Submission

Children, Youth and Families Amendment (Permanent Care and Other matters) Bill 2014

To: Chair, Scrutiny of Acts and Regulations Committee, Parliament of Victoria

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Contact:
Gemma Hazmi, Lawyer – Family Law Section
Ph: (03) 9607 9374
Email: ghazmi@liv.asn.au

www.liv.asn.au

TABLE OF CONTENTS

INTRODUCTION

The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 17,000 members.

Our members have had a long history in advocating on children's law reform issues and we welcome this opportunity to be able to provide comments to the proposed amendments to the *Children, Youth & Families (Permanent Care and Other Matters) Bill* 2014.

This submission has been prepared by the LIV's Family Law Section - Children and Youth Issues Committee in relation to the *Children Youth & Families Amendment (Permanent Care and Other matters) Bill* 2014 ("**the Bill**") which seeks to substantially amend aspects of the *Children Youth & Families Act* 2005 ("**the Act**").

The LIV is concerned that the Bill may be in breach of obligations pursuant to the *United Nations Convention on the Rights of the Child*[1] ("UNCROC") and the *Victorian Charter of Human Rights and Responsibilities Act 2006*[2] ("the Charter").

This submission is to be read in conjunction with the LIV submissions to Parliament dated 20 August 2014.

The Charter

Section 24 of the Charter – Right to a Fair Hearing

Section 24 of the Charter provides that:

> *(1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.*

Justice Bell in the *Secretary to the Department of Human Services v Sanding* [2011][3] held that child welfare proceedings which are *sui generis*[4] such as those before the Children's Court of Victoria, are civil proceedings[5] and as a result, the right to a fair hearing under section 24 of the Charter applies.

The LIV is concerned that the Bill denies all parties the right to a fair hearing.

Section 41 of the Bill creates a new section 300A, which permits the Department of Human Services ("DoHS") to bring an application to vary a Family Reunification Order without being required, as is normally the case pursuant to section 277 of the Act, to serve any other party if the Secretary is satisfied on reasonable grounds that (a) there has been an unexpected change in circumstances; and (b) the application is necessary for the safety and wellbeing of the child. Failure to serve other parties to the order obstructs their right to a fair hearing regarding the variation/s to orders or conditions sought by the DoHS when the variation/s have implications for those parent/s and child.

As the new proposed Family Reunification Orders *do* include conditions in relation to contact which may for example enshrine a reunification plan of contact, it is likely that these applications by DoHS to vary will be in relation to contact for a child and his or her parent, i.e. to make it supervised or reduce the frequency of contact. Such variations or changes can have serious consequences in terms of the likelihood of future reunification of a child to his or her parents. If parties need not be served and notified of substantive legal applications such as an application to reduce a parent's contact, this means that the right to a fair hearing is denied.

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[1] United Nations Convention on Rights of the Child http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
[2] *Charter of Human Rights and Responsibilities Act 2009* (Vic) http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/
[3] Secretary to the Department of Human Services v Sanding [2011] VSC 42
[4] Secretary to the Department of Human Services v Sanding [2011] VSC 42 [182]
[5] Secretary to the Department of Human Services v Sanding [2011] VSC 42 [206]

The LIV is also concerned that section 86 of the Bill which creates an amended section 525. This section provides that children must be represented on application in respect of a failure to comply with (i) an interim accommodation order; or (ii) a family preservation order but not in relation to failure to comply with a condition on a family reunification order. This creates a discriminatory denial to children over the age of 10 years who are otherwise legally represented in similar applications. A child's right to a fair hearing should include the opportunity for their views to be expressed through their legal representative and to have those views given appropriate weight as stated in the best interests principle (s.10(c)).

As acknowledged by Justice Bell [11]:

> *"Children are ends in themselves and not the means of others. They form part of the family, the fundamental group unit of society. Children bear rights personally, and are entitled to respect of their individual human dignity. The views of children should be given proper consideration in relation to matters affecting them. Children are especially entitled to protection from harm, and to human development. Those values are inherent in the best interests of the child which is the foundational principle of the Children, Youth & Families Act. That principle is the cardinal consideration in protection proceedings in the court, including the making and revoking of custody to secretary orders."*

Justice Garde[6] in *A & B v Children's Court of Victoria & Ors* [2012][7] further endorsed Justice Bell's comments, "that the best interests of the child principle recognises children as autonomous rights-bearers whose views are entitled to be given proper consideration". Justice Garde also found that there had not been procedural fairness for children A and B by the First Defendant (the Children's Court) contrary to their entitlement to legal representation (Grounds for review, ground 6) and failure to give sufficient notice to change their legal representation (Ground 8). The link between a fair hearing and the views of a child were explained by Justice Garde by reference to *RCB v Forrest*[8] and Others, five members of the High Court:

> "Determination of an application for a return order and, in particular, determination of any issues about the strength of a child's objection to return and the maturity of that child will affect the child's interests. Deciding issues about strength of objection and maturity of the child in a way that is procedurally fair to all who are interested in or affected by their decision – the parents, the child or children concerned and the Central Authority – presents an essentially practical issue. How is the court to be sufficiently and fairly apprised of what the child concerned wants, how strongly that view is held, and how mature the child is?"[9]

This demonstrates how the right to a fair hearing for a child benefits all other parties and the Court, as well as the child themselves.

Furthermore, the LIV is concerned that, in relation to the right to fair hearing, the DoHS have proposed in a publication issued in late August 2014, that there will be transitional arrangements when the Bill is enacted, namely that all existing Custody to Secretary Orders will be deemed to be Care by Secretary Orders and that conditions on those Custody to Secretary Orders will then lapse.

The LIV has not seen a draft of such transitional arrangements nor has there been any consultation with the LIV as to these transitional arrangements. The LIV is concerned that these type of transitional arrangements impact on a right to a fair hearing as Custody to Secretary Orders are often made by the Court as a matter of last resort after hearing evidence. Furthermore, conditions in relation to contact/access on Custody to Secretary Order are often hotly contested which are ultimately decided by the Court. The parties and the Court all

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[6] *A & B v Children's Court of Victoria & Ors* [2012] VSC 589 (5 December 2012)
[7] A & B v Children's Court of Victoria & Ors [2012] VSC 589, [101]
[8] *RCB v Forrest* [2012] HCA 47
[9] *RCB v Forrest* [2012] HCA 47 [124]

thus made decisions based on the legislation at the time. The LIV Is concerned that it denies procedural fairness to the parties to automatically convert the Custody to Secretary Orders to Care by Secretary Orders.

Section 17 of the Charter – Protection of Families and Children

Section 17 of the Charter provides:

1) **Families are the fundamental group unit of society** and are entitled to be protected by society and the State.
2) **Every child has the right**, without discrimination**, to such protection as in his or her best interests** and is needed by him or her by reason of being a child.

The Bill increases the powers of the DoHS and the State to intervene in family matters. The Carney Report (1984)[10] recommended three levels of intervention when the State is charged with the power to remove children from families. From the least interventionist, that is level 1, the acceptance by the court of undertakings or dismissal of protection orders. Level 2, the making of supervision orders or accommodation orders when the court obtains an "availability and suitability statement" from potential service provides in support of the children remaining with families, and finally level 3 (custody and/or guardianship orders), which also had three levels:

> "**Recommendation 163:* That the Court in imposing a Level 3 disposition, have the power:
>
> (a) grant custody to a third party, with guardianship remaining with the parents;
>
> (b) grant custody to the state, with guardianship remaining with the parents;
>
> (c) grant both guardianship and custody to the state.
>
> * *Recommendation 165*: That when the court imposes any Level 3 disposition, reasonable and regular periods of access by the parents to the child be provided, unless specifically ordered by the court. The Court may make any additional orders relating to specific access arrangements on request of parties at the hearing.
>
> * *Recommendation 166*: That the maximum length of any dispositional order which involves a change in the legal status of the child be 12 months, with the possibility in special circumstances, of an extension for a further 12 months." (p.38)

The current Act was modelled on Carney's levels of intervention. For example, currently we have in ascending order of intervention:

a) *Interim Protection Orders*; - to test a course of action; parental responsibility (meaning guardianship) remains with parents;

b) *Supervision Orders:* - DoHS to supervise the parents' full-time care of children; parental responsibility remains with parents;

c) *Supervised Custody Orders*: - the day-to-day to be granted to a suitable person, often a relative, with conditions about contact for the child with the parents, and the DoHS being directed to take all reasonable steps to ensure reunification; parental responsibility remains with parents;

d) *Custody to Secretary Orders*: - the day-to-day care of the child granted to DoHS, with conditions about contact for the child with the parents; parental responsibility remains with the parents;

[10] *The Child Welfare Practice and Legislation Review* (1984) ("the Carney Report") Part II: Recommendations p. 36 – 48.

e) *Custody to Third Party Orders*: - the day-to-day care of the child is granted to a third party, often a relative, conditions can be included about contact with a parent but DoHS cannot be bound by any conditions on this order; parental responsibility remains with the parents;

f) *Guardianship to Secretary Order*: - the day-to-day care of the child and parental responsibility all lie with DoHS. There are no conditions on such orders. However, they are reviewed by the Court at the interval when the order must be brought back to court by way of extension of no more than two years at a time;

g) *Long-term Guardianship to Secretary Orders*: - the Court cannot make such an order unless there is a person or persons who have assumed the care of the child. DoHS has parental responsibility and responsibility for the day-to-day care;

h) *Permanent Care Orders*: - day-to-day care and parental responsibility vest in a person approved by DoHS and the Court. Court may make conditions about contact and there is no limit on the number of times per year the child can have contact with his biological parents.

The LIV draws attention to criminologist John Braithwaite's concept of 'responsive regulation' which has been widely applied as a form of restorative justice. To a large extent the current *Children, Youth & Families Act* in its most current form reflects the principle that "governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed".[11] Having progressive stages or levels of intervention by the State provides the Court with an appropriate range of orders to apply according to the individual circumstances of each case and each child's best interests. The proposed Bill reduces this ability of the Court by eliminating the equivalent of level 3 (b) – an intermediate level of intervention whereby the DoHS has day-to-day care while a parent/s retain parental responsibility.

In replacement of the above orders, save for Permanent Care Orders which remain in their own right, the following protection orders will only be available to the Court:

a) *Family Preservation Orders*: day-to-day care and parental responsibility remains with parents;

b) *Family Reunification Orders*: sole care/day-to-day care and parental responsibility vests with DoHS but DoHS cannot exercise that responsibility in relation to long term decisions unless the parent agrees. There are conditions able to be made in relation to contact. However, these orders can only run for 12 months initially and may only be extended for a further 12 months at the most if there is 'compelling evidence that it is likely that a parent will permanent resume care of the child during the period of extension' (section 24 creating new section 294A);

c) *Care by Secretary Orders*: sole care/day-to-day care and parental responsibility vests with DoHS and there are no conditions able to be made by the Court in relation to contact;

d) *Long term Care Orders*: parental responsibility vests with DoHS but the Court cannot make such an order unless there is a person or persons who have assumed the care of the child, runs until the child is 18 years.

[11] Braithwaite, J. (2002). Restorative justice and responsive regulation . New York: Oxford University Press. Page 29

As well as increasing the degree of intervention in the family unit and reducing options available to the Court to respond with an appropriate level of intervention with regard to the range of orders, the prioritisation of adoption is another feature of the Bill which escalates the degree of intervention.

The LIV is gravely concerned by the new section 167(1) created by section 97 of the Bill which mandates that: "a case plan must include one of the following objectives (***permanency objectives***) to be considered in the following order of preference as determined to be appropriate in the best interests of the child:

(a) family preservation …..;

(b) family reunification …..;

(c) adoption ….;

(d) permanent care ….;

(e) long term out of home care ….."

The new section 167(2) makes it clear that for the purposes of section 167 (1)(c) – (e), it is to be preferred that a child is placed (a) with a suitable family member of the child and or other person of significant to the child; or (b) if a placement under paragraph (a) is not possible, with another suitable carer or cares. However, the inclusion of adoption as a permanency objective over and above long term out of home care is interventionist in the extreme and one which does not protect families as a fundamental group unit of society.

Furthermore, Section 18 of the Bill creates a new section 276A which mandates the court to have regard, *inter alia*, to DoHS case plan. Prioritising adoption over other interventions that can support parents and children to maintain their family ties sits in contradiction to the lessons learned from Commonwealth Senate Community Affairs References Committee Inquiry into forced adoption policies and practices, the subsequent report on the Commonwealth Contribution to Former Forced Adoption Polies and Practices[12] and findings and recommendations of the Australian Institute of Family Studies.[13] This also has an implication for Indigenous children (see UNCR Article 20 below).

The LIV is concerned that the Bill as outlined above creates unreasonable and unjustifiable limitations to the fundamental human right to a fair hearing and the protection of the family as the fundamental group unit as set out in sections 24 and 17 respectively of the Charter.

[12] http://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/forced-adoption-practices
[13] http://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/past-adoption-experiences-0

United Nations Convention on Rights of the Child

ARTICLE 8

Article 8 of UNCROC states:

1) States Parties undertake to respect the right of the child to preserve his or her **identity, including nationality, name and family relations as recognized by law without unlawful interference**.

2) Where a child is illegally deprived of some or all of the elements of his or her identity, **States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity**.

The LIV submits that all children and especially those children involved in the Child Protection system and before the Children's Court of Victoria, have the right to enjoy the retention of parental responsibility by their parents. Parental responsibility or guardianship is a significant component in the preservation of family relations as recognized by law. Furthermore, parental responsibility goes to the identity of a child.

As discussed above, the LIV is concerned about the reduction of the number of orders available which can be made by the Children's Court and the removal of parental responsibility on a number of these orders. The new Care by Secretary Order and Family Reunification Order (albeit with the ability of a parent to refuse to permit DoHS to make a long term decision) diminish a parent's responsibility when the previously comparable orders being the Custody to Secretary Order and the Supervised Custody Order, both ensured that parental responsibility remained with the parents. It remains to be seen how many, if any, parents will be able to regain parental responsibility once it is lost under these proposed Orders, hence making it extremely difficult for the children who are the subject of those orders to re-establish speedily his or her identity in accordance with Article 8.

ARTICLE 9

Article 9 of UNCROC states:

1) States Parties shall ensure that **a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine**, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2) In any proceedings pursuant to paragraph 1 of the present article, all interested **parties shall be given an opportunity to participate** in the proceedings and make their views known.

3) States Parties shall respect the right of the child who is separated from one or both parents to **maintain personal relations and direct contact with both parents on a regular basis**, except if it is contrary to the child's best interests. [emphasis added]

As discussed below in relation to UNCROC and further discussed in the LIV submissions of 20 August 2014, the LIV is concerned that the ability of the court to provide judicial review of DoHS decision making is impugned.

Furthermore, and by way of underlining the importance of Article 9(3) above, the LIV submits that these changes are in direct contradiction to the recommendations of the *Protecting Victoria's Vulnerable Children Inquiry*[14] ("The Inquiry") which recognised the important role of the Children's Court in making conditions on care orders that affect the rights of children and parents:

> ***"Proposed modification of orders under the Children, Youth and Families Act 2005***
>
> *While the Inquiry is attracted to the options proposed by DHS for a simpler structure for orders, the Inquiry also considers that the role of the court should extend to determining those conditions that:*
>
> - *Fundamentally alter the relationship between parents and their children or between children and siblings or other people significant in children's lives; and*
> - *Might be considered more intrusive on an individual's rights. The types of conditions that would fall in this category are conditions relating to child-parent or child-sibling contact, exclusion of individuals from a child's life, or conditions that involve the parents or caregivers undergoing some form of treatment or drug and alcohol screening*[15]*".*

The LIV wishes to draw specific attention to the views of the Inquiry in relation to the proposed new Care by Secretary Orders which will replace in operation, Custody to Secretary Orders, the Inquiry recommended the Court retain powers to make conditions about contact and length of order:

> *"Modifying the current Custody to Secretary Order so that a Court can only make a condition concerning child-parent contact, sibling contact and contact with other persons who are significant in the life of the child and the length of order…*[16]*".*

ARTICLE 12

The LIV notes that Article 12 of UNCROC states:

1) **States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child**, the views of the child being given due weight in accordance with the age and maturity of the child.
2) For this purpose the child shall in particular be **provided the opportunity to be heard in any judicial and administrative proceedings affecting the child**, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. [emphasis added]

As set out below, the *United Nations Committee On The Rights Of The Child, General Comment No.12* (2009)[17] on Article 12 underlines the obligation on States to ensure opportunities to participate and for views of children and young people to be given due weight including all care proceedings, judicial or administrative such as mediation:[18]

> *32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular "in any judicial and administrative proceedings affecting the child". The Committee emphasizes that this provision applies to all relevant* ***judicial proceedings*** *affecting the child, without limitation, in-*

[14] Protecting Victoria's Vulnerable Children Inquiry (12 February 2012) http://www.childprotectioninquiry.vic.gov.au/ (page 402)
[15] Ibid at p402
[16] Ibid at p402
[17] Ibid at p402
[18] United Nations Committee on the Rights of the Child, General Comment No.12 (2009), *The right "to be heard in any judicial and administrative proceedings affecting the child"* http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf (at page 9)

cluding, for example, ***separation of parents****,* ***custody, care and adoption****, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical* ***administrative proceedings*** *include, for example, decisions about children's education, health, environment,* ***living conditions, or protection****. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.*

33. The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those ***initiated by others which affect the child, such as parental separation or adoption****.* ***States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.*** [emphasis added]

Further, the *United Nations Committee On The Rights Of The Child, General Comment No.12* (2009) in paragraph 38 emphasises the need for the opportunity to be heard to occur in a manner consistent with rules of 'national law', which in Victoria includes, as a person, the right for a child to instruct and be represented by a lawyer:

37. The representative must be aware that she or he represents ***exclusively the interests of the child*** *and not the interests of other persons (parent(s)), institutions or bodies (e.g. resi dential home, administration or society).*

38. The opportunity for representation must be "in a manner consistent with the procedural rules of national law". This clause should not be interpreted as permitting the use of procedural legislation, which restricts or prevents enjoyment of this fundamental right. On the contrary, States parties are encouraged to comply with the basic rules of fair proceedings, such as the right to a defense and the right to access one's own files."[19]

The Bill removes the Court's powers to attach conditions on certain orders where such powers were previously available, specifically, discretion to attach conditions for contact between parents and children for Permanent Care Orders, and a range of conditions for Care by Secretary Orders (equivalent to former Custody to Secretary Orders). Under the current Act, children over the age of 10 years generally have the opportunity to express their views about conditions, including supervised or unsupervised contact with a parent or other family member. A consequence of this Bill removing powers of the Court to make conditions on orders where it was previously able to do so, is that children also lose their legal right to give instructions (if directly represented) or their views and wishes (if represented on a best interests basis by an Independent Children's Lawyer) about these issues.

The fundamental importance of legal representation of children was highlighted in the recent publicized case of two young children being found to have been sexually and physically abused in residential care. It was because of the appointment of an Independent Children's Lawyer for the young girl and her pursuit of information that the abuse of these young people was uncovered. As discussed in the LIV submissions 20 August 2014 the Court's powers in that matter, which enabled the court to further protect those young children and scrutinise state care, have now been removed by this Bill.

[19] Ibid at page 10

ARTICLE 18

Article 18 of UNCROC states:

1) States Parties shall use their best efforts to ensure recognition of the principle that **both parents have common responsibilities** for the upbringing and development of the child. **Parents** or, as the case may be, legal guardians, **have the primary responsibility for the upbringing and development of the child**. The best interests of the child will be their basic concern.

2) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

ARTICLE 19

Article 19 of UNCROC states:

1) States Parties shall take all **appropriate legislative, administrative**, social and educational **measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child**.

2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, **investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.**

The LIV submits that a powerful judicial scrutineer both of parental care and that care provided by the State is fundamentally important to the Victorian community and appropriate legislative measure to ensure the safety and protection of children. Section 13 of the Bill creates a new section 262(5) which prohibits the court from making an Interim Accommodation Order (used daily by the court in its management of the proceedings) if it is satisfied that (a) a protection order could be made … or (b) a permanent care order could be made. The LIV is currently examining the constitutionality of this section as the LIV is concerned that this section will diminish the court's ability to exercise its statutory function and conduct proceedings in accordance with central legal tenets, such as the right of parties to procedural fairness. This issue is also discussed in the LIV submissions 20 August 2014. DoHS propose that families and children will have the right of appeal through VCAT and through the Ombudsman. However, neither of those institutions are the specialist court which the Children's Court of Victoria which has been found by Dixon J in *DoHS v Sanding* [2011][20] nor are parties legally represented nor funded to be legally represented in VCAT. In contrast, access to legal representation and funding to representation is currently provided through Victoria Legal Aid for the majority of children and parents before the Children's Court.

[20] *DoHS v Sanding* [2011] VSC 42

ARTICLE 20

Article 20 of UNCROC states:

1) A **child** temporarily or permanently **deprived of his or her family environment**, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to **special protection and assistance provided by the State**.

2) States Parties shall in accordance with their national laws ensure alternative care for such a child.

3) Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. **When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background**.

The LIV is concerned about substantive amendment by section 18 of the Bill to section 276. Section 18 effectively repeals the requirement as per the current section 276(1)(b) for example, that the court 'must not make a protection order unless (a) it has received and considered a disposition report and (b) it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary *in the best interests of the child*'.

Pursuant to section 18 of the Bill the Court need only be satisfied in (b) that 'the child cannot be sufficiently protected without a protection order'. In an era where many community services have very little funding, DoHS is now not bound to provide services to the family and hence the ability for parents and children alike to access services to effect change so that they can either stay together or be reunified is grossly limited. The repeal of this requirement likely contravenes Article 20(1) of UNCROC.

The LIV also wish to draw attention to the special protections required for Aboriginal and Torres Strait Islander children living in out-of-home care (Article 20(3)). Concerns regarding the implications of the Bill for these children in relation to the lack of an Aboriginal Guardian are discussed in the LIV submissions 20 August 2014. In addition to the problems of over-representation of Indigenous children highlighted in the LIV submissions; there is also a low proportion of out-of-home care placements supported by an Aboriginal and Torres Strait Islander agency in Victoria. According to the Secretariat of National Aboriginal and Islander Child Care, just 22% of Aboriginal and Torres Strait Islander children living in out-of-home care in Victoria are supported by an Aboriginal agency, as of June 2013.[21] Furthermore, the DOHS has a record of poor compliance with the Indigenous placement principle for Aboriginal and Torres Strait Islander children living in out-of-home care in Victoria, with almost half (48.6%) in placements that do not comply with this principle.[22]

Rather than further preserve and promote the rights to continuity of identity and culture of indigenous children in this state, this Bill serves to further undermine these rights. Although the DoHS has not fully complied with implementing those rights, these rights were previously afforded to a stronger degree and contemplated under the current Act, particularly pursuant to Aboriginal best placement principles under section 13 of the current Act (e.g., adoption) and the increasing assumption of Indigenous parental responsibilities by the State (e.g. Care by Secretary Orders).

[21] p. 12, SNAICC joint submission, submission to Royal Commission into Institutional Responses to Child Sexual Abuse (http://www.childabuseroyalcommission.gov.au/getattachment/d0986ed4-22a8-4eb7-834d-e3460902bb75/52-Secretariat-of-National-Aboriginal-and-Islander

[22] AIHW 2014, Table A32 Aboriginal and Torres Strait Islander children in out-of-home care, by Indigenous status and relationship of carer, states and territories, 30 June 2013, http://www.aihw.gov.au/publication-detail/?id=60129547965

CONCLUSION

While the LIV commends any efforts to improve the efficiency of processes and procedures in children's law matters, we submit that doing so should not be to the detriment of the rights of Victorian children. Families are entitled to protections provided by the Charter and UNCROC. The LIV is and will remain committed to working collaboratively with all relevant stakeholders.

As outlined in our submissions above, these proposed amendments, if implemented will result in a Court with significantly decreased powers whilst the State's powers increase. Of significant concern for the LIV, is the removal of conditions on the comparable Care by Secretary Orders, which is in direct opposition to the recommendations of the *Protecting Victoria's Vulnerable Child Inquiry 2012*. There is also a significant risk that the proposals breach certain requirements set out in the Charter in relation to the right to a fair hearing, and the protection of families and children. The LIV is also gravely concerned in relation to the Bill's compliance with Australia's obligations under the United Nations Convention on the Rights of the Child.

We are grateful for the opportunity to provide comments and welcome the prospect of providing further input as required. We refer you once again, to the LIV submissions to Parliament *Children, Youth and Families Amendment (Permanent Care and Other matters) Bill* 2014 on the 20 August 2014.