

## **Adopt Change**

# **Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs on the *Inquiry into Local Adoption***

May 2018

### **Terms of Reference**

*The House of Representatives Standing Committee on Social Policy and Legal Affairs will inquire into and report on approaches to a nationally consistent framework for local adoption in Australia, with specific reference to:*

- 1. stability and permanency for children in out-of-home care with local adoption as a viable option; and*
- 2. appropriate guiding principles for a national framework or code for local adoptions within Australia*

*In undertaking its inquiry, the Committee will have regard to relevant legislative frameworks within Australia.*

### **Introduction**

*“While the State may make financial provisions and uphold the legal rights of the children for whom it is responsible, it cannot perform the functions of the family – to provide the enduring bonds of attachment which nurture the ability to love and to be loved.”<sup>1</sup>*

This inquiry comes at an important time in the history of Australia. There is a national crisis for vulnerable children in Australia, with the number of children entering our out of home care (OOHC) system increasing. With 47,915 children in OOHC as at 30 June 2017, 32,600 of these children have been in the OOHC for over 2 years, unlikely to return home to birth family. Instead they are more likely to remain in the system for an average of 12.5 years. By way of contrast, there were only 315 adoptions in Australia in the same year, with only 143 of those adoptions by known carers (or foster carers)<sup>2</sup>. We have an increasing number of children being raised in a system, rather than in safe, permanent and nurturing families. There are not enough foster carers able to care for these children; and it is not unknown for children to be temporarily housed in motels with case workers because there is simply nowhere else for them to safely

<sup>1</sup> Scott, D. (2010). “Here under the southern cross...”: reflections on child welfare in Australia. *Developing Practice*, 28(Spring), 4-6.

<sup>2</sup> Australian Institute of Health and Welfare 2018. Child protection Australia 2016–17. Child welfare series no. 68. Cat. no. CWS 63. Canberra: AIHW.

stay. While it is an important safety measure to take children into out of home care from unsafe environments, the out of home care system is not an appropriate long-term parent for children. Children must be raised in families for positive life outcomes.

**Adopt Change submits that there should be significant capacity building of families to ensure that children are able to remain within, or return safely to, their birth family where possible. When that is not possible or safe, we advocate for timely decision making in relation to the safety and wellbeing of children, and for other permanent legal orders to provide children with access to safety, nurture and permanency, and believe that in cases where appropriate, adoption provides the legal security to children and families to support this.**

Our response provides information on:

- the **current state** of adoption from OOHC in Australia
- The importance of **timely decision making** when a child is unable to return home to birth family
- the **detrimental impact of impermanence**
- the **positive option of adoption** (or other permanent care options where appropriate)
- the **importance of post-adoptive supports**
- and recommendations for what a **national framework** to **reduce barriers** to adoption should constitute.

NB. Our response is in relation to adoption of children from out of home care. The term 'local' adoption in this inquiry is currently referred to as 'known carer adoption' within Australia when referenced in data such as AIHW reports.

## Key Statistics

As at June 2017:

- There were 47,915 children in OOHC<sup>3</sup>.
- **32,600 of these children have been in OOHC for over 2 years.**
- 62% of those children were under the long-term legal responsibility of the state or territory.
- **19,645 children have been in OOHC for over 5 years.**
- By way of contrast, there were **only 143 adoptions by known carers.**<sup>4</sup>
- The length of stay in OOHC (in NSW, by way of example) has been on **average 12.5 years.**<sup>5</sup>
- Many children in out-of-home care **experience multiple placement moves.** A study into the placement history of 77 young people who had been in out-of-home care in Victoria and Western Australia found that 40% had experienced between two and five placements, 14% between six and 10 placements, and 32% had moved between placements more than 11 times.<sup>6</sup>
- Research indicates that young people leaving OOHC who have experienced impermanency are significantly more likely to be impacted by homelessness, poor education, poor health outcomes (especially mental health) and are more likely to be involved in criminal activity.<sup>7</sup>

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<sup>3</sup> Australian Institute of Health and Welfare 2018. Child protection Australia 2016–17. Child welfare series no. 68. Cat. no. CWS 63. Canberra: AIHW.

<sup>4</sup> Australian Institute of Health and Welfare 2017. Adoptions Australia 2016–17. Child welfare series no. 67. Cat. no. CWS 61. Canberra: AIHW.

<sup>5</sup> NSW Dept. of Family and Community Services 2017. Redesign of of Out of Home Care Case Managment & Policy Guidelines, Permanency Support Program Discussion Paper, Accessed here: [https://www.facs.nsw.gov.au/\\_data/assets/file/0005/419414/Discussion\\_Paper\\_Redesign\\_of\\_the\\_OOHC\\_Case\\_Management\\_Policy.pdf](https://www.facs.nsw.gov.au/_data/assets/file/0005/419414/Discussion_Paper_Redesign_of_the_OOHC_Case_Management_Policy.pdf)

<sup>6</sup> <https://aifs.gov.au/cfca/publications/children-care>

<sup>7</sup> Campo, M., & Commerford, J. (2016). Supporting young people leaving out-of-home care (CFCA Paper No. 41). Melbourne: Child Family Community Australia information exchange, Australian Institute of Family Studies. (<https://aifs.gov.au/cfca/publications/supporting-young-people-leaving-out-home-care/outcomes-young-people-leaving-care>)

## About Adopt Change

Adopt Change is an Australian-based not-for profit organisation that believes that **every child has the right to grow up in a safe, nurturing and permanent family home**, and that all families need the appropriate supports for children to thrive.

Adopt Change works to raise community awareness of the importance of meeting these rights for children, encourage reform, and empower Australians to work towards all children having permanency and positive life outcomes. We support capacity building of families to ensure that vulnerable children are able to remain within their birth family where possible. When that is not possible or safe, we advocate for other permanent options, including adoption where appropriate.

We understand the impacts of impermanency and trauma and we work to support families through workshops and online resources; research; pre and post-adoptive supports; trauma informed supports; information and community events; as well as working with governments, departments and the sector to address issues surrounding permanency for children.

We regularly hear from foster families, adoptive families, and prospective carers about their challenges and the importance of permanency and support for their family.

This submission has been drafted with these key objectives as the primary motivator, and children at the centre.

## Acknowledgment of Country

Adopt Change wishes to acknowledge the Aboriginal people of the many traditional lands and language groups of Australia as the traditional owners and custodians of the land. We acknowledge the wisdom of Aboriginal Elders both past, present and future and pay respect to Aboriginal communities of today.

Adopt Change acknowledges the over-representation of Aboriginal and Torres Strait Islander children in out of home care across Australia. At 30 June 2017, 17,664 Aboriginal and Torres Strait Islander children were in out-of-home care - a rate of 58.7 per 1,000 children, which was 10 times the rate for non-Indigenous children.<sup>8</sup> Adopt Change affirms that these children need to be provided care in a culturally appropriate manner, with careful implementation of the Aboriginal Placement Policy and with an overall view of prioritising the child's right to safety, nurture and permanency.

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<sup>8</sup> Australian Institute of Health and Welfare 2018. Child protection Australia 2016–17. Child welfare series no. 68. Cat. no. CWS 63. Canberra: AIHW.

## Table of Contents

<b>Terms of Reference</b>	1
<b>Introduction</b>	1
Key Statistics	2
About Adopt Change	4
Acknowledgment of Country	4
<b>Stability and permanency for children in out-of-home care with local adoption as a viable option</b>	6
Adoption from out of home care in Australia	6
The positive option of adoption (or other permanent care options where appropriate);	7
Barriers to adoption national research conducted by Adopt Change	8
Legislative frameworks within Australia	9
Inconsistencies across the states – what’s working and what’s not	9
Western Australia	10
New South Wales	11
Victoria	12
Comparison Table of Legislation State by State	12
Non-transferable approvals and processes	12
Poor Outcomes for Children in OOHC	12
Cost of the OOHC system	16
Prioritising Best interests of the child	16
United Nations – Rights of the Child	16
<b>Appropriate guiding principles for a national framework or code for local adoptions within Australia</b>	17
Recommendations	17
Simple Adoption	20
Birth Certificates	20
<b>Concluding Statements</b>	21

## **Stability and permanency for children in out-of-home care with local adoption as a viable option**

### **Adoption from out of home care in Australia**

- Adopt Change believes that **every child has the right to grow up in a safe, nurturing and permanent family home**. Our submission focuses on the substantial number of children within Australia who need permanent care. For children in out-of-home care (OOHC) including foster care and residential care, adoption should be a viable option.
- Most of the legislative regimes in Australia facilitate adoption for a child who has been placed for adoption by a parent ('local' adoption), inter-country adoption and adult adoption. In addition to this, with the exception of SA, Queensland and Victoria, the various Acts, allow for adoption by foster carers who have had a child/ren in their care for two years which we refer to as "foster to adopt".
- ACT, NSW, NT, WA and TAS permit 'foster to adopt' where a child has been in the day-to-day care of a foster carer for a period of time (usually 2 years) and where the carer desires to adopt the child/children, the children can be adopted.
  - In some circumstances adoption from foster care can occur in Queensland, Victoria and South Australia though the legislation is unclear about what is specifically required for a known adoption to occur.
- 'Known adoptions' in Australia are adoptions where the prospective adoptive parent/s and the child already know each other, for example when the child has been placed in the care of a foster carer. Known adoptions also occur with step-parents and relatives.
- Despite the increasing number of children in OOHC in Australia, there are a contextually low number of adoptions in all states and territories, with the exception of New South Wales who have recently implemented significant change to facilitate adoptions of children from OOHC.
- The figures in the table below are the known adoptions by state in Australia (known adoption being adoptions by a step-parent, relative or foster carer/s). 143 of the 204 known child adoptions were from out-of-home care. 131 of these adoptions were in NSW, which we believe reflects the significant amount of work carried out in that state to increase the number of adoptions and other permanency outcomes for children in OOHC.

Number of known child adoptions by state and territory 2016-2017 <sup>9</sup>	
State/Territory	Number of Adoptions
New South Wales	152 (131 from OOHC)
Victoria	1
Queensland	12
Western Australia	28 (only 2 from OOHC)
South Australia	0
Tasmania	2
Australian Capital Territory	7
Northern Territory	2
<b>Australian Total</b>	<b>204</b>

**The positive option of adoption (or other permanent care options where appropriate);**

- Outcomes for children who have grown up in foster care, compared with children who have been adopted, strongly indicate that adoption provides greater benefits to those children both in terms of general well-being,<sup>10</sup> as well as specific areas such as cognitive competence and education outcomes.<sup>11</sup>(ref. Vinnerljung).

*“ The main defining difference found between these two forms of substitute parenting appears to be the higher levels of emotional security, sense of belonging and general*

<sup>9</sup> Australian Institute of Health and Welfare, Adoptions in Australia Report 2016-2017, Table 3.12, page 28 accessed here <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>

<sup>10</sup> Triseliotis, J. (2002), Long-term foster care or adoption? The evidence examined. Child & Family Social Work, 7: 23-33. doi:10.1046/j.1365-2206.2002.00224.x

<sup>11</sup> Bo Vinnerljung, Anders Hjern, Cognitive, educational and self-support outcomes of long-term foster care versus adoption. A Swedish national cohort study, Children and Youth Services Review, Volume 33, Issue 10, 2011, Pages 1902-1910, ISSN 0190-7409

*well-being expressed by those growing up as adopted compared with those fostered long term.”<sup>12</sup>*

## **Barriers to adoption national research conducted by Adopt Change**

In 2017, Adopt Change conducted a research survey of the experiences of prospective adoptive parents' (PAPs) and adoptive parents' of the adoption process. There were 1,053 participants from all Australian states and territories who had either considered adoption, were adoption applicants, were foster parents, or had recently adopted a child.

- **Over 80%** of individuals who considered adopting a child found the processes and information surrounding adoption to be **complex and overwhelming**.
- **Over 56%** of research participants had experienced **unexplained delays** during the process.
- Only one third of applicants said that they would characterise the agency with whom they were dealing as supportive, while **two thirds reported that their agency was unsupportive or were ambivalent about the support from their agency**.
- It was identified that PAPs were flexible regarding the pathway to adoption. More than two thirds of PAPs surveyed (68%) indicated that they would be willing to consider a local adoption, more than half (58%) indicated they would be receptive to an intercountry adoption and **half of PAPs surveyed (51%) would adopt from OOHC if given the opportunity**.
- **There were 258 carers in the study who wanted to adopt children who were already in their care**.
- **Two thirds of these PAP respondents said they knew the child for whom they cared would like to be adopted** (only one respondent stated that they knew that the child did not want to be adopted, and the other respondents were unsure, likely because of the young age of the child).
- **Twenty-five of these children had been in the care of their foster parents for more than a decade** and, in some cases the children who wished to be adopted had been in their foster family for as long as 17 years.
- Among those already caring for children under a protection order, the majority (**72.2 percent**) were **open to other forms of permanency** orders for their children, as an alternative to adoption. **However, in most instances, foster carers preferred adoption because of the full 'belonging' it provided children with including the**

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<sup>12</sup> Trisellotis, J (2002) op. cit.



**lifelong legal relationship.** For example, *“Would prefer adoption to give the children an extra sense of belonging and so once they are 18 they are still legally our family.”*

- Some of those who already had **permanent care or guardianship orders spoke of how these orders did not provide their child with the belonging that they needed.** For example, *“Although guardianship...gives us a sense of permanency they don’t provide the same sense of belonging and being part of a family mainly due to society’s ignorance and prejudices which impact the child on every level. It’s all the little stuff like how your family gets treated by school, hospitals, when you travel with passports with different names and have to travel with court orders that just keep reminding your child that he is not yours....that makes your child feel insecure.”*
- There were a range of less common barriers that were also cited, including more personal barriers, such as being rejected from the process due to Body Mass Index or age.
- Respondent feedback included:  
*“I would LOVE anything that gives the kids the right to stay here permanently and have known stability”.*

*“I don’t care what they call it, just make the placement permanent. The court has already ruled they’ll never go back to parents, no family is willing to take them so why can’t we all have some certainty about the future with no risk of them ever being removed from our care”.*

Additional information on the barriers to adoption in Australia, and case studies of experiences, can be found in the Adopt Change research report: **‘Barriers to Adoption in Australia’**.<sup>13</sup>

## **Legislative frameworks within Australia**

### **Inconsistencies across the states – what’s working and what’s not**

- While not all children who are in long term OOHC have needs that are best suited to adoption, or will be matched with a prospective adoptive family, for many, they are denied the opportunity by the lack of consistency and implementation of existing laws in Australia.

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<sup>13</sup> Adopt Change 2017, ‘Barriers to Adoption in Australia’, National Adoption Research, September 2017. Accessed here: <https://www.adoptchange.org.au/page/20/research>

- Adopt Change submits that for those children for whom adoption is a suitable option (and have carers who wish to consider adoption), offering adoption should be the default position, remembering that carers must care continuously for the child/ren for a period of time, at least two years in most states, before a prospective adoption can be considered. This submission is not new, revolutionary, or confined to the current government, it has been a position recommended by various governments following substantial research and debate:

*“In Australia, issues related to permanency and long-term care for children and young people in out-of-home care have been the subject of parliamentary inquiries and Council of Australian Governments (COAG) reforms. The consistent goal of these initiatives has been to improve the outcomes for children and young people who enter out-of-home care as clients of child protection systems. Safe reunification is always the policy preference (Fernandez 2014). But where reunification with the family is not possible, early efforts in permanency planning to achieve stable, long-term care will provide the best outcomes. The Senate Community Affairs Committee Secretariat (2015:88, 202) reported evidence that ‘placement stability was one of the most important aspects contributing to positive outcomes for children and young people in care’, and in particular that ‘stability and proper attachment to carers in the early years is critically important for a child’s positive development’<sup>14</sup>.*

- The position in each state and territory in Australia differs in both the legislation, the implementation and the outcomes. NSW is leading the way in adoptions from foster care, and has paved the way for this with refinements to legislation and reform of practice.
- By way of example, Western Australia and New South Wales information is included below:

### **Western Australia**

- Western Australia has legislation that allows for adoption by known carers, and yet in practice, it rarely occurs. There is a divide between what the legislature anticipated and what is actually occurring.
- In 2016-2017 there were only 2 adoptions by known carers. These figures obtained from the Department for Child Protection Annual Reports published each year demonstrate a trend:

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<sup>14</sup> Page 2, Australian Institute of Health and Welfare, Child Welfare Series Number 64 Permanency planning in child protection, A review of current concepts and available data 2016, accessed here [www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection](http://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection)

	2013-2014	2014-2015	2015-2016	2016-2017
<b>Number of foster carer Adoptions</b>	2	2	0	2

- In contrast, children are entering care more often in Western Australia and are staying longer. The latest Annual Report states that in Western Australia, 69% of children in OOHC have been in foster care for two or more years. 38% of children in OOHC have been in care for 5 or more years.
- In order for local or known adoptions to occur in WA, there needs to be a serious shift towards implementing the existing legislation and thereby preventing foster care drift.

### New South Wales

- Adopt Change submits that New South Wales has been leading the way when it comes to permanency planning and providing children with access to adoption. In 2016-2017 there were 131 known adoptions from Out of Home Care in New South Wales<sup>15</sup>.
- While the adoption process can still be lengthy and drawn out in practice, the number of adoptions is providing a genuine chance at life long stability for these children.
- Adopt Change submits that a national framework consistent with the New South Wales model would be an excellent starting point to bring about meaningful change to adoptions in Australia.
- In particular, the legislation specifically permits the dispensation of consent to adoption where a known carer applies for adoption of a child. The legislation goes on to specifically allow parents views on adoption to be overridden where there has been welfare concerns for the child and the court considers that adoption would be in the child's best interest.
- In addition to adoptions in NSW, there are an increasing number<sup>16</sup> of Guardianship orders being put in place. These are especially relevant for family members, where a change in family structure through adoption is not required, and guardianship offers the level of permanency required.

<sup>15</sup> Australian Institute of Health and Welfare (AIHW) Adoptions Australia 2016-17, AIHW, Canberra, accessed here <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content>

<sup>16</sup> Appendix C to E, Australian Institute of Health and Welfare (AIHW) Child Protection Australia 2015-16, AIHW, Canberra, accessed here <http://www.aihw.gov.au/publication-detail/?id=60129558626>

## Victoria

- 'Permanency' in Victoria is provided through Permanent Care Orders, which are in place until age 18 of the child/young person. While this is an improvement on long-term foster care by providing a level of stability, the primary drawbacks are that the order ends at age 18 and so does not provide life-long belonging and security, with the legal benefits that can be drawn from adoption.

## Comparison Table of Legislation State by State

By way of example, the following indicate some of the inconsistencies in legislation across the jurisdictions.

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Adult adoption permitted?</b>	✓	✓	✓	X	✓	✓	✓	✓
<b>Known Carer adoption legislated?</b>	✓	✓	✓	✓	X	✓	X	✓
<b>Can a single person adopt?</b>	✓	✓	X	✓	X	✓	✓	✓
<b>Is there an age restriction?</b>	X	✓	✓	X	X	X	X	✓

*\*compiled from state/territory legislation and AIHW data*

## Non-transferable approvals and processes

- Inconsistency across the state and territories also impacts children and their families who are under guardianship/permanent care orders rather than adoption. The relevant orders have to be registered in each state. This is required for travel within Australia, and also in the event that a family wish to move state. The result is additional and unnecessary bureaucracy and legal costs for a family who have already been granted the permanent care of their child.

## Poor Outcomes for Children in OOHC

- The number of children in OOHC in Australia is increasing each year. Rather than having a stable and permanent home, children are subject to the vulnerability of being raised by a system rather than a family. The outcome is children who are more vulnerable to self-harm, suicide and substance abuse and, in addition, children in OOHC who have experienced impermanency are more likely to be impacted by homelessness, poor education, poor health outcomes (especially mental health) and are more likely to be involved in criminal activity.
- The majority of children residing in out of home care have experienced some level of trauma history. Research has demonstrated that trauma experienced by young children (including infants and even unborn children) has significant deleterious effects on

neurological development.<sup>17</sup> Many of these children experience substantial behavioural and emotional difficulties, which often lead to placement breakdown. To date, specialists working with trauma exposed children emphasise the need for consistency, stability and a strong attachment relationship with a primary caregiver. It is within this secure context that children are most likely to experience healing and develop resilience<sup>18</sup>.

- Johnson, Natalier, Liddiard, and Thoresen<sup>19</sup> examined the placement history of 77 young people who had been in out-of-home care in Victoria and Western Australia and found that 40% of the sample had experienced between two and five placements, 14% between six and 10 placements, and 32% had moved between placements more than 11 times.
- Each time a child moves they are at high risk of re-traumatisation: they have new people to get to know (carers and their children, new extended family members, other foster children), new house rules, new foods, new house structures and locations, a potential disruption to their schooling, friendship groups or sporting activities, a change in their day to day routine and more. Even an adult with stable mental health would struggle with this much change, but the effects of the system require that a child who has suffered trauma and neglect, must be subject to the consequences of moving placements regularly. Each time a child moves their sense of safety and trust in their carers decreases, they become more anxious and more unable to control their emotions and reactions. The resulting inability to trust their carers and to control their emotions can lead to behaviour that is extremely confronting and difficult for their carers, teachers and case managers, making the child less likely to be able to develop healthy attachments and more likely to suffer from placement breakdown.
- Osborn and Bromfield in their Outcomes for Children and Young People in Care<sup>20</sup> paper found that placement disruption was 3.38 times greater for children with a history of multiple (six or more) placement changes<sup>21</sup>. This supports the view that early permanency for children in care is crucial to preventing multiple placement moves.
- In their report for The Australian Institute of Family Studies, Osborn and Bromfield reflected

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<sup>17</sup> ANDA, R. F., FELITTI, V. J., BREMNER, J. D., WALKER, J. D., WHITFIELD, C., PERRY, B. D., DUBE, S. R. & GILES, W. H. 2006. The enduring effects of abuse and related adverse experiences in childhood. *European Archives of Psychiatry and Clinical Neuroscience*, 256, 174-186.

<sup>18</sup> BATH, H. 2008. The three pillars of trauma-informed care. *Reclaiming Children & Youth*, 17, 17-21.

<sup>19</sup> Out in the World with No One, Guy Johnson, Kristin Natalier, Mark Liddiard, Stian Thorensen, Young People Leaving State Out of Home Care, Table 8.1 page 146, accessed here [https://espace.curtin.edu.au/bitstream/handle/20.500.11937/30884/173155\\_173155.pdf?sequence=2&isAllowed=y](https://espace.curtin.edu.au/bitstream/handle/20.500.11937/30884/173155_173155.pdf?sequence=2&isAllowed=y)

<sup>20</sup> Osborn, A and Bromfield L, Outcomes for children and young people in care, Australian Institute of Family Studies, NCPC Brief No. 3 — October 2007 <https://aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care>

<sup>21</sup> Predictors of Placement Disruptions, Australian Institute of Family Studies, NCPC Brief # 3, October 2007, accessed here <https://aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care>

*“...many researchers have commented on the increasing number of children with complex emotional and behavioural problems entering care. One of the main problems associated with emotional and behavioural problems of children in care is “foster care drift” or placement instability. Many studies have identified the concerning trend of placement instability in foster care systems around the world.”<sup>22</sup>*

- Adopt Change strongly advocates for **homes for children, not children for homes**. The push for permanent options is with a view to providing stability and genuine matches for children to families and not sweeping decisions to permit adoptions without careful consideration as to the merits of each prospective adoption.
- There is no doubt that: there are many children who could be legally adopted in Australia; that permanency is crucial in obtaining the best outcome for kids in OOHC; and that there is a desire from foster families to consider adoption. Despite this, there were only 143 adoptions by known carers in 2017.
- The result is that children with complex needs are being raised in a system, with bureaucracy and red-tape, paperwork, meetings, care plans, rather than within a normalised family environment that can focus on healing them rather than complying with the burdensome requirements of ‘the system’. This continues even when a child voices their requests to be adopted by the family they have become a part of in many ways, but not legally.
- The importance of permanency and timeliness is supported by a large body of research showing that children in temporary or institutional care are more vulnerable to self-harm, substance abuse and suicide<sup>23, 24, 25</sup>, have an increased experience of emotional abuse and physical abuse<sup>26</sup> and a lack of permanency. People who have had an experience with impermanent care are more likely to experience homelessness<sup>27</sup>, poor education and health (particularly mental health) outcomes<sup>28</sup>, and are more likely to be involved with criminal activity<sup>29</sup>. In contrast, a US research project of 701 adoptees in the US

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<sup>22</sup> Osborn, A and Bromfield L, (2007) op. cit

<sup>23</sup> Sawyer, M., Carbone, J., Searle, A. and Robinson, P. (2007) ‘The mental health and wellbeing of children and adolescents in home-based foster care’ in The Medical Journal of Australia, 186 (4) 181-184.

<sup>24</sup> See <https://www.childwelfare.gov/topics/systemwide/mentalhealth/>

<sup>25</sup> See Tarren-Sweeney, M. (2008) ‘The Mental Health of Children in Out-of-Home Care’, accessed at [http://www.medscape.com/viewarticle/575410\\_3](http://www.medscape.com/viewarticle/575410_3)

<sup>26</sup> Australian Institute of Family Studies (2014) ‘Effects of child abuse and neglect for children and adolescents’, accessed at <https://aifs.gov.au/cfca/publications/effects-child-abuse-and-neglect-children-and-adolescents>

<sup>27</sup> Flatau, P., Conroy, E. et. al. (2013) Lifetime and Intergenerational Experiences of Homelessness in Australia, AHURI Final Report No. 200, Melbourne

<sup>28</sup> McHugh, M. and Pell, A. (2013) Reforming the Foster Care System in Australia: A New Model of Support, Education and Payment for Foster Parents, Berry Street and UNSW, accessed at <http://www.berrystreet.org.au/Assets/2583/1/ProfessionalisedFosterCareSystemfullpaper.pdf>

<sup>29</sup> As above

found that better relationships between adoptive parents and adoptees correlated with less chance of truancy, substance abuse, school suspension or contact with the police<sup>30</sup>.

- It is widely regarded that permanency and meaningful adult attachment are necessary for a child to experience a normal developmental trajectory, and so disruptions to this often have the adverse effects mentioned above<sup>31</sup>. Therefore, it is imperative to consider permanency options for children who are unable to remain with their birth families at as early a stage as possible.

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<sup>30</sup> Pike, G. (2014) Adoption Rethink, Women's Forum Australia

<sup>31</sup> See Tarren-Sweeney, M. (2015) Developmental Child Welfare – Protecting the Development of Children Who Are in Need of Care



## Cost of the OOHC system

- The cost of the national Out of Home Care system in 2014-2015 was \$2.4 billion dollars. The total cost of OOHC, child protection and family support services was \$4.3 billion<sup>32</sup>. These figures represent an incredible expenditure burden on the state and federal governments. Despite this, the outcomes for children and young people are often not positive.
- If some of the children who are in OOHC long term, (for a period of more than 2 years), were permitted to be legally adopted there would be significantly less burden on the Department to manage the existing case load, less money over all would need to be directed into the system and some of those resources could be:
  - Re-directed in **working intensively with families** to prevent children from experiencing trauma and neglect and keeping children with their families;
  - Re-directed into the approval of prospective adoptive parents and **adoptions for the children already in the system**; and
  - Genuine investment in **post adoption support** services.

## Prioritising Best interests of the child

- Throughout all the legislation in Australia, there is a consistent and overarching theme. The best interests of the child is paramount and should be the key motivator in any prospective adoption. Australia is not alone in this view, it is reflected throughout the world and contained within relevant international documents.

## United Nations – Rights of the Child

- Adopt Change agrees that the best interest of the child should be the primary focus and not something which is discounted due to resources, political views or departmental employee's personal views or attitudes.
- Consistent with this view is the United Nations Convention on the Rights of a Child<sup>33</sup> of which Australia is a signatory, relevantly sets out the right of a child to continuity in care: Article 20 - when a child has been deprived temporarily or permanently from their family environment, "due regard shall be paid to the desirability of continuity in a child's upbringing".
- The Convention goes on to reflect other key considerations:

Article 21 – where adoption is permitted, government must "ensure that the best interests of the child shall be the paramount consideration".

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<sup>32</sup> Table 1, Australian Institute of Family Studies, The Economic Cost of Child Abuse and Neglect, 2014-2015, accessed here <https://aifs.gov.au/cfca/publications/economic-costs-child-abuse-and-neglect>

<sup>33</sup> United Nations Convention on the Rights of a Child, accessed here <https://www.humanrights.gov.au/convention-rights-child>



Article 39 – where a child has been subjected to neglect or abuse “Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

- The United Nations General Assembly Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally<sup>34</sup> specifically sets out the rights of foster and adoptive children and states that continuity of care should be the paramount consideration:

Article 5 - In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

- Importantly, the Declaration goes on state:

Article 11 - Foster family care ... should not preclude either prior return to the child's own parents or adoption.

Article 13 – The primary aim of adoption is to provide the child ... with a permanent family.

[Underline is our Emphasis]

- Despite Australia being a founding member of the United Nations and a consistent supporter of the United Nations functions, we are failing to observe the rights of the child in relation to their two key declarations.
- The view of the international community is that children have a right to belong to a secure and stable family system, and Adopt Change submits that these rights of the child should be supported in practice and encouraged by the government and the general community.

### **Appropriate guiding principles for a national framework or code for local adoptions within Australia**

#### **Recommendations**

Adopt Change recognises the impact of past adoption practices, and their detrimental impact. Australian adoption legislation, policy and practice must be based on principles that ensure

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<sup>34</sup> United Nations A/RES/41/85, 3 December 1986 accessed here <http://www.un.org/documents/ga/res/41/a41r085.htm>

these mistakes are not repeated. In order to safeguard against repeating past mistakes, a National Adoption Framework should have underlying principles based on the Rights of the Child, and trauma-informed practices and policies.

1. A national framework or code should be developed urgently so that children already part of the out of home care system have a chance at life long stability. The code should:
  - a. prioritise safety, permanency and nurture for children through the care hierarchy, considering which permanent care option is appropriate (restoration, guardianship/permanent care order or adoption), and timeliness in decision making.
  - b. clearly articulate where adoption is an appropriate option
2. States should be required to implement the code within 12 months of it being published, again so that children already in the system have a chance at life long stability.
3. Legislation in each state should be reviewed to harmonise across the states for criteria, and transferability of process between states and territories.
4. States should be appropriately resourced to develop hubs within each state departmental office to focus on implementing the national code as a matter of priority.
5. States should be appropriately resourced to train and upskill staff in relation to the new national code and the implementation of it.
6. Social workers, case managers, policy makers and others working in the sector should attain an accreditation on open adoption practices, legislation and policy framework, attachment and trauma issues for children in OOHC, and trauma informed practice.
7. While it is essential for adoption criteria, processes and assessments to be rigorous, each state and territory should identify barriers that are a result of unreasonable criteria, inefficient processes, under-resourcing, and poor communication.
8. Significant resources should be allocated for a national public awareness campaign as well as targeted awareness campaigns for the judiciary, teachers and schools, medical field and out of home care sector.
9. Adopt Change submits that child-centred time frames and concurrent planning (ie. considering all beneficial options for permanency at the earliest possible point following a child's entry into OOHC) are adopted as standard practice.

Childhood lasts a relatively short period of time, but the level of safety and permanency a child experiences has a lasting impact throughout their lives. There is a short window of time to make decisions to ensure the minimisation of harm and instability. *“Delayed decisions mean that children experience the cumulative jeopardy of lengthy exposure to*

*abuse and neglect; disruption of attachments with temporary carers; unstable placements at home or in care; and prolonged uncertainty about their future.*<sup>35</sup>

10. If a child in care cannot imminently return home, that is within 12 months of coming into care, or it is unlikely that the child will ever return home to their parents or family prospective adoption for that child should be considered and if appropriate offered to the child and/or the foster carers.
11. For children already in out of home care for more than 12 months and who cannot be reunified with their parents or another family member, prospective adoption for that child should be considered and if appropriate considered with the child and/or the foster carers.
12. Parental consent should not be a barrier to an adoption in cases where it has been established that a child has no likelihood of returning to birth parents, where birth parents are not able to be found, where there has been significant abuse or neglect of the child by birth parents, or where a child is age 12 years and over and able to give consent to their adoption.
13. Where safe for the children, adoption should be open. This means that children and parents should have the ability to contact each other in person, through letters/emails, and at the minimum, have access to information about the other.
14. Adoption should include an adoption plan where details such as contact with family, medical history, education plans, special needs requirements etc can be contained so that all parties involved can be assured that the best interests of the child will be promoted.
15. Pre and post adoption support should be an integral part of the National Framework in order to assist potential adoptive parents to understand and prepare for the ongoing needs of their adopted children, to provide ongoing therapeutic intervention for children, and to reduce the risk of family breakdown.

One of the main advantages for children of adoption over long-term foster care or other types of permanent care orders is an ongoing stability and sense of security that adoption provides. If adequate post adoptive supports are not readily available this stability can be at real risk, and may even lead to family breakdown. Most children adopted from OOHC have experienced not just single but multiple trauma events leading up to their placement with an adoptive family. Ongoing therapeutic supports needs to be provided to children to help deal with this trauma. Early trauma events, whether comprising physical abuse, emotional abuse and/or neglect affect neural pathways in

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<sup>35</sup> Brown, R. and Ward, H. (2013), 'Decision-making within a child's timeframe: An overview of current research evidence for family justice professionals concerning child development and the impact of maltreatment', Childhood Wellbeing Research Centre (CWRC); Working Paper 16 Second Edition

ways which make children vulnerable to developmental challenges that may not become apparent for some time.<sup>36</sup>

16. Investigate additive forms of open adoption and practices, such as simple adoption, and integrated birth certificates, that acknowledge a child's history and family of origin, whilst giving them the legal security and stability that adoption brings. (Details of simple adoption and integrated birth certificates are included below).

## **Simple Adoption**

Adopt Change supports the open adoption model set out in the various States' and Territories' Adoption Acts and does not submit that any change in this respect should occur.

- Historically and currently, Australia generally practices 'plenary' adoption, which severs the legal relationship between the child and birth family. In the case of open adoption the links and relationships between child and birth family are retained, and the importance of connections with identity and heritage remain (hence the requirement for an adoption place). Adopt Change submits there are some aspects of plenary adoption which cause stumbling blocks and are not aligned with the spirit of openness.
- Adoption is now viewed differently to some past adoption practices and it is recognised that children have a right to know about their history and origins. It is understood that most children benefit from contact with members of their family of origin.
- In addition to open adoption, another form of adoption exists that allows children to remain legally a part of their family of origin when they are adopted, while forming a new legal relationship with the adoptive family and assigning them parental rights. This type of adoption is called 'simple adoption'. Adopt Change, in partnership with Western Sydney University, is currently exploring societal views regarding the concept of simple adoption in an effort to ascertain whether this would be a welcomed alternative.
- Countries including France and Belgium have adoption legislation providing for simple adoptions. Simple adoption is an additive form of adoption which allows for creation of a new legal relationship between the adopted child and their adoptive parents while retaining legal recognition that the child is still a member of the family they were born into. These countries have both types of adoption available, which apply to different situations.

## **Birth Certificates**

- Adopt Change supports adoption where children maintain contact with their family and cultural connections. Adopt Change suggests a practical way forward is for the development of an integrated birth certificate, where information on a child's birth

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<sup>36</sup> Bretherton T 2016 Post Adoption Support in Australia: Is it Time for a Triple A approach? Adopt Change, Sydney.

certificate reflects their birth family and their adoptive family by listing both sets of parents as “birth parents” and “adoptive parents”. Given that adoption is not intended to sever ties to birth family, an integrated birth certificate would reflect the child’s unique history and identity. There are a number of options surrounding amending birth certificates which should be explored as an alternative to the current practice in Australia, which currently proves to be a hindrance to more adoptions taking place.

### **Concluding Statements**

Adopt Change submits that where possible and safe, children should remain with their families with intensive supports if required, but where that cannot happen safety, nurture, and permanency should be provided to children via adoption or the appropriate long term order if adoption is not suitable.

Adopt Change recommends that the government should be facilitating significantly more adoptions from OOHC nationally, for the benefit of children for improved life outcomes, and therefore implementing adoption laws consistent with the best interests of the children and harmonised across the states and territories.

We recommend that clear information on the option to adopt from OOHC be made more accessible, and the process improved to provide children with stability sooner.

We emphasise, that in addition to facilitating more adoptions where appropriate, that post-adoptive supports be made readily available to ensure children have the best opportunity to recover from traumas.