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30 June 2015

Committee Secretariat
Legal and Social Issues Committee

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To the Legal and Social Issues Committee

Inquiry: Children Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

Liberty Victoria welcomes the opportunity to make comment in response to the *Children Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*. Liberty Victoria takes this opportunity also to make comment on the lack of public consultation afforded prior to the *Children, Youth and Families (Permanent Care and other Matters) Amendment Act 2014* and the impact of those legislative amendments particularly on Victoria's most vulnerable community members.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

Timeframe for submissions

Liberty Victoria expresses deep concern at the limited time frame allowed in the seeking of submissions in relation to this Bill. In 2014 the previous Victorian government endorsed reforms to the *Children Youth and Families Act 2005* (Vic) in respect of children captured within the child protection framework. DoHHS have since acknowledged that the then

Napthine government expressly advised the staff of DoHHS not to consult in respect of this legislation.

The current Victorian government, while in opposition, were rightly concerned and critical in relation to the lack of consultation and publically expressed their concerns. For example, as Shadow Minister, the current Minister for Families and Children and Minister for Youth Affairs, the Hon Jenny Mikakos, commented that this was *“exactly the type of bill that I would have expected to have seen being put out as an exposure draft seeking the views of interested stakeholders so that we got it absolutely right, given its sensitive subject matter”*¹.

The current time frame for submissions in relation to the *Children Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* by stakeholders allows only for limited consultation, in relation to subject matter that The Minister rightly identified as ‘sensitive’.

Liberty Victoria Concerns

Despite the time constraints, we have had the opportunity to read submissions of the Law Institute of Victoria (“LIV”) and the Aboriginal Family Violence Prevention and Legal Service Victoria (“FVPLS”) and have met with various stakeholders to discuss these matters further. Liberty Victoria broadly endorses the submissions of both organisations, with the following comments:

- The extensive research and consultation undertaken by members of the profession through the LIV and those associated with the subject matter must be commended and the views expressed reflect this expertise; and
- The voice of the Aboriginal community in relation to these proposed amendments is vital. The statistics in relation to child protection and Aboriginal children is staggering and place this discussion squarely within the underpinning causes of overrepresentation of Aboriginal and Torres Strait Islander peoples in the justice and child protection systems. Liberty Victoria further recognises the crucial voice and expertise of Aboriginal Community Controlled Organisations here and more broadly in influencing change and representing communities in key decision making and legislative reform.

¹ Second Reading Speech Minister Jenny Mikakos 2 September 2014, 2/29.

In addition, Liberty Victoria points specifically to the following concerns:

- DoHHS confirms that the basis for the proposed changes to the legislation was, in part, the findings of the Cummins Inquiry in addition to a study into 1000 children in out of home care. The lack of transparency or access to the study of 1000 children that is said to provide a basis for the changes proposed in order to ‘secure permanency’ for children is of great concern.
- DoHHS has stated that the premise for the majority of changes has been the Cummins Inquiry findings. In fact the legislation departs from and in some cases contradicts the findings of Cummins. The Hon Minister Mikakos acknowledged this in opposition when she stated “The government will claim that this bill gives effect to the thrust of the recommendations in the Cummins report. However...there are a number of departures from the Cummins report and that the bill does not reflect the recommendations precisely in many respects”.²
- Cummins made a series of recommendations in relation to the Children’s Court powers and pointed to significant failings within the current child protection system (which has grown in numbers from approximately 55,000 protective reports in 2010/11 to over 80,000 in 2013/2014). Liberty Victoria endorses the power vested in the Children’s court to exercise discretion in determining the futures of families impacted by child protection notifications and welcomes the reintroduction of s 267 in the proposed legislation. However, Liberty Victoria further endorses the position of the LIV that the reintroduction of this section alone will not protect all critical areas of court discretion
- The increased powers of adoption allowed in this legislation and the capacity of DoHHS to increase the numbers of children occupying the definitional space of adoption-readiness. DoHHS and the Minister have dismissed some of these concerns on the basis that the policy and practice of DoHHS would be to simply not invoke the power. We invite the Committee to view this practice through a historical lens and in the context of ongoing trauma to those impacted by past practices of adoption.

² Ibid 5/29

- We also ask the Committee to have regard in particular to the powers of the courts to grant an adoption in the absence of parental consent where the *Adoption Act 1984* (Vic) allows them to do so. The powers within the legislation itself under s43(1)(h) state that consent of the parents is not required in circumstances that would be in play in most instances where the DoHHS are involved. It states consent can be waived where “ *that there are any other special circumstances by reason of which, in the interests of the welfare of the [child](#), the consent may properly be dispensed with*”. The notion that comfort should be afforded to those impacted by Child Protection intervention where there is effectively a ‘promise not to act’ is highly questionable. The Minister and the DoHHS are urged to review the extended powers of adoption and not merely distance themselves in the hope they will lay dormant.
- The connection between the previous incidents of children in out of home care and the current federal Royal Commission into Institutional Responses to Child Sexual Assault (RCIRCSA). There are learnings to be taken from the RCIRCSA and the more recent Victorian Royal Commission into Family Violence in relation to protecting children from harm. One example of this is the current restriction on the availability of Interim Accommodation orders. There is a clear need and relevance to ensuring the courts can provide for an Interim arrangement for a mother and her children to flee family violence. Another example is the lack of services available to vulnerable clients. Where the government fails to adequately fund services established to assist vulnerable members of the community there remains significant time delays in accessing support services that will assist in parents having the greatest opportunity to reunite with their child. These legislative reforms, by definition require of parents an engagement with services to avoid the fast-tracking to permanency of care. Where services are inadequately resourced or not resourced at all, there remains an inevitability to the permanent care orders for children subject to child protection intervention.
- The high and increasing numbers of Aboriginal and Torres Strait Islander children subject to child protection intervention. The preliminary findings of the Aboriginal Children’s Commissioner in Taskforce 1000, looking closely at the files of 1000 Aboriginal children in out of home care, show that well over 90% [same stat as the one we use?] of children in out of home care are subject to child notifications because they are the victims of family violence. Further, preliminary findings

identify an appalling compliance rate by DoHHS with existing obligations in relation to the cultural rights of Aboriginal and Torres Strait Islander Children. Liberty Victoria calls upon the Minister to review the existing legislative compliance in respect of Departmental obligations in relation to the care of Aboriginal children in out of home care- in increasing numbers. Liberty Victoria also endorses the submission by the National Family Violence Prevention Legal Services Forum to the Australian Human Rights Commission in regard to the examination of children affected by domestic violence.

- Finally, there must be consideration to the bodies of work currently being undertaken in both the Federal and Victorian jurisdictions. There are lessons to be learnt from the Royal Commission into Institutional Responses to Child Sexual Abuse. There are lessons to be learnt from the Royal Commission into Family Violence. These Inquiries are ongoing. There are clear connections between these Inquiries and the work of Jackamos in Taskforce 1000 (expected to reach 1500 by July 2015). To fail to see a connection between out of home care, abuse, and family violence would be naïve and contrary to already published findings. To seek to amend legislation that is so closely connected to these findings would be wholly premature and may have catastrophic long term impacts.

In summary, Liberty Victoria has deep concerns that the cumulative effect of the changes (2014) will harm the most vulnerable members of the community. Particularly, we note the high potential for disproportionate impacts on Aboriginal families, children and communities, particularly given the extensive evidence about the intergenerational legacies and impacts of Aboriginal child removal.

Thank you for the extension of time granted to make this submission. Should you wish to discuss any aspect of this submission further please contact Jillian Prior [REDACTED] or the Liberty Victoria office info@libertyvictoria.org.au.

This is a public submission and is not confidential.

Yours sincerely

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President
Liberty Victoria