

18<sup>th</sup> March 2021

Minister Rachel Sanderson  
Minister for Education and Child Development  
GPO Box 1838  
Adelaide SA 5001

Dear Minister

**RE: Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020**

We thank you for reaching out, back in October 2020, for comment on the amendments to the *Children and Young People (Safety) Act 2017*. Unfortunately, the limited response timeframe prevented comprehensive consultation on the proposed changes but we were encouraged to see the “best interest” principle included in the legislation. However, since this time, we have become aware that there are proposed sections of the *Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020* (the Bill) that potentially limits or removes the child’s voice from this incredibly important decision.

For this reason, we encourage a delay on this amendment, so that the rights of children in care are more holistically protected. This would mean consulting for a longer period to receive a wider range of feedback and adjust the Bill accordingly.

When considering permanency options for children and young people, CREATE is committed to ensuring that relevant policy, legislation, and practice changes occur with consideration of the lived experiences of children and young people with an out-of-home care experience who can be regarded as experts.

It is important for children and young people in out-of-home care (OOHC) to achieve stable, safe long-term care arrangements. It is widely recognised that a stable home environment supports children to develop healthy relationships throughout their lives and is an important predictor of their wellbeing and development (Patalay & Fitzsimons, 2018; Bethell et al., 2017). Whilst permanency options are important for the development and life outcomes of children and young people, government intervention to legally sever a child’s ties with their family should be a response of last resort where there is no less extreme way that their care or permanency needs could be met. Adoption, whilst relevant in limited circumstances, establishes a new identity for a child and provides little ongoing protection or oversight for their care and wellbeing, especially in relation to contact with biological and extended family and current and future siblings.

In recent years, CREATE has consulted with children and young people on the issue of adoption and permanency and received a range of diverse and varied responses. Whilst it is clear that children and young people want to grow up in a stable, safe, and loving home, the meaning of stability varies greatly among young people, as does their thoughts about permanency and the best ways to achieve it. This diversity demonstrates that a one-size-fits-all approach to permanency is inappropriate, and a tailored approach where children and young people are part of the decision-making process is imperative (CREATE, 2020). CREATE’s position paper on adoption (2014) reflects these diversity and states:

CREATE advocates for measures facilitating stability of placements in out-of-home care and permanence in the relationships experienced by children and young people who are not able to live with their birth parents. Permanence can be achieved by reunification with family, legal guardianship, and adoption (Akin, 2011). If adoption is chosen as the most appropriate course

of action in an individual case, CREATE supports the view that the decision must be based on what would be in the best interests of the child or young person (Cuthbert & Quartly, 2010).

(CREATE, 2014, p. 1)

This submission is informed by the voices of children and young people with a lived experience of the care system. CREATE's research with children and young people, 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 that "active efforts"<sup>1</sup> 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 thorough process to ensure that all kinship options have been explored.

## Participation


The participation of children and young people in decisions that relate to them including their immediate circumstances, day-to-day care and support, and their long-term care needs is a right under the United Nations Convention on the Rights of the Child, Article 12 (United Nations, 1989). Actively participating in decisions that affect one's life is not a privilege, but rather, an important developmental process, which enables children and young people to have a sense of agency in relation to their own care and lives (Davies, 2011). Thus, for adoption to be genuinely considered, the child or young person needs to be fully informed and supported, be part of the decision-making process, and consent to adoption (in line with age of the child/young person) before it proceeds. This reiterates the importance of children and young people having an inherent right to have their opinions heard and considered.

The Bill's current wording appears to limit and/or override the children's voice in these life changing processes. CREATE notes that Chapter 7A (section 113 I (4)) of the Bill does not require the Court to have consent from the child when the child is under 12 years of age. This is the ultimate refusing of hearing the voice of the child – if a child or young person refuses adoption, the court is still able to override them. Once again rendering a child or young person voiceless. We note the inclusion of Section 113 K (1) gives provision for a child under 12 years to present their views about their proposed adoption, however Section 113K (2) (a) and (b) state that the Court can override this view if the Court feels the child or young people is not capable of presenting their views, or if it would not be in the best interest of the child to present to Court. Drawing upon the earlier comments, CREATE has concerns that this may be subjective and potentially deliver poor results for the child. Additional concerns lay in the fact that there is no required oversight or welfare monitoring of the adopted child once the Court has approved the adoption.

It is important to consider the long term needs of children and young people when making permanent decisions that will have an impact on their lives (positive or negative) potentially for years to come. However, there is evidence that young people are often not included in important decisions. For example, only 44% of children and young people are aware of their case plan (McDowall, 2018). This indicates the importance of individualised decision-making and the inclusion of young people in order

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<sup>1</sup> Definition of active efforts can be found in [https://www.snaicc.org.au/wp-content/uploads/2019/06/928\\_SNAICC-ATSICPP-resource-June2019.pdf](https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf)



to understand what they need to feel stable, and when making decisions related to permanency. Ensuring young people are involved in decision-making processes must be a priority.

**CREATE recommends:**

- Children and young people should be included in decisions about their lives. This is especially critical in permanent decisions such as adoption;
- The child or young person should be fully informed about the legal implications of adoption and supported to make an informed decision;
- In the case of young children under three where they do not have the capacity to be involved in such a significant decision, adoption should only be considered as a last resort, in exceptional circumstances, and in collaboration with the child's family and other support systems. The young children should legally be made aware of the adoption and family members throughout their life;
- Principles for permanency should include and call for children and young people to be part of the process.

## Conclusion

Children and young people are the experts when considering their own lived experience, and can provide critical insights regarding the meaning and different components of permanency and stability. It is essential that we listen to their perspectives to inform legislative, policy, and practice changes that are occurring in this area. If we are to effectively support the permanency needs of each individual child and young person in OOHC, we must listen to their voices and invite their meaningful participation in planning and decision-making.

Adoption remains a contentious issue as it takes parental rights from one family and places it with another. Risks of adoption include loss of identity, and lifetime connections with extended family including current and future siblings. There are contemporary issues regarding historical forced adoptions where the rights of children and parents were negated under government policy. CREATE acknowledges that adoption without consent of the biological parent(s) and/or the child has been and continues to be a traumatic experience in the Australian community and Australia's stolen generations continue to suffer trauma due to forced family separation.

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 South Australian 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 Bill. If you require any additional information, please contact Amy Duke, SA State Coordinator on 0434 020 905.

Yours Sincerely,

Amy Duke

SA State Coordinator

CREATE Foundation

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## References

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