

## Introduction

- 1.1 On 27 March 2018, the Committee commenced the inquiry following a referral from the (former) Assistant Minister for Children and Families.

## Conduct of the inquiry

- 1.2 The inquiry was advertised on 28 March 2018. Submissions were invited from a range of government departments, non-government organisations and other relevant stakeholders.
- 1.3 The Committee received 110 submissions and 9 supplementary submissions, which are listed in Appendix A. The Committee also received 23 exhibits, which are listed in Appendix B.
- 1.4 The Committee received 34 contributions to the inquiry that included personal details, private information, reflections on third parties or other sensitive information. These contributions included valuable insights and were received as correspondence.
- 1.5 The Committee published a statement on 7 June 2018 to explain its approach to handling sensitive matters in written evidence. The statement is included at Appendix C.
- 1.6 The Committee heard from a wide range of witnesses at public hearings in Canberra. These witnesses are listed in Appendix D.
- 1.7 The Committee expresses its thanks to all the individuals and organisations that took the time to contribute to the inquiry. The Committee is aware that for some people, the inquiry has raised difficult personal issues. The Committee has valued all the contributions it has received.

## Scope of the inquiry

- 1.8 The scope of the Committee's inquiry has encompassed all forms of legal adoption of Australian children.
- 1.9 The Australian Institute of Health and Welfare (AIHW) defines adoption as:
- The legal process by which a person legally becomes a child of the adoptive parent(s) and legally ceases to be a child of his/her existing parent(s).<sup>1</sup>
- 1.10 The AIHW describes the main two types of adoption within Australia as 'local adoption' and 'known child adoption'. Throughout this report, unless otherwise specified, 'adoption' is used to refer to both local and known adoptions of Australian children.
- 1.11 The AIHW defines local adoption as:
- An adoption of a child/children born or permanently residing in Australia before the adoption who are legally able to be placed for adoption but who generally have had no previous contact or relationship with the adoptive parent(s).<sup>2</sup>
- 1.12 Local adoption may also mean adoption in the context of informed and voluntary (or non-coerced) consent by the birth parents to the adoption of a child born in Australia.<sup>3</sup>
- 1.13 The AIHW defines known child adoption as:
- The adoption of a child/children who were born or permanently residing in Australia before the adoption, who have a pre-existing relationship with the adoptive parent(s) and who are generally not able to be adopted by anyone other than the adoptive parent(s). These types of adoptions are broken down into categories, depending on the child's relationship to the adoptive parent(s): step-parent, relative(s), carer and other.<sup>4</sup>
- 1.14 The AIHW notes in its report *Adoptions Australia 2016-17* that the words used to describe the parents of children placed for adoption carry sensitivities for all parties to an adoption.<sup>5</sup>
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1 Australian Institute of Health and Welfare (AIHW), *Submission 41*, p. 8.

2 AIHW, *Submission 41*, p. 8.

3 Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, p. 24; Ms Penny Mackieson, *Submission 61*, p. 11; Anglicare Sydney, *Submission 67*, p. 5.

4 AIHW, *Submission 41*, p. 8.

5 AIHW, 'Adoptions Australia 2016-17', 2017, p. 4, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

- 1.15 Consistent with the approach taken by many submitters,<sup>6</sup> this report refers to the child's biological parents as, 'birth mother', 'birth father', 'birth parent(s)' or 'birth family'. Children who have been adopted are referred to as 'adopted children' or 'adoptees'.
- 1.16 The terms 'adoptive mother', 'adoptive father' and 'adoptive parent(s)' are used to describe the parents who adopt a child.
- 1.17 Intercountry adoption involves the adoption of a child or children from countries other than Australia who may legally be placed for adoption, but who generally have had no previous contact with the adoptive parent(s).<sup>7</sup> Intercountry adoptions are not within the terms of reference for this inquiry.

## Out-of-home care and adoption statistics

### Out-of-home care

- 1.18 Figures from the AIHW show that the number of children in out-of-home care in Australia is rising. At 30 June 2017, there were 47 915 children in out-of-home care, an increase of 18 per cent from 30 June 2013.<sup>8</sup>
- The majority of children in out-of-home care (93 per cent) were in home-based care. Among these children:
    - ⇒ almost half (47 per cent) were with relatives or kin such as grandparents, aunts, uncles, neighbours, family friends or a member of their community;
    - ⇒ many were in foster care (38 per cent);
    - ⇒ seven per cent were in third-party parental care (that is, either with a nominated person appointed by a court such as a relative, or an officer of the state or territory department responsible for child protection); and
    - ⇒ one per cent were in other types of out-of-home care.<sup>9</sup>

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6 See for example: Name withheld, *Submission 12*, p. [1]; Australian Association of Social Workers, *Submission 24*, p. 4; Ms Patricia Guy, *Submission 32*, pp. 1-2; Name withheld, *Submission 60*, p. 4; Name withheld, *Submission 93*, pp. 3, 5, 6.

7 AIHW, 'Adoptions Australia 2016-17', 2017, p. 52, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

8 AIHW, *Submission 41*, p. 6.

9 AIHW, 'Child protection Australia 2016-17', 2017, pp. 43, 45, 46, 74, 77, 79, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 3 October 2018.

- About five per cent of children were in residential care, where the placement is in a residential building whose purpose is to provide placements for children, and where there are paid staff.<sup>10</sup>
- 1.19 Of the 47 915 children in out-of-home care, 68 per cent (32 638) had been in out-of-home care for two or more years.
- Most of these children (87 per cent) were on long-term care and protection orders; of these:
    - ⇒ about 62 per cent were on long-term finalised guardianship/custody orders; and
    - ⇒ nearly 25 per cent were in third-party parental care arrangements (home-based care where parental responsibility had been transferred to the carer).<sup>11</sup>
  - The remaining children were on short-term guardianship, other care and protection orders or were not on an order.<sup>12</sup>

## Adoption

- 1.20 In the 2016-17 financial year, 246 adoptions of Australian children were finalised. Of these, 42 were local adoptions and 204 were known child adoptions.<sup>13</sup>
- 1.21 The number of known child adoptions has increased over the past decade, from 100 in 2007-08 to 204 in 2016-17. These adoptions comprised 65 per cent of all finalised adoptions in 2016-17, with adoption by carers, such as foster parents, the most common (70 per cent).<sup>14</sup>

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10 AIHW, 'Child protection Australia 2016-17', 2017, pp. 43, 45, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 3 October 2018.

11 AIHW, 'Child protection Australia 2016-17', 2017, p. 52, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 3 October 2018.

12 AIHW, 'Child protection Australia 2016-17', 2017, p. 52, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 3 October 2018.

13 AIHW, 'Adoptions Australia 2016-17', 2017, p. 13, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

14 AIHW, 'Adoptions Australia 2016-17', 2017, p. vi, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

- 1.22 However, the overall number of adoptions has declined by 60 per cent over the past 25 years.<sup>15</sup> The AIHW reports that the reasons for declining rates of adoption in Australia include:
- contraception;
  - legalised abortion;
  - financial support for unwed mothers;
  - reduced stigma around children born outside of marriage;
  - the end of forced adoption practices;
  - the increasing labour force participation of women;
  - reproductive innovations;
  - wider availability of effective birth control;
  - the emergence of family planning centres; and
  - the use of alternative legal orders such as permanent care orders or protection orders.<sup>16</sup>
- 1.23 A survey of 1 053 prospective adoptive parents conducted by Adopt Change Limited in 2016 found that 50.5 per cent would be open to adopting children from out-of-home care.<sup>17</sup>

## Barriers to adoption

- 1.24 The declining rate of adoption in Australia, combined with the increasing number of children in out-of-home care, suggests that overcoming barriers to adoption in Australia could reduce the number of children in care.
- 1.25 The most frequently cited barrier to adoption in the evidence given to the inquiry was fear of repeating the mistakes of past forced adoption policies and practices that were in place from the 1950s until the 1980s. Under these forced, or closed, adoptions:
- mothers were forced to give up children without their consent;

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15 AIHW, 'Adoptions Australia 2016-17', 2017, p. 35, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

16 AIHW, 'Adoptions Australia 2016-17', 2017, pp. 1, 36, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

17 Adopt Change Limited, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, pp. 9, 12, <[https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers\\_research\\_2017\\_v2.pdf](https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf)> viewed 3 October 2018.

- children were separated from their birth parents and extended families, contributing to trauma and identity issues; and
  - new birth certificates were issued that replaced the names of birth parents with adoptive parents.
- 1.26 The Committee heard that these forced adoption practices have had ongoing and profound effects on adoptees, mothers, fathers and their families; spanning generations.
- 1.27 The Committee was informed about other barriers to adoption including:
- lack of understanding of open adoption, where contact between birth parents and adopted children is encouraged; and
  - complex and time consuming administrative processes such as lengthy timeframes to process adoptions.

## **Report outline**

- 1.28 This report is focused on developing a nationally consistent framework for the adoption of Australian children.
- 1.29 Chapter 2 reports on approaches to achieving a nationally consistent framework for adoption of Australian children and considers consistency in adoption legislation in the states and territories.
- 1.30 Chapter 3 considers permanency options for children in out-of-home care; including reunification, permanent care (third-party parental responsibility) orders, long-term finalised guardianship or custody orders, and adoption.
- 1.31 Chapter 4 examines the barriers to adoption and how they may be addressed in a forward-looking approach to the adoption of Australian children.
- 1.32 The final chapter considers evidence received by the Committee on national child protection and adoption data, and opportunities to improve the collection and reporting of data to support evidence-based decision making.