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Adoption Taskforce
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creating a better life
for children and young
people in care

RE: Adoption Amendment Bill 2020 – proposed changes

CREATE thanks the ACT government for the opportunity to further comment on the proposed changes to the Adoption Act 1993 in ACT. Our response is framed around the two questions, do the proposed changes:

- Provide clearer guidance for determining the “best interests” of children and young people?
- Support the Court to place children and young people at the centre of decisions about dispensing with consent?

CREATE welcomes amendments within adoption legislation which strengthens requirements for a child-centred approach. For children and young people to be the focus of decisions made in relation to adoption and other permanency arrangements, specific obligations must be clearly articulated in legislation designed to hold all parties accountable to ensure a child-centred focus. CREATE also supports a focus on the child’s best interests as one which is potentially less combative for all parties involved.

Legislated obligations to obtain and consider the views of a child or young person are just as (if not) more pertinent in determining the next course of action in achieving permanency. The proposed amendments do provide clearer guidance for determining the best interests of the child or young person, noting that the views expressed by the child or young person remain a key part of making a determination. It is also noted that similar legislative requirements currently exist in the ACT Children and Young People Act (2008) in relation to making decisions which impact the child or young person.

CREATE’s research with children and young people (McDowall, 2018), has shown that adequate efforts are not always made to seek the views of children and young people in child protection matters, and that too often children and young people do not feel that they have been involved in fundamental decisions. As such, we would suggest that legislation requires “active efforts”¹ be made to seek the views of children and young people in adoptive matters, and that these efforts are required to be demonstrated before the court.


To ensure the Court is supported to make a determination in the “best interests” of the child or young person, it is imperative that appropriate resourcing is committed to ensure timely, child-centred and thorough pre-adoptive assessments. Such assessments would necessitate active engagement with the child or young person and a process to ensure that all kinship options have been explored.

CREATE supports the additions which require the Court to also consider the cultural inheritance, personal identity and sense of belonging of the child or young person, recognising these as additional safeguards for Aboriginal and Torres Strait Islander children and young people. Specifically, the recognition of sibling connections within the considerations for determining the best interests of the child or young person is welcomed, noting that historically these relationships have not been consistently recognised in child protection, Family Court, or Adoption legislation, despite the enduring nature of these relationships and their significance to the identity of a young person in care (McDowall, 2015).

CREATE reiterates the advice provided in our 2017 and 2019 submissions, that any proposed changes to adoption legislation actively protect and maintain sibling relationships and contact. Decisions to dispense with consent must take into consideration the impact on sibling relationships. Provisions must be made to ensure that siblings have consistent and meaningful contact with one another where dispensing with consent may lead to adoption of one sibling but not all (CREATE, 2014b). Dispensing with consent therefore may be justified to achieve adoption where it leads to siblings being placed in a permanent arrangement together; but where frequent and meaningful contact with siblings cannot be achieved, adoption should not be considered.

CREATE supports the opportunity to investigate permanency options which provide alternatives to adoption, including Enduring Parental Responsibility where appropriate. CREATE’s independent, direct consultations with children and young people with a care experience show that adoption seems to appeal to some children and

¹ Definition of active efforts can be found in https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf



young people; but, although it can offer benefits, it may not suit all, and therefore requires decision-makers to consider other permanency options within the out of home care system. CREATE supports the view that a decision to progress with adoption must be based on what would be in the child's best interests (Cuthbert & Quartly, 2010). Adoption may not be the chosen way to achieve permanence for all children and young people in care. However, if it is to be successful, even if it has been as achieved by dispensing with consent, the role to be played by birth parents in future still must be considered. Some adopted young people still might want contact with birth parents. The work of Elsbeth Neil (e.g., Collings et al., 2018; Neil, 2018) stresses the importance of considering continued post-adoption contact even if the adversarial legal context is challenging, and ensuring all parties receive appropriate support. Following Neil's lead, CREATE urges governments to ensure their adoption policies meet these four challenges, even after dispensing with consent:

1. The first relates to achieving adoption within a timescale that meets children's developmental needs (whilst giving birth families fair opportunities to look after the child themselves).
2. The second challenge is how to support birth families through and after the almost inevitable adversarial nature of proceedings.
3. The third challenge is to manage the child's connection to their birth family over time through openness practices, including post-adoption contact.
4. The fourth challenge is to support adopted children and adoptive parents after adoption.

(CREATE, 2014a)

To conclude, CREATE welcomes any amendments which strengthen the requirement for the Court to hear the views of children and young people involved in life-changing processes such as adoption. CREATE acknowledges that the amendments to legislation are only part of the process and it is the implementation of these changes that will have the most impact upon the lives of children and young people. We strongly encourage the ACT government to actively consult and include the voices of children and young people in developing and refining the implementation strategy for the new legislation.

Thank you again for the opportunity to provide comment on the proposed amendments. Please contact Susan Pellegrino, ACT State Coordinator on 0439 764 163 if you require any additional information.

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