right of Aboriginal and Torres Strait Islander people to self-determination and provides that, for Aboriginal and Torres Strait Islander children:

*the long term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.*¹²

It is submitted that the stated objectives of the Act do not provide sufficient justification for breaching human rights under the UN Declaration on the Rights of Indigenous Peoples or for undermining the principles in s.5C or for limiting sections 25 and 28 of the *Human Rights Act 2019* in relation to culture and the right to privacy and reputation.

While adoption and severing of a child's ties with his/her family is concerning for any child, the significance for Aboriginal and Torres Strait Islander children is enormous, given the loss of culture and identity that adoption may potentially inflict, the violation of their indigenous rights and the known legacy of trauma and intergenerational trauma still experienced by Stolen Generations people and their families.

It is noted that Mason Jet Lee was neither an Aboriginal nor Torres Strait Islander child and was not a child in out of home care. In this context it is particularly unacceptable to use the tragic death of this toddler as a justification for introducing an option that will sever children from their families through adoption.

⁶ See for example https://en.wiki/Murder_of_Tiahleigh_Palmer

⁷ See for example, "The Family Matters Report" 2016, pp15-23

⁸ <https://www.csyw.qld.gov.au/child-family/our-performance/ongoing-intervention-phase/living-away-home>

⁹ <https://www.abs.gov.au/ausstats/abs>

¹⁰ Articles 3 and 18, *UNDRIP*

¹¹ Articles 8, 9, 11 *UNDRIP*

¹² S.5C(1)(b) *Child Protection Act 1999*

(c) Adoption as a failure to invest in Aboriginal and Torres Strait Islander children

It is submitted that the Bill's proposed changes to s.5BA represent an undervaluing of Aboriginal and Torres Strait Islander cultures and a failure to invest in the futures of Aboriginal and Torres Strait Islander children in a meaningful way. The potential over-riding of section 5C undervalues the importance of maintaining principles of self-determination and of considering the impact on Aboriginal and Torres Strait Islander children of loss of family and community.

The strengths of Aboriginal and Torres Strait Islander families' child-rearing practices have at times been misunderstood where they differ from typical non-indigenous child-rearing practices. In particular, Aboriginal and Torres Strait Islander collective child rearing and shared responsibilities for children are often misunderstood as instability, while they represent social cohesion and community protectiveness.¹³ This has contributed to the over-representation of Aboriginal and Torres Strait Islander children in the Child Protection systems in Australia¹⁴.

The risk of entrenched misunderstandings leading to children entering the child protection system and staying long enough to become eligible for adoption are concerning and place Aboriginal and Torres Strait Islander children disproportionately at risk of adoption under the proposed amendment to the Act.

The two year time frame, after which a child may be adopted, also presents a particular obstacle for Aboriginal and Torres Strait Islander families to achieve reunification with their child or children. Factors that may impact on the family's capacity to achieve reunification include inter-generational trauma in addition to socio-economic factors that may be experienced by the family.

We agree with the submission of QATSICPP, that although a parent may not be ready to achieve reunification within 2 years this may be achieved within 3 or 4 years, particularly where the Department has supported the parent/s to access support services.

In our submission and in support of achieving more positive outcomes for Aboriginal and Torres Strait Islander children and their families, we recommend a more positive approach to addressing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, through the focuses of the Fourth Action Plan.¹⁵ In particular, we support actions that aim to:

- (a) Improve outcomes for Aboriginal and Torres Strait Islander children *at risk of entering, or in contact with* child protection systems; and
- (b) Improving prevention and early intervention...¹⁶

Amendment of Child Protection Act 1999 Clause 9

We support the insertion of s.51VAA, providing for a review process of long-term guardianship orders to the chief executive, provided that reviews are implemented in a way that consider all options including reunification of the child with family.

Cathy Pereira
Principal Solicitor
ATSIWLSNQ

¹³ Lohar S, Butera N, Kennedy E "Strengths of Australian Aboriginal cultural practices in family life and child rearing" *Child Family Community Australia* Paper No.25 of 2014

¹⁴ "The Family Matters Report" 2016

¹⁵ Fourth Action Plan 2018-20, *Supporting families, communities and organisations to keep children safe, National Framework for Protecting Australia's children 2009-2020*

¹⁶ Fourth Action Plan 2018-20, p10