Speech By

Hon. Leanne Linard

MEMBER FOR NUDGEE

Record of Proceedings, 23 March 2021

CHILD PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. LM LINARD (Nudgee—ALP) (Minister for Children and Youth Justice and Minister for Multicultural Affairs) (11.31 am): I move—

That the bill be now read a second time.

On 3 December last year I introduced the Child Protection and Other Legislation Amendment Bill. The bill was referred to the Community Support and Services Committee for consideration and the committee tabled its report on 12 February 2021. I thank the committee for its examination of the bill, particularly the member for Mansfield, the chair of that committee, and note its single recommendation that the bill be passed. I also thank the former Legal Affairs and Community Safety Committee for its detailed examination of the bill when originally introduced by my predecessor the Hon. Di Farmer, member for Bulimba, in the last parliament. I would like to thank all of the people who made submissions to both committees and the stakeholders who provided valuable input when the bill was being developed.

The Child Protection Act 1999 recognises the importance of permanency and stability for children. This is not just legal permanency but also permanency in their relationships with people of significance to them and stability in their living arrangements. The bill proposes amendments to the Child Protection Act to enhance the approach to achieving permanency for children under the act. Adoption is already one option available for achieving permanency for a child who needs long-term care. The bill clarifies that adoption is an option to be considered as part of a suite of long-term options available.

The bill also clarifies the importance of and promotes alternative permanency options for children subject to a child protection order granting long-term guardianship to the chief executive. In doing so, the bill implements the intent of recommendation 6(b) of the Deputy State Coroner's findings of inquest into the death of Mason Lee. The Queensland government has implemented significant reform since Mason's tragic death, including legislative reforms that commenced in 2018 to improve stability and permanency for children in care in Queensland.

An objective of these reforms was to promote positive long-term outcomes for children in the child protection system through the timely decision-making and decisive action towards either reunification with family or alternative long-term care. These reforms included a definition of permanency to include three elements: relational, physical and legal permanency; new permanency principles for ensuring a child's best interests with consideration of relational, physical and legal permanency; requirements for all case plans to include goals and actions for achieving permanency; a limit on the making of successive short-term child protection orders that extend beyond two years unless it is in the child's best interests; and the introduction of a new child protection order—a permanent care order—which grants guardianship of a child to a suitable person until the child turns 18 years of age

and is more secure than a long-term guardianship order. This bill continues to build on these reforms by further strengthening our focus on achieving permanency for children known to the child protection system.

In talking about the objectives of the reforms, I will take this opportunity to clarify the differences between the New South Wales and Queensland child protection systems, noting in her findings of inquest the Deputy State Coroner referred to the New South Wales' approach to the adoption of children in care. In New South Wales, similar to Queensland, reunification with the child's parents is the first preference for permanency, followed by guardianship of a relative, kin or other suitable person. Differing from Queensland, in New South Wales the third preference is for the child to be adopted, except for Aboriginal and Torres Strait Islander children, and the last preference is for the child to be placed under the parental responsibility of the minister for child safety.

Where a child's permanency plan has a goal of reunification, adoption or guardianship, the maximum period that an order gives the New South Wales minister parental responsibility for the child is two years unless there are special circumstances. In comparison, Queensland limits the total duration of successive short-term child protection orders to two years, unless it is in the child's best interests and reunification with family is reasonably achievable within the time frame.

While our systems have some differences, both New South Wales and Queensland laws recognise that timely permanency outcomes are in the best interests of children and young people. Both systems have specific protections for Aboriginal and Torres Strait Islander children in permanency planning, and the best interests and wellbeing of the child are always the primary consideration in any decision made.

When I introduced this bill in December last year, I advised that the proposed amendments would be complemented by operational reforms. I am pleased to advise that many of these actions have been completed and others are underway. These actions include: completing a review of the implementation of the 2018 permanency reforms, including safe care and connection for Aboriginal and Torres Strait Islander children; completing a review of case plans for the 141 children in care under three years old on long-term orders to ensure the most appropriate long-term outcomes are being pursued; reviewing case plans of 880 children in care under three years of age on short-term orders to ensure the most appropriate long-term outcomes are pursued; working with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak to explore permanency outcomes for 30 Aboriginal and Torres Strait Islander children under three years of age who were identified through the first case read process and are not placed with family or community kin; and establishing a new senior position of Chief Practitioner in the department dedicated to overseeing improved permanency outcomes across the department. The Chief Practitioner, Dr Meegan Crawford, was appointed in September last year.

As part of the ongoing response to support implementation of the bill, the department will provide internal quarterly reporting on the status of permanency planning for children in care, including the number of children on permanent care orders or other long-term orders; progress actions in the internal permanency strategy and road map to focus on system improvements that improve permanency outcomes for children in care and those who can continue safely residing with their families; and continue to explore opportunities to improve outcomes for our children in care. This is a major focus for the Chief Practitioner.

I note that, as part of its consideration of the bill, the committee had access to submissions made to the former Legal Affairs and Community Safety Committee. Several stakeholders who made submissions to the former committee were supportive of the bill's objectives to enhance the approach to permanency and permanency planning. However the bill's reference to adoption was consistently raised as an issue for many stakeholders throughout both committee processes. I will address these issues shortly.

Before I turn to the detail of the bill, I would like to make clear that the Child Protection Act embeds all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle in legislation. The five elements are: prevention, partnership, placement, participation and connection.

The prevention principle is that an Aboriginal or Torres Strait Islander child has the right to be brought up within their own family and community. The partnership principle is that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under the act about Aboriginal or Torres Strait Islander children. The placement principle is that, if an Aboriginal or Torres Strait Islander child is to be placed in care, the child has a right to be placed with a member of the child's family group. The participation principle is that an Aboriginal or Torres Strait Islander child and their parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child. The connection

principle is that an Aboriginal or Torres Strait Islander child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

The act requires that the department have regard to these principles when making a significant decision about an Aboriginal or Torres Strait Islander child. The act also requires that the court have regard to the principles when exercising a power in relation to an Aboriginal or Torres Strait Islander child. Nothing in this bill proposes to change the application of these important principles.

I will now turn to the detail of the bill. Section 5BA(4) of the Child Protection Act includes a hierarchy of preferences for deciding whether an action or order best achieves permanency for a child. The first preference is for the child to be cared for by the child's family; the second preference is for the child to be cared for under the guardianship of a family member who is not a parent of the child or another suitable person; and the third preference is for the child to be cared for under the guardianship of the chief executive. The bill proposes amendments to this order of preference by providing that adoption is the third preference for children other than Aboriginal or Torres Strait Islander children.

For Aboriginal and Torres Strait Islander children the bill provides that adoption is the last preference for achieving permanency. This recognises that adoption is not part of Aboriginal tradition or Torres Strait island custom and 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. This is consistent with the Adoption Act 2009, which I will turn to in more detail later.

Permanency and adoption are very sensitive issues, and the submissions received by the committee reflect this. During the previous committee process some stakeholders expressed support for this amendment; however, many other stakeholders considered that adoption is not an appropriate option for achieving permanency for children in care. Adoption is already available as an option for achieving permanency for children in care. The bill does not introduce adoption as a new option and does not require adoption to be pursued for a child. Instead, the bill clarifies that adoption is an option as part of a suite of alternative long-term care options available.

The committee also heard from several stakeholders who highlighted the trauma of past forced adoption policy and practices and that contemporary adoption could still have negative impacts on a child, such as separation from their birth family, siblings and broader family group. Many Aboriginal and Torres Strait Islander families continue to live with the trauma of past practices. I acknowledge every person affected by past forced adoption practices and appreciate the bravery of those who have shared their experiences. I acknowledge that for many children who require long-term care adoption may not be appropriate due to their individual circumstances, including: age, cultural identity, ongoing support needs and the importance of ongoing connection with family.

An adoption order severs a child's legal relationship with their birth family, not only their parents but also grandparents, uncles, aunts, cousins—indeed, all family and extended family members—and changes their identity. For these reasons we know that in practice adoption is rarely deemed the most suitable option for children in care. In the last seven years, 10 children have been adopted from Queensland's child protection system. The Australian Institute of Health and Welfare's 2019-20 report confirms that the number of local adoptions in Queensland is comparable with those in other jurisdictions. This aligns with a general decline in the number of local adoptions across Australia, reflecting significant changes in society. Today parents are provided with more supports to care for their child.

In Queensland, the Supporting Families Changing Futures reform program is focused on delivering the right services at the right time to support families and keep children safely at home. Contemporary adoption practices are voluntary and enable parents to make informed decisions around their child's care arrangements. This allows for appropriate consideration of children to either be reunified with their parents, extended family outreach to support the parents, external supports to be provided to enable the parents to care for their child, or the child to be adopted. There are some children who require long-term care for whom adoption may be the best option to bring stability and support. The bill makes it clear that adoption will be considered as an option among the suite of options to be considered for a child who requires alternative long-term care.

The best option for an individual child will always be based on their individual circumstances and needs. We will continue to act and make decisions based on the principle that the safety, wellbeing and best interests of a child—both through childhood and for the rest of their lives—are paramount. When we consider a child's safety, wellbeing and best interests for the purpose of the Child Protection Act, the other general principles under section 5B and the principles for achieving permanency for a child under section 5BA are part of that consideration. The other general principles include, among other

things: that a child has the right to be protected from harm or risk of harm; a child's family has the primary responsibility for the child's upbringing, protection and development; and the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family. It is also a general principle of the act that, if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care.

The principles for achieving permanency for a child provide that the action or order that should be preferred is the action or order that best ensures the child experiences or has: ongoing positive, trusting and nurturing relationships with people of significance to the child, including the child's parents, siblings, extended family members and carers; stable living arrangements with connections to the child's community that meet the child's developmental, educational, emotional, health, intellectual and physical needs; and legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability including, for example, a long-term guardianship order, a permanent care order or an adoption order for the child.

Queensland's child protection system prioritises achieving permanency for children in the context of the safety, wellbeing and best interests of the child being paramount. It is a general principle of the Child Protection Act that the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family. For deciding whether an action or order best achieves permanency for a child it continues to be the first preference that the child is cared for by their family; however, if the department assesses that adoption may be a suitable option for a child who requires long-term care, the process under the Adoption Act 2009 must be followed.

The Adoption Act includes guiding principles and safeguards that recognise the impact of past forced adoption policies and practices and prevents those practices from happening again. This includes clear requirements for the consent of the child's parents and for the Childrens Court to have oversight of the making of final adoption orders. The Adoption Act requires prescribed information to be given to each of the child's parents. This includes: information about options other than adoption for the child's long-term care; support that may be available to the parent, whether or not adoption of the child proceeds; possible short- and long-term psychological effects for the parent and child of consenting to the adoption; and how and when the parent's consent to the adoption may be revoked. There is also a requirement for the chief executive to arrange pre-consent counselling for each of the child's parents. The counselling must be carried out in a way that allows the parent to ask questions and discuss the prescribed information and matters arising from the information.

The Adoption Act also requires that the child is given certain prescribed information in a way and to an extent that is reasonable having regard to their age and ability to understand. The chief executive must also ensure the child receives counselling about the proposed adoption, which must be carried out in a way and to an extent that is reasonable having regard to the child's age and ability to understand. If the child is able to form and express views about their own adoption, the court must consider those views before deciding whether to make an adoption order for the child.

The Adoption Act includes limited circumstances when the court may dispense with the need for a parent's consent. Relevant circumstances include where the court is satisfied the parent: is not, and will not be, willing and able to protect the child from harm and meet the child's need for long-term stable care within a time frame appropriate to the child's age and circumstances; is unreasonably withholding consent to the adoption or refusing to engage with the chief executive in relation to whether to give consent to the adoption; or does not have capacity to give the consent.

A joint submission by a number of our key stakeholders to the Community Support and Services Committee suggested independent oversight is required. Only the Childrens Court can make an adoption order for a child. This is not a decision that can be made administratively by the department.

During the committee process, several stakeholders raised that adoption is not an appropriate option for Aboriginal and Torres Strait Islander children. We have listened to our stakeholders on this issue. The bill reflects this by highlighting that, for an Aboriginal or Torres Strait Islander child requiring long-term care, adoption is the last preference after being cared for under the guardianship of the chief executive. This is consistent with the principles of the Adoption Act which recognise that adoption, as provided for under that act, is not part of Aboriginal tradition or island custom and as such should be considered as a way of meeting an Aboriginal or Torres Strait Islander child's need for long-term care only if there is no better available option.

Any consideration of adoption for an Aboriginal or Torres Strait Islander child must apply all five elements of the child placement principle contained in the Child Protection Act, as well as human rights considerations contained in the Human Rights Act 2019, and the existing protections and mechanisms under both the Child Protection Act and the Adoption Act will also continue to apply. The protections in

the Adoption Act include a requirement for the court to have regard to the views of an appropriate Aboriginal or Torres Strait Islander person if considering adoption for an Aboriginal or Torres Strait Islander child, both about the child and about Aboriginal tradition or island custom relating to the child.

The Adoption Act also provides that, if a child is in the custody or guardianship of the chief executive or someone else under the Child Protection Act, the court must not make an adoption order unless a document signed by the chief executive is produced to the court stating that the chief executive considers the adoption is an appropriate way of meeting the child's need for long-term stable care.

There are also safeguards in the Adoption Act to support children to maintain connection with their community or language group. For example, the Adoption Act requires that, if a child is an Aboriginal or Torres Strait Islander child and the prospective adoptive parents are not from the child's community or language group, an adoption plan must be agreed to that addresses how the prospective adoptive parents or adoptive parents will help the child to maintain contact with their community or language group, help the child to develop and maintain a connection with their Aboriginal tradition or island custom, and preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

While neither the Adoption Act nor the Child Protection Act promote adoption as an appropriate option for the long-term care of an Aboriginal or a Torres Strait Islander child, any recommendation that adoption be pursued as an option for an Aboriginal and Torres Strait Islander child in care will be personally reviewed by the Director-General of the Department of Children, Youth Justice and Multicultural Affairs. This responsibility will not be delegated.

To support implementation of the bill, information about compliance with the child placement principle will be prepared and provided to the court to support an application for adoption of an Aboriginal or Torres Strait Islander child. For an Aboriginal or Torres Strait Islander child, the department will encourage and facilitate an independent Aboriginal or Torres Strait Islander entity for the child providing advice about compliance with the child placement principle. This will better enable the court to independently consider whether adoption of the child is the most suitable option.

The joint submission to the committee suggested introducing a requirement for the department's compliance with the Aboriginal and Torres Strait Islander child placement principle to be to the standard of 'active efforts'. I am pleased to advise the House that this is already an operational commitment and my department continues to work to embed this in practice.

The Aboriginal and Torres Strait Islander child placement principle provides a critical safeguard to protect the rights and interests of Aboriginal and Torres Strait Islander children and families. The department is also working to further embed the Aboriginal and Torres Strait Islander child placement principle in policy and practice and support staff to make active efforts to comply with its five elements. The department is committed to partnering with Aboriginal and Torres Strait Islander children, families, departmental staff and organisations to do this. We understand the importance of our legislation being consistent with tradition and island custom. We demonstrated our commitment to this with the passage of the historic meriba omasker kaziw kazipa act in 2020 that recognises traditional Torres Strait Islander child-rearing custom.

The bill also includes a new requirement for the chief executive to review the case plan for a child who is subject to a child protection order granting long-term guardianship to the chief executive 24 months after the order is made. This new provision seeks to promote alternative permanency options for children who are already subject to a child protection order that grants a long-term guardianship order to the chief executive. During the previous committee process, many stakeholders noted their support for this. However, some stakeholders raised concerns that the amendment would lead to increased adoptions for children in care. Other stakeholders interpreted the amendment as requiring adoption to be considered after two years for every child under the long-term guardianship of the chief executive.

The bill does not require that adoption be considered or expedited after two years of a child protection order granting guardianship to the chief executive. Rather, the bill requires the chief executive to review the case plan in these circumstances to consider whether there is a better way of achieving permanency for the child. Alternative permanency options may include: reunification with the child's family; pursuing an alternative child protection order for the child, including an order granting guardianship to a member of the child's family or another suitable person; a permanent care order; or adoption. The order of priority for achieving permanency, as amended by this bill, will apply to these case plan reviews, including that adoption will be the third preference for a child who is not an Aboriginal or Torres Strait Islander child.

Should the case plan review identify adoption as a new permanency goal, this will be captured in the report about the review as required under the act. This outcome will not result in adoption automatically being pursued for a child. If adoption is assessed as an option for achieving permanency for a child, the process under the Adoption Act, which I outlined earlier, must be followed.

In submissions to the previous committee, some stakeholders interpreted the bill as imposing a two-year time limit on achieving reunification with a child's family. The bill does not impose such a time limit, and a child being cared for by their family continues to be the first preference for deciding whether an action or order achieves permanency for a child.

The bill also proposes unrelated minor and technical amendments to the Adoption Act to enable an application for a final intercountry adoption order to be made for a number of children placed with prospective adoptive parents by the Commonwealth minister. The Adoption Act enables the chief executive to apply to the Childrens Court for a final intercountry adoption order for a child when the child has been in the custody of the prospective adoptive parents for at least one year, including in circumstances where the chief executive placed the child in the prospective adoptive parents' care.

The chief executive of the department is usually responsible for the placement of children in Queensland as part of Australia's intercountry adoption program because of a delegation by the Minister for Home Affairs and the Minister for Immigration and Border Protection under Commonwealth legislation. Following the 2017 Queensland election, machinery of government changes occurred that resulted in the forming of a new department. As the instrument of delegation referred to a previous department, the delegations conferred on Queensland were unable to be exercised until a new delegation had been approved by the Commonwealth minister.

Between 30 April 2018 and 1 July 2019, the Commonwealth minister placed a small number of children from overseas with their prospective adoptive parents in Queensland. The chief executive cannot apply for a final adoption order under the Adoption Act for these children because they were not placed with their prospective adoptive parents by the chief executive. This situation has significantly impacted and created great uncertainty for the families and children affected. The bill amends the Adoption Act 2009 to enable the chief executive to apply to the court for a final adoption order for the relevant children. During the committee process, stakeholders did not raise concerns about this minor amendment.

Again, I would like to extend my thanks to the Community Support and Services Committee for its thorough consideration of the bill. The bill builds on our government's commitment to improving permanency and stability for children in care. We want every child to have a safe, loving and stable home where they can achieve the best start in life. I commend the bill to the House.