

Joint statement raising Human Rights Concerns with the Children and Young People (Safety) (Miscellaneous) Amendment Bill

We the undersigned represent a range of community service organisations and advocacy groups that support the rights of children and adults who may have experienced state care or adoption throughout South Australia.

We strongly urge the Government to delay the progress of the [Children and Young People Safety \(Miscellaneous\) Amendment Bill](#) until further consultation has occurred and revisit its design to ensure the rights and interests of the children concerned – both in childhood and in later life - are more robustly protected.

We respect the Government's intention to improve care outcomes for vulnerable young South Australians and consider that this Bill has a range of important, rights-enhancing objectives including encouraging Aboriginal and Torres Strait Islander people, their children and young people and State authorities to act in partnership when making decisions under the Children and Young People (Safety) Act 2017 (the CYPS Act). However, the introduction of Chapter 7A into the CYPS Act entitled 'Adoption of children and young people from care' **removes key rights protections currently available to children and adults subject to adoption in South Australia, and alters the role of courts in the adoption process**, with flow on effects for all services providers, individuals and agencies responsible for administering this proposed new law. Our key concerns with the Bill can be summarised as follows:

- Lack of compliance with UN Convention on the Rights of the Child (CRC).

Chapter 7A introduces new processes, tests and decision-making powers that depart markedly from the CRC and undermine the protections in the *Adoption Act 1988* (SA) which are designed to safeguard and promote the best interests of the child (both in childhood and later life) and ensure that the child's voice is heard in every stage of the adoption process. This is because the Bill puts the 'best interests of the child' on an equal footing with other considerations, rather than giving the best interests of the child 'paramountcy', as is currently the case in the *Adoption Act* and required under international human rights law. This loss of the paramountcy of best interests of the child has a range of consequences, including that:

- The court cannot make an alternative order to adoption even when other orders would be preferable and in the best interests of the child.
- The child's or their parents and siblings views can be prevented from being heard in court, and consent to the adoption by the child (at any age) can be dispensed with.
- Crucial decision-making power is potentially shifted from the court to the Chief Executive, the Minister, or outside agencies (noted with concern in the [2020-2021 Rice Review into Child Protection](#)).
- Criteria for prospective adopter assessment, and the timeframe before an adoption can take place are not under the umbrella of the paramountcy of best interests, and so there is potentially a lack of protection from discrimination and a meaningful lack of equal treatment of children in care in adoption decision-making due only to a status as 'removed child'.

This Bill gives rise to a range of additional human rights concerns that have been identified in a briefing document available on the Rights Resource Network website [here](#).

- Problematic legislative design

Unlike similar legislation in other jurisdictions such as NSW, this Bill appears to create a parallel adoption regime for a certain category of children that undermines the key principles and legislative

clarity of the Adoption Act. This not only gives rise to the substantive rights concerns above, it also makes the laws and processes surrounding adoption complex, inconsistent and potentially contradictory depending on the child's care status. The necessity for making these types of changes to achieve the stated objects of the Bill is not clear. Dispensation of the need for parental consent in adoption is already available within the Adoption Act. There are also concerns about the implications of other features of this Bill for the legal obligations and powers of carers and service providers within the child protection system.

- Lack of public consultation and consultation with South Australians with lived experience of adoption or state care

The findings [of the last publicly consulted review](#) that considered adoption from care in South Australia expressly recommended against prioritising adoption over long-term orders. While an earlier version of this Bill was shared with a select group of community organisations in 2019, including some with expertise in the area of child protection, there has been a distinct absence of engagement with organisations with lived experience of adoption (for example Adoptee Rights Australia). The submissions made with respect to the 2019 consultations have not been made publicly available, nor has a detailed summary of key findings been published. We consider it of vital importance to ensure that further consultation – particularly with those with lived experience, and if possible, public consultation – is undertaken before the bill progresses any further.

In light of these concerns, we strongly urge the Government to delay the progress of the Bill until further consultation has occurred and revisit its design to improve its compliance with human rights standards.

Signatories would be very willing to provide further information on request. Please contact Dr Sarah Moulds on sarah.moulds@unisa.edu.au or 0401 132544 should you wish to arrange a meeting with signatories or access further information.

Signed by:

