



**THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON  
SOCIAL POLICY AND LEGAL AFFAIRS**

**INQUIRY INTO LOCAL ADOPTION  
INSTITUTE OF OPEN ADOPTION STUDIES RESPONSE TO QUESTIONS  
ON NOTICE**

**PUBLIC HEARING**

Committee Room 1R2  
Parliament House, Canberra

Tuesday, 26 JUNE 2018  
17.55 – 18.21

**ASSOCIATE PROFESSOR AMY CONLEY WRIGHT  
PROFESSOR JUDITH CASHMORE**

**INSTITUTE OF OPEN ADOPTION STUDIES**

Sydney School of Education and Social Work  
Faculty of Arts and Social Sciences  
The University of Sydney

## **QUESTIONS ON NOTICE**

### **Question – The Hon. Dr Freeland, MP**

**And what numbers of the adoptions already happening in New South Wales are opposed adoptions by the birth family?**

#### **Response**

The most accurate information on the number of adoptions that are opposed, or contested, by birth parents in the context of open adoptions from out-of-home care in NSW will be available from the administrative data held by the NSW Department of Family and Community Services. We have been advised by the Department that they will be providing this information to the Committee Secretariat.

The Institute of Open Adoption Studies (the Institute) is conducting an in-depth review of Supreme Court case files of open adoptions from out-of-home care completed in 2017. The review consists of a total of 117 children within 89 adoption case files. We can report from the analysis that has been completed on this sample, that 14 of the cases were contested by the birth parents in court. The files also indicate that, for 4 of these contested cases, birth parents were no longer opposed to the adoption once they were satisfied with particular conditions after negotiations (such as post-adoption contact with birth family, child's name after the adoption order is made).

During the consultations the Institute has conducted with the out-of-home care and adoption sectors in NSW, practitioners have reported that the provision in the NSW legislation to dispense with parental consent to adoption, on the basis of the child's established and stable relationship with their carer, is an important factor in progressing out-of-home care adoptions. This provision allows for a parent, who does not have the care or custody of their child, to be spared the necessity of consenting to the adoption. For example, parents may not want to formally relinquish their child even if they do not oppose the adoption order. Further, even though parents may contest an adoption, they are still provided an opportunity to participate in the formation of the adoption plan and maintain regular contact with their child.

### **Question – The Hon. Dr Freeland, MP**

**Do you know how many of these children that are being adopted have disabilities?**

#### **Response**

The most accurate information on the number of children with a disability who have been adopted from out-of-home care in NSW will be available from the administrative data held by the NSW Department of Family and Community Services. We have been advised by the Department that they will be providing this information to the Committee Secretariat.

The Institute can report on the findings from the sample of children in the 2017 Supreme Court adoption case file review. Our analysis found that of the 117 children in the sample, 33 children had been identified as having a disability (e.g., Autism Spectrum Disorder; Attention Deficit Hyperactivity Disorder; Oppositional Defiance Disorder; or a language, learning or speech disorder). Another 18 children were mentioned as having a 'possible' disability, which included concerns about developmental, learning and speech difficulties or delays. Therefore, almost half of the children had some level of special needs, which had been identified

prior to the adoption application. Contingency funds and care allowances, that would continue after the adoption, were included in the adoption plans for several of these children.

Barnardos Australia has conducted a study into the open adoptions of 210 non-Aboriginal children adopted from care in the period 1987-2013. This study is triangulating data from their administrative data collection, survey responses and interviews, to build a profile of the life trajectories, including information about health and wellbeing, of adoptees and their adoptive and birth families. The initial analysis from this study found that 58% of the children had at least one diagnosed long-term health condition and/or developmental delay. The Institute has been informed that Barnardos Australia will be providing more detailed information about the health and wellbeing of the children in the study to the Committee Secretariat.

**Question – The Hon. Dr Freeland, MP**

**Do you have any breakdown of the reasons for these children not being able to be cared for by their families?**

**Many of these families, in my experience, have either intellectual disability, mental illness or a range of factors. I have major concerns about it; I don't mind declaring my concerns. What evidence is there that the New South Wales government is investing more in early intervention?**

**Response**

In 2016, a review of the NSW out-of-home care system found the main drivers for entry into out of home care include parental socioeconomic disadvantage, drug and alcohol abuse, domestic violence, and mental health issues.<sup>1</sup> The top three issues for reports to the NSW Child Protection Helpline are: physical abuse (21.2%), neglect (20.4%) and sexual abuse (16.8%).<sup>2</sup>

Research conducted by Barnardos Australia, into the outcomes of over 210 children placed for open adoption in NSW since 1986, found that the majority of these children were highly vulnerable with extremely adverse early childhood experiences. Most of these children had experienced more than one form of abuse, and 75% of children had experienced emotional abuse and neglect.

The NSW Government budget for 2018-2019 included approximately \$2 billion for child protection and early intervention services. Of this, \$39.2 million has been allocated to the implementation of programs aimed at improving family preservation through multisystem therapy for child abuse and neglect and functional family therapy child welfare services. The NSW Department of Family and Community Services can provide the Committee Secretariat with more detailed information about the proposed investment in early intervention and family preservation programs.

The multisystem therapy model was developed in the United States in the late 1970s to provide intensive family and community-based treatment. The Functional Family Therapy – Child Welfare program was also developed in the United States and delivered by a not-for-profit agency in New York City. Given the difference between the family welfare and child protection systems in Australia and the United States, it is important that the implementation of these interventions is accompanied by rigorous long-term research

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<sup>1</sup> NSW Family & Community Services (2016). *Their Futures Matter: A new approach*. Reform directions from the Independent Review of Out of Home Care in New South Wales.

<sup>2</sup> FACS statistics quarterly report summary - *Services for children and young people* – quarter 2 2016-17

and evaluation. It is imperative that we understand the long-term consequences of policy and service system reforms on the lives of children and families. Targeted and longitudinal research offers the most effective means of addressing the gaps in knowledge. A mixed methodology longitudinal study drawing upon linked administrative data, supplemented with qualitative research, could effectively capture outcomes and the experiences of children, their families and professionals.

**Question – Th Hon. Mr Christensen, MP**

**It's just about understanding from the Institute what is defined as 'best interests of the child' in the instance of adoption. I really like to understand, from your institutes, because you've obviously done a lot of work in this space, what you would define as 'best interests of the child'. I think it's crucial.**

**Response**

The Institute is conducting an in-depth review of the adoptions of 117 children, finalised in 2017, in terms of the NSW Supreme Court's deliberations regarding children's best interests. This includes an examination of Adoption Plans in relation to arrangements for birth family contact and promoting links with children's cultural identity. We will be able to report more on our findings by the end of this year. It should be noted that it is not possible to conduct a comparison of the approach of the NSW Supreme Court with that in other Australian jurisdictions, as NSW is the only jurisdiction to routinely publish judgments concerning the adoption of children.

Much has been written about the imprecise nature of the term 'best interests of the child' and the Court must weigh the factors and particular circumstances of each case, without any rigid, or pre-conceived, notions. The factors which must be considered, and the principles to be applied, when the Court decides whether an adoption order are to be made are contained in sections 8 and 90 of the *NSW Adoption Act*:

- views of the child (s8(1)(d))
- wishes expressed by the parents (s 8(2)(e)),
- attachment of the child to the birth parents and proposed adoptive parents (s 8(2)(f) and (h)) and
- general questions of personal, family and cultural identity (s 8(2)(c)).<sup>3</sup>

The *NSW Adoption Act* requires the decision maker to consider the relationship of the child with both birth parents (s8(2)(f)) and with the proposed adoptive parents (s8(2)(h)) in determining the best interests of a child in an adoption application. In the judgments analysed by the Institute, the children had in most cases been removed from the care of birth parents at a very young age before significant attachments had developed – many children were removed before their first birthday – and had been in the care of the proposed adoptive parents for a significant period of time, even where there had been multiple prior placements. In the adoption applications analysed, the proposed adoptive parents were the same people who were currently caring for the child, therefore, their parenting capacity is not in issue, the child has already formed attachment bonds with the family and was secure in the placement.

Under the *NSW Adoption Act 2000* for adoption proceedings before the Supreme Court, the court must find that adoption is 'clearly preferable' to other orders. In response to each adoption application, the Supreme Court must independently determine whether adoption is the clearly preferred option for the child<sup>4</sup> and if it

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<sup>3</sup> *Adoption Act 2000*, section 8(1)(d), 8(2)(c)(e)(f)(h).

<sup>4</sup> *Adoption Act 2000*, section 90(3)

decides it is not, may make other orders including allocating parental responsibility to the Minister.<sup>5</sup> Research is clear that children's relationships, especially relationships with caring adults, comprise the most important aspect of their environment and lived experience. Developing secure relationships, including those with non-parent carers, can mitigate or reverse negative outcomes.<sup>6</sup> This is because a 'child who has been subject to trauma and loss requires a deep, meaningful and sustained primary attachment relationship to heal'.<sup>7</sup> Therefore, a key aim for children in out-of-home care is to achieve a stable, long-term care arrangement. For a child, that means being with a family where they feel safe, secure and loved.

One of the benefits of (foster) carer adoptions, as practiced in NSW, is that there is usually a strong pre-existing relationship and bond between the child and the carer(s) prior to the application for adoption.<sup>8</sup> Research that has explored the differences between long-term foster care and adoption has found that the majority of adopted children reported feeling emotionally secure and strongly identified with their adoptive families. Research has also found that there is lower rate of placement breakdown with adoption compared to other placement types. For example, a longitudinal study conducted by Selwyn and Quinton (2004)<sup>9</sup> found that 83% of adopted children were still in their adoptive placement at follow-up seven years later. Of the children who remained in long-term foster care, only half were still with their first long-term foster carers at follow-up. A critical factor, however, is the age at which children are placed in those long-term arrangements – younger age is associated with more stable placements for children in both foster and adoptive placements.<sup>10</sup>

The Institute is committed to capturing the voices and views of children, their carers and birth families in our research. Outcomes for vulnerable children are unlikely to improve if we do not listen to children about what matters to them, and about their relationships with the people in their lives. As mentioned in the Institute's submission to this Parliamentary inquiry, Article 12 of the Convention on the Rights of the Child requires that the views of children are given due weight in accordance with their age and maturity.<sup>11</sup> This right, often described as the right to be heard or the right to participation, has been identified by the Committee on the Rights of the Child as one of the four general principles of the Convention, which '*highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights*'.<sup>12</sup>

The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) requires Indigenous children to be placed with extended family, kin or community whenever possible, with non-Indigenous carers as a last option. Aboriginal and Torres Strait Islander extended families and communities have complex kinship interrelationships and obligations, which must be factored into caseworkers' relationship-

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<sup>5</sup> *Adoption Act 2000*, section 92

<sup>6</sup> Center on the Developing Child at Harvard University 2016. *Applying the science of child development in child welfare systems*. Cambridge: Harvard University. Viewed 11 January 2017, <<http://www.developingchild.harvard.edu>>.

<sup>7</sup> McPherson L & MacNamara N 2014. Therapeutic kinship care: a carer's perspective. *Children Australia* 39(4):221–5.

<sup>8</sup> Biehal, N. (2014). A sense of belonging: Meanings of family and home in long-term foster care. *British Journal of Social Work*, 44(4), 955–971.

<sup>9</sup> Selwyn, J., & Quinton, D. (2004). Stability, permanence, outcomes and support: Foster care and adoption compared. *Adoption & Fostering*, 28(4), 6–15.

<sup>10</sup> Biehal, N., Ellison, S., Baker, C., & Sinclair, I. (2010). *Belonging and permanence: Outcomes in long-term foster care and adoption*. London: British Association for Adoption and Fostering.

<sup>11</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

<sup>12</sup> United Nations Committee on the Rights of the Child, *General Comment No 12 (2009): The Right of the Child to be Heard*, 51st session, CRC/C/GC/12 (20 July 2009) [2].

building practices.<sup>13</sup> However, the mainstream child protection systems in Australia may not adequately consider traditional child rearing practices, and cultural identity and connection have not always been a factor when making decisions about the best interests of children.<sup>14</sup>

Aboriginal community control, ownership and oversight of Aboriginal programs and Aboriginal participation in the design and development of Aboriginal service delivery is an essential element of ongoing continuous improvement efforts, allowing data to be properly understood and approaches adjusted to further strengthen the outcomes achieved. Australia does not currently have a systematic national protocol to monitor and assess implementation of the Principle. The Principle needs to be supported through a suite of strategies that include funding, training, planning, cultural recognition and inclusion, and strengthened in legislation and policy, including the focus on Aboriginal and Torres Strait Islander children's best interests and safety.<sup>15</sup>

The NSW *Pathways of Care Longitudinal Study* found that Relative/Kinship care is the fastest growing form of care in NSW.<sup>16</sup> The Australian Institute of Health and Welfare figures show that foster care numbers have increased to around 8,000 in 2014 (approximately a three-fold increase), whereas relative/kinship care numbers have quadrupled to around 10,000.<sup>17</sup> The term Kinship, rather than 'relative', is the preferred term as it captures a broader range of potential carers, including close biological relatives, in-laws, more distant biological relatives, but also close friends or people who might have a community role or identity, similar to a relative.

Another of the findings from *Pathways of Care* was that, in NSW, 'other relative' households (most often aunts and uncles) were significantly more likely to be Aboriginal. Almost a third of 'other relatives' were Aboriginal, which was more than double the rate observed in foster care and grandparent groups. The study also reported Kinship care can be associated with stronger emotional connections between family members. For instance, grandparents will be more likely to provide a nurturing environment to children who they consider to be their own.<sup>18 19</sup> There is also increasing evidence that the facilitation of contact and keeping in touch with parents and other family members in relative/Kinship care is a positive factor in children's wellbeing and development.<sup>20</sup>

The Institute is aware of the unique challenges that Aboriginal children in out-of-home care face, and the intergenerational impacts caused by past legislation and policies including the forced removal of Aboriginal children from their families and communities. Aboriginal and Torres Strait Islander children are 10 times

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<sup>13</sup> Riley, L., Howard-Wagner, D., Mooney, J. (2015). Kinship Online: Engaging 'Cultural Praxis' in a Teaching and Learning Framework for Cultural Competence. *The Australian Journal of Indigenous Education*, 44(1), 70-84.

<sup>14</sup> Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S. (2015). *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations* (CFCA Paper No. 34). Melbourne: Child Family Community Australia information exchange.

<sup>15</sup> Valentine, B., & Gray, M. (2006). International perspectives on foster care: Keeping them home. Aboriginal out-of-home care in Australia. *Families in Society*, 87(4), 537–545.

<sup>16</sup> Delfabbro, P. (2017). *Relative/kinship and foster care: A comparison of carer and child characteristics*. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care. Research Report Number 7. Sydney. NSW Department of Family and Community Services.

<sup>17</sup> Australian Institute of Health and Welfare (AIHW) (2015). Child protection Australia: 2013-2014. Canberra: AIHW.

<sup>18</sup> Ibid, Delfabbro et al.

<sup>19</sup> Kiraly, M., & Humphreys, C. (2013). Policy briefing paper: Kinship care and family contact. *Developing Practice*, 35, 68-74.

<sup>20</sup> Ibid, Delfabbro et al.

more likely to be placed in out-of-home care compared with non-Indigenous children.<sup>21</sup> To better understand the experiences and challenges for Aboriginal Kinship carers, the Institute has been fostering connections with Aboriginal controlled organisations and families in Western NSW. We are currently undertaking a qualitative study with Aboriginal organisations and carers to capture what helps children stay connected with their families when they are in long-term care and to improve the practice around contact for Aboriginal children. The aim is to develop evidence to support practices and to co-design community and family resources aimed at keeping children safe and connected to Kin.

### **Question – The Hon. Ms Husar, MP**

**If you could take Ms Husar's question on notice. Effectively it is in two parts, which are:**

- 1. What are the key datasets that should be collected and how might they be better used to understand the effects of different permanency pathways; and also**
- 2. What are the barriers in your view to achieving consistency in data collection if we're going to look at a national framework?**

### **Response**

- 1. Key datasets that should be collected and how might they be better used to understand the effects of different permanency pathways**

To date there has been very limited Australian research into children's outcomes in different placement types, including open adoption, Kinship care, guardianship and other permanency orders. The impact of permanency reforms on the lives of children and families calls for much greater understanding of the impacts of different permanency pathways for children in out-of-home care, relevant to the Australian cultural and policy environment. Targeted and longitudinal research offers the most effective means of addressing the gaps in knowledge.

A large-scale prospective longitudinal study of children and young people in out-of-home care in Australia is required. Such a study would utilise a mixed methodology, drawing upon linked administrative data, supplemented with qualitative research, effectively capturing outcomes and experiences of children, their families and professionals. The Commonwealth government is well placed to commission research into this issue that looks across jurisdictions and facilitate whole-of-government agreements that would allow for data sharing and linkage. A national driven research agenda could draw together information on children's child protection backgrounds, OOHC placements, health, education and offending held by multiple government agencies and match it to firsthand accounts from children, caregivers, caseworkers and teachers. The child developmental domains of interest are physical health, socio-emotional wellbeing and cognitive/learning ability.<sup>22</sup>

A partnership approach is recommended, modelled on Australian Research Council Centres of Excellence, that could draw together a collaboration involving government agencies (e.g., Department of Social Services, Australian Institute of Health and Welfare, Australian Institute of Family Studies, Australian Bureau of Statistics) and leading universities and research bodies (such as the Institute of Open Adoption Studies,

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<sup>21</sup> Australian Institute of Health and Welfare 2017. *Australia's welfare 2017*. Australia's welfare series no. 13. AUS 214. Canberra: AIHW

<sup>22</sup> Cashmore, J. and Talyor, A. (2017). *Children's Family Relationships in Out-of-Home Care*. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care. Research Report Number 9. Sydney. NSW Department of Family and Community Services.

University of Sydney; Australian Centre for Child Protection, University of South Australia; Australian Catholic University, Centre for Child Protection Studies; University of Melbourne, Centre for Excellence for Child and Family Welfare), and industry partners from the child protection and out-of-home care sectors. Investment in such a collaboration would create the platform to address the most challenging and significant research and policy questions for vulnerable children and families.

**2. What are the barriers in your view to achieving consistency in data collection if we're going to look at a national framework?**

The increased emphasis in the UK and USA on adoption as a permanency placement option for children in public care has led to a rise in the amount and quality of research on adoption and other forms of permanent placement. For example, in the United States, 3% of federal child welfare funding is dedicated to research, evaluation, technical assistance and demonstration projects.<sup>23</sup> Private foundations and special interest groups have invested in adoption research, such as the British Association for Adoption and Fostering (BAAF), and the Donaldson Adoption Institute in the USA. There has also been extensive research and collection of statistical data relating to adoption undertaken and published by government and government-funded or assisted research centres and foundations, particularly in the UK and the USA.

Australia has lacked a national approach to research into the outcomes of children in out-of-home care. Currently, there is limited evidence about what works in the unique legislative and policy environment of Australia, and an overreliance on international literature, which is based on very different legislation and welfare systems. The Australian Government could drive the whole-of-government agreements that would allow for the tracking of children's outcomes across safety, health, welfare and education domains with appropriate safeguards for privacy concerns. National leadership could provide the research investment to measure the impact on children's lives and the outcomes achieved from the different legislation and policies across jurisdictions.

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<sup>23</sup> <https://fas.org/sgp/crs/RA3458.pdf>