SNAICC

National Voice for our Children

Inquiry into the Implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Permanency Amendments Inquiry)

Submission to the Commission for Children and Young People, Victoria

November 2016

About SNAICC

SNAICC – National Voice for our Children (Aboriginal and Torres Strait Islander Corporation) is the national non-governmental peak body for Aboriginal and Torres Strait Islander children.

SNAICC works for the fulfilment of the rights of our children, in particular to ensure their safety, development and well-being.

The SNAICC vision is an Australian society in which the rights of Aboriginal and Torres Strait Islander children, young people and families are protected; our communities are empowered to determine their own futures; and our cultural identity is valued.

SNAICC was formally established in 1981 and today represents a core membership of Aboriginal and Torres Strait Islander community-controlled organisations providing child and family welfare and early childhood education and care services.

SNAICC advocates for the rights and needs of Aboriginal and Torres Strait Islander children and families, and provides resources and training to support the capacity of communities and organisations working with our families.

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National Voice for our Children

Introduction

SNAICC – National Voice for Our Children ('SNAICC') welcomes the opportunity to make a submission to the Commission for Children and Young People's Inquiry into the Implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Permanency Amendments Inquiry). We particularly welcome the timely call for and conduct of the inquiry six months after the permanency amendments were brought into effect. This inquiry is critical in the context of a Victorian child protection system with an increasing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. SNAICC is concerned that these children are at risk of permanent separation from their families, communities and cultures through the operation of the permanency amendments.

SNAICC recognises and supports the importance to achieve stability for children who need to be separated from their parents for their safety. However, we believe that the permanency amendments as currently constructed are far from appropriately designed to achieve this. SNAICC has set out its concerns relating to inflexible and inappropriate approaches to achieving stability and permanency for Aboriginal and Torres Strait Islander children in our policy position statement – *Achieving Stability for Aboriginal and Torres Strait Islander Children in Out-of-Home Care* – attached to this current submission. We refer the Commission to this document as well as to our submission to the Victorian Law Reform Commission in relation to its review of the *Adoption Act 1984* (Vic) which addresses related issues in legislative design – also attached.

As set out in our policy position statement, we believe that the approach to stability and permanency as provided by the permanency amendments is fundamentally inconsistent with Aboriginal and Torres Strait Islander perspectives on stability, permanency, and child wellbeing. SNAICC believes that the amendments are likely to sever important connections to family, community, and culture for Aboriginal and Torres Strait Islander children, breaking bonds that are critical to their stability of identity while they are in care and later in their post-care adult life.

SNAICC recognises that the current Inquiry is bound by terms of reference that limit it to the consideration of the unintended consequences of the legislative amendments. SNAICC contends that the broad range of Victorian Government legislation and policies that uphold and promote the vital importance of cultural identity and connection for Aboriginal and Torres Strait Islander children demonstrate that the severance of those connections could not have been intended as an outcome of the permanency amendments. As such, we request that the Commission have particular regard to any circumstances under which the amendments have damaged or created barriers to Aboriginal and Torres Strait Islander children's permanence of identity in connection with family, community, and culture.

SNAICC's core concerns about the design and application of permanency measures relate to:

- Limited compliance with the Aboriginal and Torres Strait Islander Child Placement Principle;
- Inadequate participation of Aboriginal and Torres Strait Islander peoples in decision making;
- Insufficient support to preserve and reunify families;
- Lack of ongoing support for kinship and foster carers; and
- Law and policy contrary to human rights.[1]

This submission describes a number of these concerns in the context of the Victorian permanency amendments and their potential to contribute to unintended consequences, while others are detailed further in SNAICC's policy position statement attached.

Our submission addresses concerns about potential unintended consequences of the amendments, rather than reviewing implementation to date. It provides the Commission with guidance to consider

operation of the amendments against key concerns raised by Aboriginal and Torres Strait Islander communities and organisations across the country for how permanency reform could result in the unintended consequence of damaging stability of identity and relationships for Aboriginal and Torres Strait Islander children.

In line with our concerns, we call for:

- **An immediate repeal of the inflexible provisions of the permanency amendments that do not allow consideration of a child's best interests in each case** – this includes particularly the expedited and inflexible provisions that prescribe permanency objectives for case plans after a maximum period of time that a child is in out-of-home care, and that limit parental contact for a child on a permanent care order; and
- **An immediate moratorium on orders placing Aboriginal and Torres Strait Islander children permanently in out-of-home care** until appropriate legislative amendments and safeguards are progressed.

Aboriginal and Torres Strait Islander concepts of permanence

SNAICC believes that the permanency amendments are fundamentally misaligned with Aboriginal and Torres Strait Islander concepts of stability and permanence.

The theory that underpins the permanency amendments focuses on quickly establishing an enduring attachment to an individual carer or set of carers.[2] This narrow construction of attachment theory has been described as 'inconsistent with Aboriginal and Torres Strait Islander values of relatedness and child-rearing practices'.[3] As many Aboriginal and Torres Strait Islander children are part of a system of care with different kinship relationships,[4] stability and permanency for these children comes from a broader communal sense of belonging, a stable sense of identity, where they are from,[5] and their place in relation to family, mob, community, land, and culture. SNAICC asserts that because the permanency amendments fail to recognise connections to family, community, and culture as the basis of stability and permanency for Aboriginal and Torres Strait Islander children, its provisions are likely operating in a way that is detrimental to the wellbeing and best interests of Aboriginal and Torres Strait Islander children.

Recommendation 1: That the Commission review the extent to which the permanency amendments incorporate concepts of permanence of cultural identity, relationships, and ties to family, community, land and spirituality for Aboriginal and Torres Strait Islander children. In doing so, that the Commission identify any adverse consequences of failures to incorporate these vital elements of relational permanence.

Lack of support for family preservation and safe family reunification

The *Children, Youth and Families Act 2005* (Vic) (The CYF Act) makes clear the desirability of planning for reunification (s10(3)(i)), alongside the need to protect, strengthen, preserve and promote each child's relationships with parents and family members (s10(3)(a) and (b)). Further, s276(1)(b) requires all reasonable steps to provide the services necessary for the child to remain in the care of the child's parent. SNAICC is concerned that the permanency amendments will operate contrary to these provisions to expedite long-term care in a context where families receive inadequate support to prevent entry to care or to reunify.

The Protecting Victoria's Vulnerable Children Inquiry Report of 2012 noted submissions made by ACCOs calling for a greater emphasis on reuniting families.[6] The Commission for Children and Young People's (the Commission's) recent review of Aboriginal children in out-of-home care (Taskforce 1000) again highlighted that at least anecdotally, given specific data was not available to

the Commission during Taskforce 1000, lack of reunification was a significant issue.[7] The Commission's report recommended that due to the common absence of regular case planning or review, reunification guidelines specific to Aboriginal children in out-of-home care be developed.[8] The report also described a widespread lack of access to and provision of culturally safe early intervention services, including long waiting lists and poor communication between and coordination of services for families. This included significant access gaps for key services that could respond to the causes of child removal across areas including early childhood development, mental health, drug and alcohol, housing and family violence.[9]

In the context of concerns about the lack of planning and practical supports for family preservation and reunification, the permanency amendments, with their expedited and inflexible time frames for pursuing reunification, present an even more significant risk that Aboriginal and Torres Strait Islander children will be permanently separated from family, community, and culture. The relatively short time frames provided do not adequately recognise the complex and entrenched issues that Aboriginal and Torres Strait Islander families in contact with the child protection system require support and time to overcome – issues that often have roots in past child removal, inter-generational trauma, structural racism and discrimination, and entrenched poverty and disadvantage. The specific inclusion of provisions requiring the counting of *cumulative* time in out-of-home care when determining a permanency objective further do not account for the challenge of making sustained change.

There is further a danger that mandated timeframes for moving children onto case plans that do not pursue family reunification could effectively shift priority, efforts and resources away from supporting safe family reunification. We are deeply concerned by observations in the submission of the Victorian Aboriginal Child Care Agency (VACCA) to the present inquiry of a decrease in effective engagement of child protection services with families as a result of the new timelines. SNAICC believes that a priority shift away from already inadequate reunification planning and supports would lead to the unintended and perverse consequences of further entrenching family breakdown and inter-generational trauma for Aboriginal and Torres Strait Islander communities.

Recommendation 2: That the Commission review the extent to which legislative safeguards and adequate service provision operate to support family preservation and reunification and to ensure that the child and parent relationship has been afforded the 'widest possible protection and assistance' prior to the making of a permanent care order in line with s10(3)(a) and s276(1)(b) of the CYF Act.

Limited compliance with the Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle has been developed to support and maintain the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures. It provides the benchmark in Australian law and policy to ensure that the actions that caused the deep harm and tragedy of the Stolen Generations are never repeated. SNAICC is concerned that in the context of very limited compliance with the Principle, a system that is already severing cultural connection for Aboriginal children will do so more rapidly and conclusively through the operation of the permanency amendments – and that this will inflict more harm on Aboriginal children, their families and their communities.

The Commission's own review of implementation of the Principle has found widespread failings, highlighting: minimal practice compliance overall, minimal compliance with cultural support planning requirements, and widespread failures to provide services that would enable the participation of Aboriginal and Torres Strait Islander families and communities in decisions for their children.[10] We note with deep concern observations of VACCA in its submission to the present inquiry of permanent care orders presented to it for endorsement with a clear absence of prior consultation, cultural support

planning, family placement identification, reunification support and family-led decision-making. Added to these concerns, the permanency amendments have reduced judicial oversight and direction on placement in accordance with the Principle by removing the capacity of the court to name who will care for the child on care by Secretary orders and reunification orders.

Recommendation 3: That the Commission review the extent to which the operation of the permanency amendments are severing connections to family, community and culture for children in circumstances where other legislative and policy requirements to preserve those connections remain unimplemented.

Recommendation 4: That the Commission make recommendations on the danger and inappropriateness of applying permanent care orders in circumstances where the Aboriginal and Torres Strait Islander Child Placement Principle has not been implemented, and on appropriate safeguards to ensure permanent care orders are not made in those circumstances.

Limiting parental responsibility, contact and potential for kinship connections

The new protection orders introduced by the permanency amendments limit the circumstances under which parents retain parental responsibility and can enjoy court ordered contact with their children, as well as limiting other conditions the court could impose regarding contact with siblings, family, community and culture. They further limit the opportunity for parents to seek judicial review of contact arrangements. SNAICC believes that these provisions significantly restrict the making of decisions in line with each individual child's best interests.

Safe parental and family contact are vital to support the maintenance of positive self-identity, family relationships and cultural connection for Aboriginal and Torres Strait Islander children. The Commission's Taskforce 1000 data for 2014-2015 demonstrated a lack of contact between Aboriginal children in out-of-home care and their extended family – only 68.3 per cent had contact – and with their siblings who are not residing with them – only 66 per cent had contact.[11] In the context of already limited contact, the removal of the Children's Court's powers to place conditions on care by Secretary orders represents an unwarranted and dangerous removal of judicial oversight of a child's contact with family, community, and culture. The introduction of discretion to include contact conditions for permanent care orders potentially further erodes a focus on maintaining children's connections.

SNAICC is very concerned by the maximum limit of four that the amendments place on the number of court ordered parental contact visits for permanent care orders. This further removes the capacity of the court to determine the level of family connection that is in each child's best interests – a measure that SNAICC believes is incompatible with the best interests principle as articulated in the *United Nations Convention on the Rights of the Child 1989* and the CYF Act. The inability of parents to apply to vary contact arrangements in the first 12 months then restricts review of arrangements to ensure that they are aligned to the best interests of the child. Appropriate levels of contact should be determined and provided in line with the changing circumstances of parents and other family members, which may vary significantly over a 12 month period.

Further, the effect of the amendments in removing parental responsibility for parents of children in out-of-home care, except in relation to 'major long-term issues' in the case of reunifications orders, significantly erodes Aboriginal and Torres Strait Islander parents' control over the wellbeing and future of their children. We believe these changes have significant potential to undermine hope,

empowerment, and efforts to build capacity for parents to re-take responsibility for the safe care of their children in the future.

Recommendation 5: That the commission review the extent to which the operation of the permanency amendments is enabling the consideration and making of contact arrangements aligned with each child's best interests.

Recommendation 6: That the Commission review the extent to which the reduction of parental responsibility as a result of the amendments has hampered efforts to support parental capacity to safely reunify with their children.

Participation of Aboriginal and Torres Strait Islander families and organisations in decision making

It is deeply concerning that most decisions about the care, protection and out-of-home care placement of Aboriginal and Torres Strait Islander children in Victoria are being made with very limited participation of their families and communities. This was a clear finding of the Commission's recent report on compliance with the Aboriginal Child Placement Principle that recognised that the appropriate systems, processes, resources and capacity were not enabled for compliance with either consultation with the Aboriginal Child Specialist Advice and Support Service or the provision of Aboriginal Family-led Decision Making. The failure to include Aboriginal and Torres Strait Islander perspectives in decision-making means that many decisions are made without adequately addressing the cultural needs of the child, and without identifying the safe care options that exist within families and communities. In this context, SNAICC is concerned that expediting permanent care options will contribute to progress poor, ill-informed decisions to become irreversible decisions that can harm children.

SNAICC notes positively the maintenance of the strong requirement that a permanent care order for an Aboriginal or Torres Strait Islander child with a non-Indigenous carer cannot be made unless the court has received a report from an Aboriginal agency recommending the making of the order. However, in the context of limited participation of Aboriginal agencies and families in prior decision-making, there remain significant questions as to whether that agency will have the necessary information to make a recommendation or the time and resources to be able to gather it.

Recommendation 7: That the Commission review the extent to which safeguards operate to ensure permanent care orders are the result of and informed by the participation of Aboriginal and Torres Strait Islander families and communities in decision-making, and consider recommendations on systems reform and resourcing necessary for this to occur.

Recommendation 8: That the Commission give particular attention to whether the systems, processes and capacity needed for an Aboriginal agency to make an informed recommendation for permanent care of an Aboriginal child with a non-Indigenous agency are in place.

Cultural Support Plans

SNAICC welcomes the now mandatory legislative requirement that Aboriginal and Torres Strait Islander children on permanent care orders have a case plan that addresses their cultural support needs. We recognise the potential utility of a cultural support plan in ensuring connections to family, community, and culture are maintained. We also note recent and additional funding provided by the Victorian Government for initiatives to improve the quality of cultural support planning for Aboriginal and Torres Strait Islander children.

However, we remain concerned, due to poor compliance with similar provisions in the past,[12] that cultural support plans may not be properly designed, implemented, and monitored. This is of particular concern noting the current lack of participation of Aboriginal and Torres Strait Islander family and community organisations that could inform a quality cultural support planning process. SNAICC is concerned by the lack of resources currently available for Aboriginal agencies to support quality and implementation of plans, and also by the lack of avenues for children, families and communities to seek redress where cultural plans are not implemented.

Recommendation 9: That the Commission review the extent of completion and the quality of cultural support plans for children on permanent care orders to determine the extent to which permanency provisions are supporting the ongoing maintenance of cultural connections and identity for children and consider making recommendations regarding the resourcing and accountability mechanisms needed to ensure ongoing cultural support.

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[1] SNAICC (2016) *Achieving Stability for Aboriginal and Torres Strait Islander Children in Out-of-Home Care*, SNAICC Policy Position Statement, Melbourne: Author.
[2] NSW Department of Community Services (2007). *Permanency Planning Policy*, p4.
[3] Osborn, A., and Bromfield, L., (2007) '*Getting the big picture': A synopsis and critique of Australian out-of-home care research*. NCPC Issues No. 27 – October 2007.
[4] D'Souza, N. (1993) Aboriginal Child Welfare: Framework for a National Policy, *Family Matters*, no.35, Melbourne: Australian Institute of Family Studies, p43.
[5] Yeo, S. (2003). *Bonding and Attachment of Australian Aboriginal Children,* Child Abuse Review Vol 12, p. 293.
[6] Cummins, P., Scott, D., and Scales, B. (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Melbourne: State of Victoria, Chapter 12.
[7] Victorian Commission for Children and Young People (2016) *Always was, always will be Koori children*. Melbourne: Author, p106.
[8] Ibid, p79.
[9] Victorian Commission for Children and Young People (2016) *Always was, always will be Koori children*. Melbourne: Author.
[10] Ibid, p24.
[11] Victorian Commission for Children and Young People (2016) Always was, always will be Koori children. Melbourne: Author, 75.
[12] Victorian Commission for Children and Young People (2016) *In the Child's Best Interests*. Melbourne: Author, p23.