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Mr Peter Cain MLA

Chair of the Standing Committee on Justice and Community Safety

ACT Legislative Assembly

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Dear Chair *Peter*

I am writing to respond to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on D12023-202, the Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023 (Risk Assessment Guidelines 2023). I thank the Committee for their observation centred on the treatment of any potential implications for human rights.

The Risk Assessment Guidelines provide the risk assessment framework for foster and kinship carers who in exceptional circumstances, cannot obtain a Working with Vulnerable People (WWVP) registration to become an approved carer.

The Committee raised that the explanatory statement for the Standards did not address potential human rights implications, including a statement the Committee considers, at the very least, the potential engagement with the rights of children to protection, provided for by subsection 11(2) of the *Human Rights Act 2004*, should have been addressed. Given the relevance of 'kinship', it might also be suggested the cultural and other rights of Aboriginal and Torres Strait Islander peoples, protected by section 27 of the *Human Rights Act 2004*, might also have been addressed.

I am pleased to provide the following comments to address this matter.

The Government acknowledges, in the course of deciding whether to approve a person as an approved carer, a decision-maker must give proper consideration to human rights, their decisions must be compatible with human rights and any limitation to human rights must occur in the least restrictive way possible.

The aim and effect of the Risk Assessment Guidelines is to embed those principles into a structured decision-making framework under the *Children and Young People Act 2008* (CYP Act).

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Section 11 of the *Human Rights Act 2004* sets out that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. This right permits every child the right to a safe care environment and the right to be protected from abuse and neglect.

Child and Youth Protection Services (CYPS) involvement in a family's circumstances is guided by the *Children and Young People Act 2008* through graduated and proportionate steps (or thresholds). The thresholds act to balance the protection of children and young people against the protection of the family unit, within parameters set by the *Human Rights Act 2004*. The Risk Assessment Guidelines are intended to assist decision makers when they are assessing persons to provide foster or kinship care to children and young people.

Prior to authorising a person to provide foster or kinship care, decision makers are required to ensure they are satisfied the person is an 'appropriate person' to care for children or young people. In addition, if they do not hold a WWVP registration, they:

- a. do not pose an unacceptable risk to the child or young person,
- b. are familiar to the child or young person,
- c. are a 'significant person' in the child or young person's life, such as a parent-in-law, long-term friend or someone who normally lives with the child.

Section 27 (2) (a) (ii) of the *Human Rights Act 2004* sets out the cultural rights for Aboriginal and Torres Strait Islander Peoples to not be denied the right to kinship ties.

The Risk Assessment Guidelines supports the use of culturally sensitive risk assessment of carers who face barriers to obtaining a WWVP registration. The Risk Assessment Guidelines also recognise the inherent value of cultural and familial knowledge and connection, which may make a person more suitable to care for a child, than measures of suitability which are less specific to an individual child.

For this reason, and for the reasons set out above, I am satisfied they are compatible with the *Human Rights Act 2004* and the principles of the Act duly influences and impacts decisions making in relation to the approval of exemptions for WWVP registration.

Thank you for the opportunity to respond to the findings of the Committee, and for ensuring implications for human rights are given proper consideration. I have asked the Community Services Directorate to develop an updated Explanatory Statement to address this issue.

Yours sincerely



Rachel Stephen-Smith MLA
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