Adoptee Rights Australia

Adoptee Rights Australia (ARA) Inc.

Submission to the Legal Affairs and Community Safety Committee

Child Protection and Other Legislation Amendment Bill 2020

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ARA Inc.

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Part 1. Introduction

Adoptee Rights Australia (ARA) Inc. thanks the Legal Affairs and Community Safety Committee ('the Committee') for the opportunity to make a submission to their inquiry into the Child Protection and Other Legislation Amendment Bill 2020, introduced by the Hon Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence on 14 July 2020.

This submission relates to Clause 8 of the Child Protection and Other Legislation Amendment Bill 2020 (Clause 8 of the Bill).

Clause 8 of the Bill makes an amendment to provide that adoption is third in the order of priority for achieving permanency for a child.

Those who want adoption prioritised use emotive statements threatening that children will be 'bouncing around in foster care' if adoption is not used. But the Child Protection and Other Legislation Amendment Bill 2020 is not about increasing stability for children in care. Guardianship and Permanent Care Orders (PCOs) already offer stability.

An adoption order has the effect of removing the child from the out of home care system without returning them to their family, and also of removing the duty of care obligations from the State. Adoptees abused in care were excluded from the Royal Commission into Institutional Responses to Child Sexual Abuse because they were adopted. Their care had been privatised, and with it, any protection and obligation that they should have been entitled to under the State's duty of care to them.

Adoption tends to be understood on a largely symbolic level by those who have not examined its legal reality or the lifelong and intergenerational impacts of being adopted and living under an Adoption Act. But beyond the myths, adoption from care means transferring a vulnerable child from being under an Act that has specific requirements for their Standard of Care, and requires follow up checks on their welfare, and placing them under an Act that has no safeguards or protections recognising that they are not related to the people caring for them. Their ancestry and relationship rights are severed, and their rights to know or contact their natural families even as adults are radically restricted.

We argue that with the prioritisation of adoption from Clause 8 of the Bill, at least six different human rights under the *Human Rights Act 2019* are limited, along with breaches of the individual's liberties, the denial of natural justice, and disproportionate intervention in the adult lives of those subject to adoption.

An *adoption evidence base* about the long-term effects of adoption needs to be built before decisions are made to increase it. Continuing adoption at all - let alone promoting it, without paying heed to its outcomes, is not only short-sighted, but a reckless act which will have long-term and profound negative repercussions.

Part 1.1 Summary

Part 1 Introduction and Summary

Part 2 provides a brief description of Adoptee Rights Australia (ARA) Inc. and what we do.

Part 3 contains an overview of background information about adoption, clarifying misinformation, myths, stereotypes and providing information on available research on comparisons of long-term care and adoption, and outcomes over the lifespan for adoptees. This has added to the length of the submission, but serves as a reference for Parts 4 and 5.

Part 4 contains an examination of Clause 8 of the Bill's consistency with fundamental legal principles starting with the potential inconsistency around the adopter's power to close an open adoption, acknowledged in the Explanatory Notes, and adding other, unacknowledged, inconsistencies around:

- Information and contact as an adopted adult
- The criminal offence of publicly identifying as an adopted adult
- The denial of Natural Justice

Part 5 contains an introduction and then an examination of the compatibility of Clause 8 of the Bill with the human rights under the *Human Rights Act 2019* that are acknowledged as being limited by the Bill in the Statement of Compatibility:

- Privacy and reputation (section 25 of the Human Rights Act 2019)
- Protection of families and children (section 26 of the Human Rights Act 2019)
- Cultural rights – generally (section 27 of the Human Rights Act 2019)

with the addition of further, unacknowledged human rights limited by Clause 8 of the Bill:

- The right to recognition and equality before the law (section 15, Human Rights Act 2019)
- The right to protection from torture and cruel, inhuman or degrading treatment (section 17, Human Rights Act 2019)
- The right to Freedom of expression (section 21, Human Rights Act 2019)
- The right to peaceful assembly and freedom of association (section 22, Human Rights Act 2019)

and other rights unjustifiably limited – Convention on the Rights of the Child (UNCRC):

- the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. (Article 25, UNCRC)

Part 6 Concludes the submission

Part 2. About ARA

Adoptee Rights Australia was established in 2018 by adopted persons to give a national voice to the lived experience of adoption, in response to the need for a national organisation to advocate for the rights of adoptees in Australia.

Legislation for adoption has existed in Australia for around one hundred years, with numerous influences, amendments, and variations to the Adoption Acts throughout the decades and between jurisdictions. In this time, more than 250,000 Australians have had their identities extinguished and lives changed forever by adoption.

ARA advocates for reform in adoption legislation, policy and services in all Government jurisdictions in Australia, so that the human rights and wellbeing of adopted persons are restored, protected and promoted.

Part 3. Overview

Background information about adoption.

Part 3.1 The Issue of Past vs Current Adoption

The Queensland *Adoption Act 2009* is based on legislation first enacted in 1935, and then built on and added to and amended over 85 years. For most of that time, the voices of the adoptees who live their entire lives affected by the Act in whatever its current form is have had little influence over the changes.

This continues today. Unfortunately, when adult adoptees and adoptee organisations attempt to be treated as stakeholders in consultation on policy decisions around adoption, we are regularly dismissed as having adoptions under 'past practices' of 'forced adoption' that are claimed to be very different to adoptions today.

Yet the past practices that were apologised for in the Federal Forced Adoption Apology in 2013 were centred around mothers, and about questions of consent, relinquishment, and illegal practices in *obtaining* infants for adoption – *not the lived experience of being adopted for adopted people.* Despite an outpouring of information about the experience of adoption by adoptees in the lead up to the Federal Apology, an apology for the institution and practice of adoption itself was not included.

Adoption – itself - has never been examined. On even a brief examination, it is evident that there are far more commonalities than differences in the lived reality of adoption under adoption legislation for all adoptees, be they adults, children, or infants; and whether removal was at birth or later.

One of the main myths about adoption is how different it is today from the past:

Features of adoption	**Did this happen in 'past-forced' Adoption?**	**Does this still happen in current Adoptions?**
Legal order severing connection to ancestry	Yes	Yes
Cancellation of birth certificate	Yes	Yes
Issue of a new birth certificate with new name and new carer's names	Yes	Yes. Integrated birth certificates add the original parent's names but do not restore the severed ancestry or relationship to kin.
Verbal advice to the child that they are adopted.	Most, but no legislative requirement to do so	Most, but no legislative requirement to do so
Access for the adopted person to their original birth certificate when they are over 18, unless restricted	Records were closed in Qld in 1964 and have been open again since 1990 for those not restricted	Yes, unless restricted, or the legislation is changed again.
Legal power of State to place restrictions and prevent the adopted person from *ever* accessing their birth records?	Yes	Yes
Can adopters return the child? (discharge availability)	Yes	Yes
Welfare checks after adoption?	Never	Never

Part 3.2 Spruiking Adoption by Re-Branding: 'Open Adoption'

The creation of a false divide between past and present adoption has meant that adoption could be re-branded. All of the problems and issues inherent in the institution of adoption that caused the practice to (deservedly) reduce to near extinction in Australia have been condensed into one: the supposed lack of 'openness'.

Not only is this alarmingly simplistic, demonstrating the paucity of the evidence base underlying this approach, it is at best misguided, or at worst, deliberately disingenuous.

There are two versions of open adoption in adoptions and neither of them are new.

Open Adoption, Version 1

Re-opening of records (for most adoptees) is one version of 'open' adoption.

Records only became permanently sealed in the different jurisdictions of Australia in the mid to late 1960's after model universal adoption legislation was developed Federally, and then gradually introduced by the states and territories. But within around 20 years of the records being closed, this was reversed (with restrictions that did not exist before), and records were gradually reopened in the 1980's to 1990 in the various jurisdictions.

In Queensland, it took until 1987 for a contact register to be created, and it was 1990 before legislation in Queensland was amended to allow adoptees to access their identities and birth records again. This was now subject to restrictions for some that had not existed before. In contrast to the supposed 'openness' of adoptions today, no jurisdiction which has these restrictions has shown interest in pulling back on the powers, and in the amendments to the Adoption Act in South Australia in 2018, these powers to deny adoptees the right to their birth records were actually strengthened.

For someone born and adopted in Queensland in 1955, even though they were adopted under the Adoption of Children Act 1935, which did not close their records, theirs, and all adoptions, were closed retrospectively when Queensland introduced the changes in 1964. They then could not access their records when they turned 18 in 1973. That adoptee would have been 35 years old before they were seen as having the 'right' to access their records again – though it is still not an actual 'right' as it can be restricted, and restrictions can be increased at any time.

Adoptions have been open in this sense prior to the mid 1960's, and after 1990 in Queensland.

Open Adoption, Version 2

Separate to the re-opening the records at 18, 'open' adoption was proposed and debated in the 1980's in Australia. This form of adoption was the same 'open' adoption as is being

spruiked today as a *new* type of adoption. This type of open adoption means some forms of information or contact are potentially available while the adoptee is under 18 years old.

But this is not new at all. The principles of 'open adoption' were actually written into the Adoption Act legislation in Victoria as early as 1984, and there is a group of potentially 3,000 adult 'open' adoptees adopted since 1984 in Victoria, whose outcomes and experiences could inform current practice, but there has been no interest shown by the current 'open adoption' promoters.

In the United States there never was the downturn in adoption that happened in Australia, and adoption has continued unabated, with a lot of supposedly 'open' adoptions. Many adult 'open' adoptees from the US recount the pain of watching their families and kept siblings leaving them over and over again, and of never feeling part of either family. Here are some observations from 'open adoption' adoptee blog, *Sisterwish*, by Kat Stanley:

- I felt trapped between worlds.
- I never knew how to tell my mothers how I felt without hurting their feelings.
- I dealt with every single reunion issue adult adoptees have – except I was six.
- Genetic mirroring was looking like the person who left me.
- Open Adoption is an adult concept based on boundaries. As a child I didn't know that. I was fully invested.

For many under 18 'open adoptees', the jealousy and insecurity of the adoptive carers in the face of the perceived or real threat to their parenthood or the adoptee's loyalty has been traumatically damaging – akin to the push and pull between two parents after a divorce, but with the other cumulative trauma of adoption added in. And that is for those who actually did see their mothers/parents/siblings as they were growing up.

'Open' adoption could mean anything - they *might* get a meeting, a phone call, or a letter, or nothing at all if the adopters close the arrangement. Everything is dependent on the adults, and the torn child has to negotiate a minefield of jealousy and loyalties, with no independent protection.

Part 3.3 Lack of Research and Evidence Base

Outcomes for adoptees

Although there is the capacity, and the records are available to provide data, there has been minimal research done in Australia on the long-term outcomes for adoptees in adoption.

Professor Daryl Higgins, then of the Australian Institute of Family Studies (AIFS), quotes from data obtained in the Past Adoption Experiences Research: "[a]round 70 per cent of adopted individuals agreed 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." (Past and Present Adoptions in Australia, 2012). That report was produced by the AIFS in the lead up to the Forced Adoption Apology. It was mainly aimed at following up outcomes for mothers, but adoptees made up the majority of the respondents, and there were indications of overall negative effects and damage from adoption, but there have not been any follow up studies done to build further on those findings.

Some international studies have done the type of research that should be being done in Australia. This study: *Excess Mortality Rate During Adulthood Among Danish Adoptees* using a very large sample size of adoptees – over 13,000 - with a median age at adoption of one year – shows statistically significant excess mortality for adoptees especially from cancer, alcohol related deaths, and suicide:

> **Results:** Significant excess mortality before age 65 years was also observed for infections, vascular deaths, cancer, alcohol-related deaths and suicide. Analyses including deaths after age 65 generally showed slightly less excess in mortality, but *the excess was significant for all-cause mortality, cancer, alcohol-related deaths and suicides.*
> Conclusion: Adoptees have an increased all-cause mortality compared to the general population. All major specific causes of death contributed, and the highest excess was seen for alcohol-related deaths (Petersen, Sorensen, Mortensen, Andersen (2010).

The median age at adoption in this study would be close to the median age at adoption of the adoptees who were taken from their mothers at birth in Australia and almost immediately placed in adoptive families, then adopted at a later date. It is also very close to the age of current infants taken at birth due to the risk of future harm, or with siblings already removed, who will be channelled straight to one family and then adopted later if this Bill is passed. These are very similar groups – and this similarity is yet another reason why the insight, lived experience, and outcomes of adult adoptees is extremely relevant to current adoption policy.

In general, none of the groups (removed as infants in the 'past' and the 'present' and also those of the Danish sample group) are affected by the confounding variable of neglect or abuse that leads to the removal of older children, although they all have experienced the developmental trauma of maternal deprivation. Yet the studies discussed above indicate significant negative effects over the lifespan for adoptees.

If all the damage cannot be put down to maternal deprivation or abusive pre-adoptive or adoptive placements, and the timeframe of pre-adoptive placement is minimal or straight from birth, then what is it about adoption *itself* on a fundamental level that leads to these

outcomes? We argue that it certainly cannot be reduced down to the one problem of 'openness' (whichever version or combination of versions is applied), and that a few minor tweaks to adoption policy cannot 'fix' it, no matter what those promoting it today want to believe, or want the public to believe.

An *adoption evidence base* about the long-term effects of adoption needs to be built before decisions are made which condemn further generations to suffer the same outcomes.

Part 3.4 The Myth of Permanence in Adoption

There are many myths around the idea of permanence in adoption. The pro-adoption rhetoric implies that, once adopted, the child has exactly the same status as they would have if they were born into the family. That is not the case in Australia. A lot of research comparing adoption and foster care is based on UK research, which is based on UK adoptions and adoption law. But there are crucial differences in the UK and Australian adoption legislation.

In both Australia and the UK, discharges of adoption are possible where the adoption order was obtained under fraud, duress or improper means. But the major difference is that in Australia, discharges of adoption *can also be obtained for other reasons* and are even available to those who committed – as adults - to the supposedly permanent contract of adoption, the adopters themselves. Versions of 'special circumstances' discharges and who can apply vary arbitrarily between jurisdictions. In Queensland, a discharge can be ordered in "exceptional circumstances" and can be applied for by:

- the adopted person, if he or she is an adult;
- a birth parent of the adopted person;
- an adoptive parent of the adopted person;
- the chief executive.

But surely an 'exceptional' circumstance that is in the best interests of the under 18 year old adoptee is *any time* an adopter goes to court to be rid of the child and discharge the adoption? The prevalence of 're-homing' in the United States speaks to the likelihood of this happening in Australia with numbers of adopter-led discharges increasing in proportion to increases in adoptions.

While shoring up the adoptive carer's rights *to* the child, the Adoption Acts ensure there is an escape clause for the adopter. The adoption is permanent for the child *only if the adoptive carer wants it to be*. So, the permanence of adoption is a myth.

Part 3.5 Long-term Care vs Adoption

In 'Adoption and Long Term Foster Care: How do they Compare' from the South Australian Adoption Act (1988) Review, Associate Professor Lorna Hallahan noted that "…the need to provide permanency for children through the practice of adoption is highly controversial from an ethical and human rights perspective," and concluded:

> … studies suggest, unsurprisingly, that children fare better when they do not have prolonged exposure to highly inadequate parenting, poor living conditions, sustained neglect and abuse. They also fare better when their living arrangements are safe, stable and maintained over their childhood. Whether or not adoption adds that bit more that really helps a child settle and belong is not entirely clear, (2015)

Curiously, it was another State Coroner, Mark Johns in South Australia, who also made numerous recommendations about adoption from care in the Coronial Inquiry into the death of a child known to (SA) Child Protection, Chloe Valentine. In making his recommendations, Johns relied heavily on the highly controversial work of Jeremy Sammut, employee of the Neo Liberal Think Tank, the Centre for Independent Studies (CIS), as well as Sammut's book: "*The Madness of Australian Child Protection: Why adoption will rescue Australia's underclass children*".

Although Chloe Valentine had loving grandparents, ready and available to care for her if she had been removed in a timely manner as she should have been, Johns used the Coronial Inquiry to strongly promote and recommend adoption in South Australia. These recommendations were not followed as the Adoption Act (1988) SA Review had just been completed, with a Recommendation *against* adoption from care (Hallahan, 2015).

Again, there is little research, but looking overseas, in *Long term foster care or adoption? The evidence is examined*, John Triseliotis in the UK compared short-term outcomes for children adopted at various ages and found that 'recent' comparisons (even in the 1990's) of modern adoption and foster care showed very similar outcomes, due to changes in policies and practices:

> [Pre-School Children]
>
> Overall, if we include past studies, then breakdowns amongst the adoption group were significantly lower compared with the fostering group. However, if we include only studies carried out in the past 10 or so years, then hardly any differences would be found. This could be attributed to improved policies and practices.

> [Children placed between the ages of 5 and 12]
>
> If studies carried out before about 1990 are included, then long-term fostering experiences would show significantly higher breakdown rates compared to adoption. However, if studies carried out after about 1990 were contrasted, then they would show that fostering breakdowns were still higher, but the gap between these two forms of substitute parenting is narrowing..
>
> [Placement of adolescents]
>
> Though the overall breakdown rate suggests somewhat lower breakdown rates in favour of adoption, this disguises the fact that a proportion of older children are adopted by their foster carers after the placement stabilises. (2002, p 25-26).

The South Australian Office of the Guardian for Children and Young People, in their response to the Adoption Act (1988) SA Review agreed that "…the evidence is not strong for favouring adoption over long-term foster care placements to achieve good outcomes for children and the risk of disruption is similar," (2015).

From the Victorian Inquiry into Protecting Vulnerable Children:

> A recent UK study suggests that the main factors influencing outcomes in care are age, pre-placement adversity and delay in placement (that is, exposure to adversity). Where adversity levels are similar, children in stable foster care and adopted children had similar needs and outcomes when they arrived at the placements at similar ages. Overall there were no significant differences in outcomes between children in stable foster care and children who were adopted, (Beek et al, 2010, pp 2-4)
>
> and "Tilbury and Osmond's literature review suggests that temporary foster placements that become permanent deliver as good outcomes as other permanent arrangements, including adoption, (Cummins, Scott and Scales, 2012, 229).

The supposed 'good' outcomes from adoption cannot be separated out from that of long-term care, and this does not take into account the long-term impacts of adoption arising from the experience of the cascade of effects of a state assigned replacement identity and disconnection from kin for adoptees over their lifetimes and intergenerationally.

If the requirement of adoption is not necessary to achieving good outcomes from care, and the available research indicates this, as do many of the adoptees and adoptee run organisations who speak about the harm of adoption, then why expose a child-then-adult to these negative short and long-term effects when they can be cared for under long-term guardianship and Permanent Care Orders?

Part 4. Explanatory Notes – Consistency with Legislative Principles

The fundamental legislative principle discussed in Part 4 is that "Legislation has sufficient regard be given to an individual's rights and liberties, including natural justice and proportional intervention (Legislative Standards Act 1992, section 4(2)).

Part 4.1 Closure of an open adoption

In the Explanatory Notes accompanying the Bill, only one potential breach of an individual's rights and liberties is acknowledged, which is that adopters have the power to "…decide the adopted child will no longer have an ongoing relationship with their siblings and broader family group," (2020). This is noted as a potential breach of the principle that legislation should have sufficient regard given to an individual's rights and liberties, including natural justice and proportional intervention (*Legislative Standards Act 1992*, section 4(2)).

The closure of an open adoption, (as per the *Adoption Act 2009*, Part 8, 168 (1) (a) *An adoption plan is not enforceable*), and the resulting potential breach of rights and liberties is argued to be justified due to the amendment in Clause 8 prioritising adoption being "…necessary to promote the permanency needs of children who require long-term care, when reunification with family is not possible," (p. 5).

ARA disputes this justification and refers the Committee to the research by John Triseliotis and others, quoted in this document in Part 3.5. If similar child protection outcomes up to adolescence are achieved with long-term guardianship orders as are achieved with adoption, as the evidence shows, then the potential to breach an individual's rights and liberties that would occur if adoption is ordered over a guardianship order or PCO *cannot* be justified. Part 3.3 in this document is also referred to in this context due to its discussion of the indications that outcomes over the lifespan for a significant number of adopted people are negative.

There are other actual and inevitable restrictions of the child-then-adult's rights and liberties which follow from Clause 8 of the Bill, and which are not mentioned in the Explanatory Notes, and these are discussed in parts 4.1 to 4.3 below. None of these restrictions to rights and liberties occur if the child-then-adult is placed under Guardianship or a PCO.

Part 4.2 Information and Contact

Access to birth records, information, files, and family contact for adult adoptees:

There are *over 22 pages* in the *Adoption Act 2009* devoted just to clauses around the regulation of an *adult* adoptee's access to their file, adoption information, access to seeing their original, cancelled, birth certificate, and contact restrictions in relation to the family they are not related to after the adoption order is made. Because adoption information is under the *Adoption Act 2009*, and not the *Right to Information Act 2009 (Qld)* and the *Information Privacy Act 2009 (Qld),* there is also no set timeframe for documents to be provided.

Division 5, 275 (1) to (8) covers the availability of a court order to restrict or deny the adoptee's access to information when they are an adult. The application to restrict information can be made when the adoption order is made, or any time after, and can be made by – among others - the adopter/s.

These contact and information restrictions are discriminatory, oppressive, extreme, and lead to Draconian regulation of, and intervention into, the adoptee's liberties and private and personal affairs for their entire adult life – an outcome which is entirely at odds with the stated paramountcy of the rights of the child-then-adult, and disproportionate to interventions for any other citizen, except perhaps those who have been convicted of criminal offences. These interventions are not just limited to the child-then-adult, but also include further restrictions placed on the adoptee's children and future generations, if any, and other close family members.

Access to birth records, information, files, and family contact restrictions for adults previously on Guardianship orders, or PCO's when they were children:

There are no legislative restrictions around information other than those applied to every other adult citizen under *Right to Information Act 2009 (Qld)* and the *Information Privacy Act 2009 (Qld)* Provisions.

There are no legislative restrictions around contact other than those applied to every other adult citizen using Restraining Orders.

There is no restriction or denial of access to a birth certificate that states the true facts of the person's birth, as the birth certificate was never tampered with.

Part 4.3 Identifying as an adult as having been adopted or under Guardianship orders

This is another example of the restriction of rights and liberties which follow from Clause 8 of the Bill, and which are not mentioned in the Explanatory Notes. None of the restrictions to rights and liberties occur if the child-then-adult is placed under long-term guardianship or a PCO:

Identifying as an adoptee

It is a criminal offence for someone adopted in Queensland to publicly identify themselves as an adopted person if that identifies or is likely to lead to the identification of a party or a relative of a party to an adoption.

From the *Adoption Act 2009* (Qld) Division 2, 315:

> "This section applies to material that *identifies, or is likely to lead to the identification* of a person as
>
> 1(a) a party, or relative of a party, to an adoption unless
>
> 2(a) the publication is made with the written approval of the chief executive;
>
> or (b) written consent to the publication has been given, for each identified person…..
>
> The Maximum penalty – 315 (a) for an individual – 100 penalty units or 2 years imprisonment or (b) for a corporation – 1,000 penalty units….
>
> (4) Publish means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication."

Identifying as a person who has been Under Guardianship Orders

It is not a criminal offence in Queensland to identify before the public as an adult who has been under Guardianship orders.

Part 4.4 Natural Justice

The prioritising of adoption over Guardianship and PCOs is a denial of natural justice, when natural justice is interpreted as the rule against bias, and the right to a fair hearing. If adoption is accepted and prioritised based on the acceptance of the myth of the supposed outcomes of adoption, and there is no requirement to do research to provide an evidence-base on which to make an informed decision, then natural justice is denied, (see Sections 3.3, 3.4 and 3.5 in this document).

Part 5. Examination of the Statement of Compatibility

The acknowledged limitations on human rights in the Statement of Compatibility with the Bill are neither reasonable, nor are they reasonably justifiable, and there are also limitations on other human rights that the Statement of Compatibility does not mention.

Part 5.1 Privacy and reputation (Section 25, Human Rights Act 2019)

The Statement of Compatibility for the Bill acknowledges that "the right to privacy is limited by the amendments to the extent that they interfere with families and may lead to the likelihood of ties between families being severed through the adoption process" (p. 5).

Ties between families are severed immediately by an order of adoption, and Section 25 (a) of the *Human Rights Act 2019* also states that the interference should not be unlawful or arbitrary. Any decision that is based on a random choice or beliefs, rather than reason, is of an arbitrary nature. Due to the lack of an evidence base supporting the supposed long-term positive effects of adoption, any decision made to apply an adoption order is, by definition, an arbitrary decision. So Clause 8 of the Bill is not compatible with Section 25(a) of the *Human Rights Act 2019*, because it prioritises arbitrary interference with families.

The existence of an alternative option without the need for such a radical approach that does not have human rights limitations, shows that regarding Section 25, Privacy and Reputation, the application of Clause 8 of the Bill is neither reasonable, nor reasonably justifiable.

(See Parts 3.3, 3.4, 3.5 and 4.4 in this document).

Part 5.2 Protection of families and children (Section 26, Human Rights Act 2019)

The Statement of Compatibility for the Bill acknowledges that Section 26 of the *Human Rights Act 1999* "… also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child's best interests," (p. 5).

It is also acknowledged in the Statement of Compatibility that the "right requires the State to ensure the survival and development of every child to the maximum extent possible, and

to take into account the best interests of the child as an important consideration in all actions affecting a child," (p. 5)

When a child has been removed from their family, into the care of the State, either at birth or later – for whatever reason - that child is considered to be particularly vulnerable. The Statement of Compatibility for the Bill acknowledges that "[d]ecisions regarding permanency and adoption must be made in accordance with existing safeguards in the CP Act and Adoption Act," and that these decisions need to be consistent with the principle of paramountcy of the safety, wellbeing and best interest of the child, (p. 5).

There are numerous and explicit safeguards for the child built into the *Child Protection Act 1999*. The Standards of Care are reproduced here to show how comprehensive, and explicitly stated these protections are:

Queensland *Child Protection Act 1999* Chapter 4, Part 1, Section 122 - Statement of standards:

> (1)The chief executive must take reasonable steps to ensure a child placed in care under section 82(1) is cared for in a way that meets the following standards (the statement of standards)—
>
> (a)the child's dignity and rights will be respected at all times;
>
> (b)the child's needs for physical care will be met, including adequate food, clothing and shelter;
>
> (c)the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;
>
> (d)the child's needs relating to his or her culture and ethnic grouping will be met;
>
> (e)the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;
>
> (f)the child will receive education, training or employment opportunities relevant to the child's age and ability;
>
> (g)the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;
>
> (h)the child will receive dental, medical and therapeutic services necessary to meet his or her needs;

(i)the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;

(j)the child will be encouraged to maintain family and other significant personal relationships;

(k)if the child has a disability—the child will receive care and help appropriate to the child's special needs.

A Charter of Rights for a child in care is also at Schedule 1 of the *Child Protection Act 1999*.

ARA wishes to draw the Committee's attention to the contrasting *lack* of safeguards for the child in the *Adoption Act 2009* itself. There are no Standards or Charter of Rights of the child in the *Adoption Act 2009*, because the original intention of the Act was for it to be a means of creating the legal fiction that the child was born to the adopters. All of the warranted and added protections that recognise that a child has been in the care of the State, has a different family of origin, and is not a biological member of the caring family group disappear when the final adoption order is made.

The child begins in care of their family, then, according to the *Child Protection Act 1999* 5B (d) *if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child.* When the child is in the care of the State, the State is required to protect that child, and act in its best interests.

By placing a child in a situation where there are no safeguards and standards of care, and no recognition of their added vulnerability, then the State is not acting in the best interests of the child.

The mere hope or assumption that a vulnerable child will be cared for– without the explicit requirement, the follow-up checks, and the added duty of care of the state to ensure this happens – does not equate to protection of that child as required in Section 26 (2) of the *Human Rights Act 1999.*

The human rights limitations under Section 26 (2) of the *Human Rights Act 2019* which would be caused by the application of Clause 8 of the Bill are neither reasonable, nor reasonably justifiable due to the comparison between the safeguards in the *Child Protection Act 1999* and the *Adoption Act 2009*, the lack of an evidence base supporting the supposed positive long-term effects of adoption, and the existence of an alternative option that does not have human rights limitations without the need for such a radical approach. (See Parts 3.3, 3.4, 3.5 and 4.3 in this document. Part 5.5 below also refers to the lack of follow up checks in adoption, and their requirement under the United Nations Convention on the Rights of the Child).

Part 5.3 Cultural Rights – generally (Section 27, Human Rights Act 2019)

The Statement of Compatibility for the Bill acknowledges that "The amendments may indirectly limit this right should they lead to increased use of adoption as a mechanism to achieve permanency for children in care, if a child is adopted into a family that does not share their cultural background," (p. 6).

Section 27 of the Human Rights Act, 2019 states that "All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language."

The justification given for ignoring a potential adoptee's culture is that "the Senate Community Affairs References Inquiry into out-of-home care report noted evidence that 'stability was one of the most important aspects contributing to positive outcomes for children and young people in care,'" (p. 6).

But the lack of an evidence base to support the claim for supposed positive outcomes over the long-term in adoption, and the existence of an alternative option of Guardianship and PCOs which provide stability in a less restrictive and more reasonable manner, without the need for such radical human rights limitations, means the application of Clause 8 of the Bill is neither reasonable, nor reasonably justifiable in regard to limitations on cultural rights. (See Parts 3.3, 3.4, 3.5 in this document).

Vulnerable groups like Culturally and Linguistically Diverse (CALD) Australians are not mentioned as having cultural traditions of any importance. One reason given for the different considerations for Aboriginal and Torres Strait Islander children is that adoption is not part of Aboriginal or Island custom, but many European and other cultural groups also do not have adoption as part of their cultural tradition.

The protections written into the *Child Protection Act 1999* as the 'Statement of Standards', as discussed in Part 5.2, and specifically, the protection of 1(d) *the child's needs relating to his or her culture and ethnic grouping will be met*, are also safeguarded with Guardianship and PCOs, but again, when a final adoption order is made, they disappear.

Allowing Clause 8 to limit the cultural rights of anyone except Aboriginal and Torres Strait Islander peoples ignores the existence of cultural groups other than Aboriginal and Torres Strait Islander peoples, and in doing so, it discriminates against other potentially adoptable children then adults and denies them recognition and respect for their identity, and their right to be supported to develop and maintain a connection with their culture, traditions and language.

Part 5.4 Other Rights unjustifiably limited – Human Rights Act 2019

The following is a list of four other rights under the *Human Rights Act 2019* that are also limited by Clause 8 of the Bill, but are not acknowledged in the Statement of Compatibility:

Section 15 - The right to recognition and equality before the law under Section 15 of the *Human Rights Act, 2019* is potentially limited by Clause 8 of the Bill.

The definition in the *Adoption Act 2009* of a party to an adoption includes the adopted child, the persons who were the child's parents immediately before the adoption and the adopters. Although the adoptee is defined as a party to the contract, and that contract does not cease when they reach adulthood, the adoptee is never given the opportunity as an adult to agree to the contract they are treated as a party to.

Despite being a 'party' to the adoption, there is also no requirement for the adoptee to be advised that they are, or that they have been adopted.

According to the Queensland Human Rights Commission, Section 15 can be relevant where activities have a disproportionate impact on people who have one or more protected attributes under the Anti-Discrimination Act 1991 (for example, sex, race, age or disability).

In the case of adoption, because age is relevant to the activity, and is the cause of a person who is legally considered a party to the adoption not being able to consent, and also the reason they may not be told the adoption occurred, then measures should be taken for the purpose of assisting or advancing the right to the recognition without age discrimination. As these have not been taken, then the right to recognition and equality before the law is potentially limited by Clause 8 of the Bill.

Section 17 - The right to protection from torture and cruel, inhuman or degrading treatment under Section 17 (b) of the *Human Rights Act 2019* is potentially limited by Clause 8 of the Bill. The Queensland Human Rights Commission defines 'inhuman and degrading treatment' as not necessarily intentional, or physical, and includes acts that cause mental suffering, humiliation, anguish or a sense of inferiority. Adopted children and adults, denied access to their identity information and origins; defined and treated as children for life; expected to accept intrusive restrictions on contact with their families as adults; or forced to beg for a discharge of the adoption that they never consented to is arguably an example of being subject to inhuman and degrading treatment.

Section 21 - The right to Freedom of expression under Section 21 of the *Human Rights Act, 2019* is potentially limited by Clause 8 of the Bill, because it is an offence in Queensland to publish anything that identifies someone as an adult adoptee, if this would identify, or be likely to lead to the identity of a party to the adoption or their relative, (refer to Part 4.3 in this document). This limits an adopted adult's freedom to seek, receive and impart information and ideas of all kinds, which is enshrined in Section 21 of the *Human Rights Act, 2019* .

Section 22 - The right to peaceful assembly and freedom of association under Section 22 of the *Human Rights Act, 2019* is potentially limited by Clause 8 of the Bill. As the right extends to all forms of association with others, and is not limited to associations for political purposes, the right of an adoptee to associate with members of their family who are not recognised as being related to them due to an adoption order are arguably limited by the contact restrictions in the *Adoption Act 2009.*

Part 5.5 Other rights unjustifiably limited – Convention on the Rights of the Child

Another limitation of rights by Clause 8 of the Bill is Article 25 of the United Nations Convention on the Rights of the Child (UNCRC):

> Article 20, Part 1. "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."
>
> Article 20, Part 3. "… such care could include, inter alia, foster placement, kafalah of Islamic law, *adoption* or if necessary placement in suitable institutions for the care of children..."
>
> Article 25 "States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

As the requirements for welfare checks of children in care is not followed in practice, nor included in the *Adoption Act 2009* (and 'care' includes adoption as per the definition at Article 20, part 3 of the UNCRC), the right to periodic review of treatment provided, and all other circumstances relevant to their placement under Article 25 of the UNCRC is potentially limited by Clause 8 of the Bill.

Part 6 Conclusion

With the prioritisation of adoption in Clause 8 of the Bill, at least six different human rights under the *Human Rights Act 2019* are limited, along with breaches of the individual's liberties, the denial of natural justice and disproportionate intervention in the lives of those subject to adoption.

For each of these limitations on rights, and breaches of fundamental legislative principles, the alternative of Guardianship and PCOs offer more protection, are less radical and restrictive and are reasonably available.

There is no evidence base that shows that adoption provides positive long-term outcomes over the lifespan, even in the absence of abusive carers, and instead the available research indicates that it has the opposite effect.

Yes, procedures in choosing adoptive carers have improved, but procedures for choosing foster carers have improved too, and procedures for decisions around leaving an at-risk child in their home environment have improved. These improved procedures failed Tiahleigh Palmer and Mason Jet Lee.

What happened to Tiahleigh and Mason are extreme examples along a continuum which ranges from wonderful care to abuse and murder – and this is within a system that checks on the welfare of children and has requirements like Standards of Care.

Adoption is a highly controversial practice that is acceptable only if it is not examined or researched, and only if the voices of those who live it are ignored.

The State prioritising placement of a vulnerable child into the private, unmonitored, unchecked care of genetic strangers is a failure of the State's duty of care to that child-then-adult.

The State prioritising adoption so it can place a vulnerable child – for life and beyond - under an Act that exhibits such blatant disregard for human rights under the *Human Rights Act 2019,* and other Human Rights instruments, is a failure of the State's duty of care to that child-then-adult.

The State prioritising placement of a vulnerable child into a system where research indicates that there are significant negative long-term effects over the lifespan even when no other abuse has occurred, is a failure of the State's duty of care to that child-then-adult.

Adoption is tolerable only when myths are preferred over reality.

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