

Policy and practice barriers to adoption

- 4.1 This chapter reviews the evidence on policy and practice barriers to adoption.
- 4.2 It considers how past forced adoption policies and practices, as well as complex and time consuming administrative processes, create barriers to a forward looking approach to adoption.

The legacy of past forced adoption policies and practices

- 4.3 Past forced adoption policies and practices were unethical, immoral and often illegal. They resulted in a high prevalence of forced adoptions from the 1950s to the 1980s.¹
- 4.4 The Australian Government has issued apologies to those affected by past practices of forced removals and forced adoptions, including the 2008 National Apology to Australia's Indigenous Peoples, the 2009 National Apology to the Forgotten Australians and Former Child Migrants, and the 2013 National Apology for Forced Adoptions.²
- 4.5 In addition, states and territories, with the exception of the Northern Territory, have also apologised for past forced adoption policies and practices.³ All have undertaken not to repeat them.⁴

1 Australian Institute of Family Studies (AIFS), 'Forced Adoption National Practice Principles', 2016, pp. 3, 6, <<https://aifs.gov.au/sites/default/files/fass-practice-principles.pdf>> viewed 3 October 2018.

2 Australian Human Rights Commission, *Submission 103*, p. 16.

3 Name withheld, *Submission 57*, p. 4; Mrs Jo Fraser, *Submission 75*, p. [1]; Ms Alison Anderson MLA, Minister for Children and Families, Northern Territory Government 'Support for adoption apology on behalf of nation', *Media Release*, 21 March 2013,

4.6 The Australian Institute of Family Studies defines forced adoption as referring:

... to mothers who were forced to give up children for adoption. From the mid- 20th century until the 1970s and 1980s, adoption practice in Australia reflected the concept of secrecy and the ideal of having a “clean break” from the birth parents. Closed adoption is where an adopted child’s original birth certificate is sealed and an amended birth certificate issued that establishes the child’s new identity and relationship with their adoptive family. The experience of closed adoption included people being subjected to unauthorised separation from their child, which then resulted in what has been called “forced adoption”.⁵

4.7 One submitter suggested that:

The greatest single barrier to adoption has to be the prevailing community attitude against adoption. This attitude has been formed because of the significant pain caused by past adoption practices.⁶

4.8 The impact of past practices on birth parents and adopted children was expressed in many submissions and a great deal of correspondence to the inquiry, as evidenced in the following extracts:

I will never know my birth mother or my birth father. As well as not knowing any hereditary diseases. As there would be issues for the birth mother having your baby taken away from you would be heart wrenching. You would be looking for your baby forever and not knowing where the baby went and to who would be catastrophic for the mothers and not forgetting about the fathers as well.⁷

I have been directly affected by forced adoption since 1976 when my son was taken from me at birth. My family lost everything that

<[http://www.territorystories.nt.gov.au/bitstream/10070/244510/1/Anderson-210313-Support for adoption apology on behalf of nation.pdf](http://www.territorystories.nt.gov.au/bitstream/10070/244510/1/Anderson-210313-Support%20for%20adoption%20apology%20on%20behalf%20of%20nation.pdf)> viewed 3 October 2018.

4 See for example: NSW Government, *Submission 22*, p. 10; Aboriginal Child, Family and Community Care State Secretariat (AbSec), *Submission 46*, p. 5; Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, pp. 24-25; Name withheld, *Submission 57*, p. 4; Mrs Jo Fraser, *Submission 75*, p. [1].

5 AIFS, ‘Forced Adoption National Practice Principles’, 2016, p. 6, <<https://aifs.gov.au/sites/default/files/fass-practice-principles.pdf>> viewed 3 October 2018.

6 Name withheld, *Submission 38*, p. [1].

7 Name withheld, *Submission 12*, p. [1].

a grandchild brings. I lost my son and he lost his mother and everything that was his birthright.⁸

- 4.9 Lessons must be learned from Australia's past forced adoption policies and practices to ensure that they are not repeated.⁹ Jigsaw Queensland Inc. commented that:

The overall concern of all post-adoption stakeholders is that in providing stability and permanency to children in out-of-home care we do not repeat the mistakes of the past and compound that trauma of family separation.¹⁰

Parental consent

- 4.10 Under past forced adoption policies and practices, birth parents were subjected to unauthorised separation from their child.¹¹ These parents did not provide informed consent to the adoption of their children.¹²
- 4.11 Consent in adoption is different today. As discussed in Chapter 2, while provisions vary, adoption legislation in the states and territories now requires that parental consent be informed, given freely or voluntarily. Support services such as counselling must also be offered to birth parents.¹³
- 4.12 For example, in New South Wales, birth parent(s), or the person(s) required to consent to an adoption, must be provided with 'mandatory written information' which includes:
- alternatives to the adoption;

8 Name withheld, *Submission 16*, p. [1].

9 See for example: Dr Patricia Fronck and Professor Denise Cuthbert, *Submission 6*, pp. 7, 10; Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Association for Adoptees Inc., *Submission 19*, p. 10; Name withheld, *Submission 20*, p. 15; NSW Government, *Submission 22*, p. 10; Department of Social Services, *Submission 40*, p. 5; Anglicare Australia, *Submission 43*, p. 2; AbSec, *Submission 46*, p. 20; Professor Daryl Higgins, *Submission 50*, p. [1]; VANISH, *Submission 56*, pp. 24-25; Jakob's Voice, *Submission 63*, pp. 3, 11; Adopt Change Limited, *Submission 77*, pp. 17-18; Victorian Aboriginal Child Care Agency (VACCA), *Submission 78*, p. 3; Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, p. [11]; Ms Nikki Hartmann, Manager, Post Adoption and Forced Adoption Support Services, Relationships Australia South Australia, *Committee Hansard*, Canberra, 19 June 2018, p. 2; Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, *Committee Hansard*, Canberra, 22 June 2018, p. 19.

10 Jigsaw Queensland Inc., *Submission 79*, p. 3.

11 AIFS, 'Forced Adoption National Practice Principles', 2016, p. 6, <<https://aifs.gov.au/sites/default/files/fass-practice-principles.pdf>> viewed 3 October 2018.

12 Name withheld, *Submission 13*, p. [1].

13 *Adoption Act 1999* (ACT) ss. 27, 29; *Adoption Act* (NSW), ss. 57- 59; *Adoption of Children Act 1994* (NT), ss. 27-28, 30; *Adoption Act 2009* (Qld) s. 17(1), s. 23; *Adoption Act 1998* (SA), s. 15; *Adoption Act 1988* (Tas), ss. 31, 36; *Adoption Act* (Vic) ss. 35, 42; *Adoption Act 1994* (WA), Schedule 1.

- financial and other support;
- possible emotional effects, both short and long term, of relinquishing the child for adoption;
- the legal process of adoption, including how to revoke consent; and
- information about, or contact with, other parties to the adoption.¹⁴

4.13 Mr Mark Galvin, Partner, EY (Ernst & Young), told the Committee that:

... a large number of birth parents will support an adoption, recognising that it is in the best interests of the child, but may not formally consent to the adoption. One of the reasons anecdotally as to why they may not do that is that it may affect the relationship with the child in the future if the child perceives that they were given up for adoption. That is one reason why parents won't formally consent.¹⁵

4.14 Adopt Change Limited suggested that parental consent should not be a barrier to adoption in certain circumstances; such as where it has been established that a child has no likelihood of returning to birth parents, where there has been significant abuse or neglect of the child by birth parents, or where a child is aged 12 years and over and able to give consent to their adoption.¹⁶

4.15 Similarly, Barnardos Australia suggested that:

... the grounds for adoption should not create an insurmountable barrier of the birth parent's consent.¹⁷

4.16 In New South Wales, there are legislative protections that ensure the consent of parents is sought during an adoption process. Consent may only be dispensed with if the New South Wales Supreme Court is satisfied that it is in the child's best interests to do so. The Court may dispense with a parent's consent in any of the following situations:

- the mother or father cannot be found, or identified
- the mother or father are unable to give consent due to their physical or mental condition
- there is serious concern for the welfare of the child
- the child is in foster care and has a stable relationship with their carers and the adoption of the child by those carers will promote the child's welfare.¹⁸

14 *Adoption Act 2000* (NSW), s. 57.

15 Mr Mark Galvin, Partner, EY (Ernst & Young), *Committee Hansard*, Canberra, 21 August 2018, p. 5.

16 Adopt Change, *Submission 77*, p. 19.

17 Barnardos Australia, *Submission 52*, p. 6.

18 NSW Government, *Submission 22*, pp. 9-10.

Open adoption

- 4.17 The Committee heard that to ensure that the mistakes from the past are not repeated, a national framework for adoption must move from closed to open adoption practices.¹⁹
- 4.18 The Institute of Open Adoption Studies explained the ways in which open adoption is different to past forced adoptions:
- In contrast to the secrecy of past adoptions in Australia, current adoption practice emphasises the needs and best interests of the child, which is characterised by an open exchange of information. Communicative openness implies a way of relating to children that is honest and responsive to their changing needs. It also implies that the child has the belief that they have the right to seek the information they want and need. Open adoptions are said to be *open* in that they promote the discussion of adoption-related issues within adoptive families such that children can understand why their birth parents are unable to look after them and the importance of building relationships with birth family members.²⁰
- 4.19 In acknowledging the mistakes of the past, Mr Mark Galvin, Partner, EY, commented that:
- Openness, transparency and preservation of some connection between adopted children and their biological families, should be paramount considerations in framing adoption policy today.²¹
- 4.20 The Committee was told that open adoption achieves permanency for the child and brings a sense of wellbeing, fulfilment, stability and security.²²
- 4.21 Unlike closed adoption practices, where adoptees had their name, identity and family history hidden from them,²³ open adoption addresses these barriers. Positive outcomes include:
- increased and ongoing direct contact between birth and adoptive parents;
 - improved relationships and communication between all parties;
 - a greater appreciation of the positive aspects of adoption as a permanent option; and
 - a sense of autonomy and self-direction in relationships.²⁴

19 NSW Committee on Adoption and Permanent Care Inc., *Submission 89*, p. 3.

20 Institute of Open Adoption Studies, *Submission 76*, p. 6.

21 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 1.

22 Ruth Owen, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 3.

23 Dr Karleen Gribble, *Submission 28*, p. [2].

- 4.22 Significantly, Barnardos Australia stated that open adoptions overcome the problems of identity formation (once common in closed adoption), by nurturing a meaningful ongoing connection between the child and their birth family.²⁵
- 4.23 The Institute of Open Adoption Studies described the importance of contact through open adoption:
- Contact plays an important role in supporting identity formation but there is a need for clear guidelines to ensure that contact is used to support positive experiences and outcomes for children. Contact with birth family members can serve to facilitate the formation of an adoptive identity. In most cases, contact is useful in allowing a child to maintain connections with their birth family so that they have access to information about their past, which is likely to be critical for adoptive identity formation during adolescence. It is important that contact has a purpose, that the rights and best interests of the child remain paramount, and that contact should not emphasise the rights of birth parents to have access to their biological child above the child's ordinary needs for safety, stability and protection.²⁶

Case worker reluctance to progress open adoption

- 4.24 While open adoption is facilitated in all states and territories,²⁷ the Committee was told that case workers responsible for making permanency decisions can be concerned that progressing adoption may be repeating the mistakes of the past.²⁸ Barnardos Australia submitted that:
- Many professionals continue to have concerns based on the 'closed' adoptions of the past, involving forced adoption policies and practices, and fail to differentiate these from the 'open' adoption practices of today. Our experience is that for children in

24 Anglicare Sydney, *Submission 67*, p. 8.

25 Barnardos Australia, *Submission 52*, p. 3.

26 Institute of Open Adoption Studies, *Submission 76*, p. 16

27 Australian Institute of Health and Welfare (AIHW), 'Adoptions Australia 2016-17', 2017, p. 1, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 4 October 2018.

28 See for example: Dr Karleen Gribble, *Submission 28*, p. [4] and Department of Family and Community Services, NSW, 'The Gap Between Knowing and Doing: Developing Practice in Open Adoption from OOHHC in New South Wales' p. 7, <https://www.facs.nsw.gov.au/_data/assets/file/0007/384829/OOHC_Adoption_Practitioner_Study_Full_Report.pdf> viewed 4 October 2018.

long-term foster care, there is strong resistance by workers to considering adoption as a viable option.²⁹

4.25 EY supported this view, stating that:

There is a lack of awareness regarding the difference between Open Adoptions and past historical closed and forced adoptions, and a lack of clarity in regards to direction and policy. This has resulted in a bias against progressing adoptions within workers, organisations and the community more generally. Case workers experience a dilemma in making permanent decisions which would inevitably 'break' families even as they are progressing adoptions.³⁰

4.26 In Barnardos Australia's experience, adoption as a viable option for children in long-term foster care is resisted by caseworkers because they do not realise that open adoption creates less trauma than past adoption practices.³¹

4.27 Further to this, Barnardos Australia submitted that the sector experiences high staff turnover. Combined with low caseworker exposure to adoption and a need for specialist skills, caseworkers 'lack confidence in their ability to progress open adoption cases'.³²

4.28 Adopt Change recommended that staff in the out-of-home care sector receive training and attain an accreditation on open adoption practices, to improve understanding in this area. Adopt Change further recommended that the public be adequately informed about open adoption via awareness campaigns.³³

Plenary adoption and simple adoption

4.29 Australia practices 'plenary' adoption, which replaces the legal relationship between the child and birth family with a legal relationship with adoptive parent(s).³⁴

4.30 Plenary adoption was a key element of forced adoption policies, as explained by Relationships Australia South Australia:

29 Barnardos Australia, *Submission 52*, p. 3.

30 EY, *Submission 51*, p. 11.

31 Barnardos Australia, *Submission 52*, p. 3.

32 Barnardos Australia, *Submission 52*, p. 3.

33 Adopt Change, *Submission 77*, p. 18.

34 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 5, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018

It was not uncommon for all records of the adoption proceedings to be kept secret and for amended birth certificates to be issued to the adoptive parents. This emphasis on secrecy was influenced by the "clean break" theory (personality development in babies is informed by environment rather than genes).³⁵

- 4.31 Ms Penny Mackieson advised that the impacts of adoption orders, irrespective of the state/territory or year of adoption, include:
- legal replacement of one set of parents (the natural or biological parents) with another set (the adoptive parents);
 - legal cancellation of the child's original birth certificate and replacement with a new one with different identifying information about the child 'as if born to' their adoptive parents;
 - legal severance of the child's connections to their natural parents, siblings, grandparents, aunts, uncles and cousins; and
 - endurance of these legal effects, not only throughout the adoptee's lifetime but beyond into any subsequent generations (for example, an adoptee's natural children are also legally disconnected from their adopted parent's natural relatives).³⁶
- 4.32 During the Committee's inquiry, a number of submitters raised the alternative of 'simple adoption', an additive form of adoption which 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.³⁷ Simple adoptions are provided for by legislation in Mexico, France, Thailand, Ethiopia and Belgium.³⁸
- 4.33 Under simple adoption, a separate legal document (such as an 'adoption certificate', 'parenting certificate' or 'guardianship certificate') would reflect the legal relationship between the adoptive parent(s) and child, while keeping the original birth certificate.³⁹
- 4.34 In its report *Barriers to Adoption in Australia*, Adopt Change noted that simple adoption:

35 Relationships Australia SA, *Submission 69*, pp. 10-11.

36 Ms Penny Mackieson, *Submission 61*, pp. 5-6.

37 Adopt Change, *Submission 77*, p. 20.

38 Associate Professor Karleen Gribble, *Submission 28*, p. [5].

39 Associate Professor Karleen Gribble, private capacity, *Committee Hansard*, Canberra, 22 June 2018, p. 33; Professor Denise Cuthbert, private capacity, *Committee Hansard*, Canberra, 22 June 2018, p. 33.

... provides more permanency than a Permanent Care Order or Guardianship, where the legal relationship ends when the young person turns 18.

Adopt Change also suggested that:

In re-examining adoption and permanency legislation, an additional option for Simple Adoption could be considered where full adoption is not suitable, rather than substituting an order that only provides elements of permanency until age 18.⁴⁰

4.35 Simple adoption was supported by Jigsaw Queensland, who submitted:

... a contemporary approach to adoption, and particularly for adoption as an option for children from out-of-home care, must take the form of simple adoption; that is, if the parental rights of original parents must be terminated a child can become a member of an adoptive family without forever terminating their legal relationship to their family of origin. The child thus gains an additional family, parental rights are clearly defined until the child reaches 18 years of age, and the child maintains their right to be legally acknowledged as the relative of all parties, both the adoptive family and their family of origin. The implications for everyone beyond the child turning 18 years of age will depend on the autonomous choices of the adults involved, rather than legislative fiat.⁴¹

4.36 Associate Professor Karleen Gribble submitted that simple adoption:

- allows adoptive parent(s) to have full parental responsibility and to be recognised as legal parents to their adopted child;
- allows the child to legally fully belong in both their adoptive and birth families;
- means that children lose nothing when they are adopted, they only gain;
- does not remove anything from birth parents when a court has already decided that they cannot ever parent their child again;
- would likely increase the likelihood of birth parent(s) consenting to adoption;

40 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 18, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

41 Jigsaw Queensland, *Submission 79*, p. 6.

- would facilitate the adoption of many children from out-of-home care and support the short and long-term wellbeing of children who cannot be cared for in their family of origin; and
- does not erase the child's identity but allows children to add an identity. In simple adoption, an amended birth certificate could be replaced by an adoption certificate allowing children's identities to be accurately reflected in documentation.⁴²

4.37 Adopt Change, in partnership with Western Sydney University, is exploring societal views on simple adoption.⁴³

Birth certificates as a barrier to open adoption

4.38 While many submissions expressed support for open adoption⁴⁴, there was concern that open adoption still severs the legal relationship between children and their birth families, through the creation of new birth certificates.⁴⁵ For example:

... the obliteration of identity and creation of a new identity via amended birth certificates has been identified, as being "in direct contrast to the openness of current adoption work, and presents an ethical barrier to adoption practice".⁴⁶

4.39 The Department of Social Services submitted that a reluctance to legally sever the relationship between a child and his or her birth family may be a reason for the relatively low number of adoptions of children in out-of-home care.⁴⁷

4.40 The Committee was told that birth parents are reluctant to consent to the adoption of their children because of the legal severance that results from

42 Associate Professor Karleen Gribble, *Submission 28*, p. [6].

43 Adopt Change, *Submission 77*, p. 20.

44 See for example: NSW Government, *Submission 22*, p. 7; Legal Aid NSW, *Submission 42*, p. 8; The Law Society of New South Wales, *Submission 44*, p. 5; The Centre for Excellence in Child & Family Welfare, *Submission 74*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 6; Adopt Change, *Submission 77*, p. 19; The Benevolent Society, *Submission 86*, p. 10.

45 See for example: Name withheld, *Submission 5*, pp. 4-5; Family Inclusion Network Queensland (Townsville) Inc., *Submission 17*, p. 12; Association for Adoptees, *Submission 19*, pp. 2, 18; Name withheld, *Submission 21*, p. [1]; Associate Professor Karleen Gribble, *Submission 28*, p. [4]; VANISH, *Submission 56*, p. 9; Ms Sharyn White, *Submission 58*, p. [1]; The Benevolent Society, *Submission 86*, p. 9; Name withheld, *Submission 93*, p. 6; Adoptee Advocacy and Information Service, South Australia Inc. (AAISSA), *Submission 94*, p. 3; Ms Kay Hanning, *Submission 106*, p. [3]; Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 17, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

46 Associate Professor Karleen Gribble, *Submission 28*, p. [4].

47 Department of Social Services, *Submission 40*, p. 3.

the creation of new birth certificates.⁴⁸ Similarly, the Committee was advised that foster parents, prospective adoptive parents, kinship carers, children in out-of-home care and case workers considered the creation of new birth certificates a barrier to adoption.

- 4.41 Foster parents may not want to adopt because children lose legal membership of their family of origin.⁴⁹
- 4.42 Some prospective adoptive parents considered the removal of any legal connection between a child and their birth family and the creation of amended birth certificates as serious drawbacks. In some cases, these drawbacks were considered to be so great that they outweighed the benefits of adoption to children.⁵⁰
- 4.43 Ms Penny Mackieson, Chair, Victorian Adoption Network for Information and Self Help, told the Committee that kinship carers (family members) do not want to adopt because it legally distorts the relationship.⁵¹ For example, the Australian Institute of Health and Welfare advised that if a child was adopted by their grandmother, the child's parent would legally become the child's sibling.⁵²
- 4.44 While many children in out-of-home care may wish to fully belong with the family caring for them, they also want to remain a child of their birth parents, the sibling of their birth siblings, and the grandchild of their birth grandparents.⁵³
- 4.45 The Committee was told that case workers consider that the creation of a new identity via amended birth certificates is in direct contrast to the openness of current adoption work and present an ethical barrier to adoption practice.⁵⁴

48 Associate Professor Karleen Gribble, *Submission 28*, p. [4]; Department of Social Services, *Submission 40*, p. 3; Legal Aid NSW, *Submission 42*, p. 5.

49 Associate Professor Karleen Gribble, *Submission 28*, pp. 3-4.

50 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 16, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

51 Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 8.

52 AIHW, 'Adoptions Australia 2016-17', 2017, pp. 9-10, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 4 October 2018.

53 Associate Professor Karleen Gribble, *Submission 28*, pp. [3-4].

54 Associate Professor Karleen Gribble, *Submission 28*, p. [4].

- 4.46 For many submitters, new birth certificates were considered to be false⁵⁵ and contributed to a loss of family, identity and culture.⁵⁶ For example, the Committee heard that:

Because I'm adopted, I am forced to live with a false birth certificate as the basis of my identity, severed from my ancestry and kin for all time, and my future generations are also severed from their true history.⁵⁷

- 4.47 A study undertaken by the Department of Family and Community Services, NSW, found that adoption practitioners believed that parts of the legal process of open adoption needed to change to reflect the spirit of open adoption. One practitioner commented:

... I say to carers when you get that new birth certificate you have to put it right next to that original one. Like they need to sit side by side. Not like you get the new one and file the old birth certificate away. That's what happened in the dark days and pretending you were born to them. You cannot pretend that.⁵⁸

- 4.48 Other consequences for adoptees resulting from the creation of new birth certificates included lack of access to medical information⁵⁹ and inheritance⁶⁰ from birth families. However, the Committee was informed

55 See for example: Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 7; VANISH, *Submission 56*, p. 18; Name withheld, *Submission 64*, p. [1]; Feminist Legal Clinic Inc., *Submission 73*, p. 4; The Benevolent Society, *Submission 86*, p. 9; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 3; Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 7.

56 See for example: Dr Nicola Ross, *Submission 49*, p. [2]; VANISH, *Submission 56*, p. 9; The Benevolent Society, *Submission 86*, p. 9; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 3.

57 Ms Sharyn White, *Submission 58*, p. [1].

58 Department of Family and Community Services, NSW, 'The Gap Between Knowing and Doing: Developing Practice in Open Adoption from OOHC in New South Wales' p. 39, <https://www.facs.nsw.gov.au/_data/assets/file/0007/384829/OOHC_Adoption_Practitioner_Study_Full_Report.pdf> viewed 4 October 2018.

59 See for example: Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 2; Association for Adoptees, *Submission 19*, pp. 8,10; Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Name withheld, *Submission 38*, p. [3]; Name withheld, *Supplementary Submission 93.1*, p. 2.

60 See for example: Name withheld, *Submission 5*, p. 4; Australian Adoptee Rights Action Group, *Submission 7*, p. 5; Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 7; Association for Adoptees, *Submission 19*, p. 10; Name withheld, *Submission 20*, p. 13; Name withheld, *Submission 21*, p. [1]; Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Name withheld, *Submission 38*, p. [3]; Ms Dorothy Kowalski, *Submission 55*, p. [2]; Origins Supporting People Separated by Adoption Inc., *Submission 66*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 11; Jigsaw Queensland, *Submission 79*, pp. 5-6; The Benevolent

that adopted children do have access to inheritance from adoptive families.⁶¹

- 4.49 A number of submitters were of the view that is not in the best interests of the child to issue new birth certificates.⁶²

A new approach to birth certificates

- 4.50 Adopt Change submitted that:

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.⁶³

- 4.51 Evidence to the inquiry strongly supported a new approach to birth certificates. 'Integrated birth certificates' include the names of birth parents and adoptive parents on an amended birth certificate.⁶⁴
- 4.52 While evidence to the inquiry notes that simple adoption, as discussed above, retains the legal relationship between children and their birth parent(s), the Committee did not receive definitive evidence on whether that would be the case for integrated birth certificates.
- 4.53 Barnardos Australia submitted that integrated birth certificates would be legally recognised; however The Adoptee Advocacy and Information Service, South Australia noted that while integrated birth certificates include the names of birth parent(s), the child is still never again related to them.⁶⁵
- 4.54 As discussed in Chapter 2, the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australian, and Victorian governments are in various stages of considering a new approach to birth certificates, including integrated birth certificates.⁶⁶

Society, *Submission 86*, p. 5; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 3; Name withheld, *Submission 93*, p. 6.

61 Name withheld, *Submission 59*, p. [1]; Jigsaw Queensland, *Submission 79*, p. 6; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 1.

62 Name withheld, *Submission 13*, p. [3]; Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 12; Name withheld, *Submission 57*, p. 4; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 2.

63 Adopt Change, *Submission 77*, p. 21.

64 Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; ACT Government, *Submission 35*, pp. 3-4; Berry Street, *Submission 70*, p. [4]; Adopt Change, *Submission 77*, pp. 20-21; The Benevolent Society, *Submission 86*, pp. 9,16; Name withheld, *Submission 93*, pp. 3,6; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 2.

65 Barnardos Australia, *Supplementary Submission 52.1*, p. 2; AAISSA, *Submission 94*, p. 3.

66 ACT Government, *Exhibit 7*, p. 3; Ms Sarah Anderson, Senior Manager, Human Services Policy, Community Services Directorate, Australian Capital Territory Government, *Committee*

- 4.55 In 2018 the Department of Family and Community Services, NSW, received overwhelming support from a survey of almost 600 people on a proposal to provide integrated birth certificates in addition to the original birth certificate.⁶⁷

Complex and time consuming processes

- 4.56 Adoption from out-of-home care has traditionally been a lengthy and difficult process. Adopting a child can take many years, from the time a family makes an enquiry about adoption, to the time when an adoption order is made.⁶⁸
- 4.57 In its report *Barriers to Adoption in Australia*, Adopt Change reported that a 2016 survey of 1 053 prospective adoptive parents and adoptive parents from across Australia found that:
- 59.1 per cent of adoptions took one to four years;
 - 34.3 per cent of adoptions took five to nine years; and
 - 6.6 per cent of adoptions took 10 years or more.⁶⁹
- 4.58 Adoptive parents described lengthy and difficult processes to the Committee, in terms such as the following:
- In almost five years we have been managed by at least five different case workers - all of whom appear to support the notion of adoption but are unable to progress it any further. In addition, case workers appear to have limited knowledge of the legal process and rely on a checklist of activity which does not take into

Hansard, Canberra, 22 June 2018, p. 10; Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 10; Mr Mick Naughton, Director, Children and Families Policy, Children, Families, Disability and Operations Division, Department of Health and Human Services, Victorian Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10; Ms Cathy Taylor, Chief Executive, Department for Child Protection, South Australian Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10; Mr Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families, Northern Territory Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10; Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women, Queensland Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10.

67 EY, *Supplementary Submission 51.1*, Answer to Question on Notice, p. 1.

68 EY, *Submission 51*, p. 5.

69 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 22, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

account individual circumstances, security concerns or the best interests of the child.⁷⁰

There were delays in every part of the process, starting with submitting my application for adoption ... Often busy caseloads, high staff turnover and unexpected departures meant there was not opportunity for adequate hand over. This does slow processes down. I would find myself repeating where the case was up to and providing information or missing paperwork again ... I kept hearing that adoption "is not a priority" in a heavy caseload.⁷¹

4.59 Mr Mark Galvin, Partner, EY, told the Committee that, in his experience:

... carers who go through this very traumatic process - and it has been in the past, certainly, with over five years to complete an adoption order - are committed to building relationships with those birth families. They committed because they believe it's in the best interests of that child.⁷²

4.60 The Association of Children's Welfare Agencies submitted that potential carers considered the lack of clarity about the process and the time required to achieve adoption as barriers to adoptions.⁷³

4.61 Ms Renee Carter, Chief Executive Officer, Adopt Change, told the Committee that the barriers experienced by prospective adoptive parents include:

... everything from the caseworker changing over, paperwork being lost, having to start again, having to resubmit, or legislation not allowing or not making provision for adoption. So it really is very complex, and those prospective adoptive parents can try for years to adopt the children in their care, including having the children actually voicing their opinion about wanting to be adopted. Then you have prospective adoptive parents who don't have a child in their care and who would very readily do so. Some have been prospective adoptive parents for many years and face a whole range of barriers, and that can be based on criteria about the type of parent or just again the same kinds of barriers being placed around child adoption.⁷⁴

70 Name withheld, *Submission 60*, p. 2.

71 Name withheld, *Submission 25*, pp. 1-3.

72 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 5.

73 Association of Children's Welfare Agencies, *Submission 101*, p. 7.

74 Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 2.

- 4.62 Ms Carter's comments reflect the findings of the Adopt Change survey, that:
- over 80 per cent found the processes and information surrounding adoption to be complex and overwhelming; and
 - 56.6 per cent experienced unexplained delays during the process.⁷⁵
- 4.63 Similarly, the Committee heard from Mr Galvin that:
- Some of the key barriers that we found are that things were taking far too long, in that there were a number of stakeholders in the process, a lot of handover points and a lot of what I would term unnecessary delays in the process.⁷⁶
- 4.64 In its submission, EY also suggested that bureaucratic, invasive and lengthy casework and legal processes are barriers to adoption.⁷⁷
- 4.65 Complex adoption processes and time delays have an impact on children and families. The *Barriers to Adoption in Australia* report stated that:
- ... the process is lengthy and intense. While there is a strong consensus that any adoption assessment procedures should, quite rightfully, hold families to the very highest standards, these processes can place significant stress on both children and their families.⁷⁸
- 4.66 These barriers to adoption compound the trauma that children have already experienced in out-of-home care:
- We'll be picking up the pieces for years to come for the children who were exposed to bouncing around a system from which the negative mental, physical and social impacts are well known. We must simplify the system, including introducing national consistency, not to make adoptions faster or easier for adoptive parents but to allow children access to permanency – not until they're 18, but for life.⁷⁹
- 4.67 In order to address some of these barriers, Anglicare Sydney suggested that timely decision making requires:
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75 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 21, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

76 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 2.

77 EY, *Submission 51*, p. 6.

78 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 21, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf> viewed 4 October 2018.

79 Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, pp. 1-2.

- efficient legal and administrative processes;
 - important interpersonal case work;
 - interagency collaboration;
 - timely access to a relevant court for adoption orders; and
 - may involve significant investment in locating and engaging with birth parent(s).⁸⁰
- 4.68 Barnardos Australia suggested that using specialist adoption teams can minimise delays, and that agencies need more legal expertise and knowledge of adoption pathways provided by specialist adoption teams if they are to process more adoptions.⁸¹
- 4.69 These suggestions are supported by the New South Wales Government's report *Developing Practice in Open Adoption from out-of-home care in New South Wales*. The report found that only 37 per cent of child protection caseworkers had a good understanding of the court processes and procedures in open adoption from out-of-home care applications. Key findings of the report included that:
- An overwhelming majority of practitioners identify a need for better information on court processes and procedures ...
- Child protection practitioners exhibit a high level of generalised understanding of permanency and adoption reforms, but weaker knowledge and understanding of legal processes underpinning open adoption.⁸²
- 4.70 The Committee was told that the key characteristics that enabled an Adoptions Taskforce to process adoptions more effectively in New South Wales included:
- a performance and evaluation culture;
 - promoting a team culture of openness, information gathering and accountability clearly supported by evidence;
 - prioritising cases based on the characteristics that make them less or more complex to process;
 - establishing regular, collaborative discussions between legal and casework teams;

80 Anglicare Sydney, *Submission 67*, p. 13.

81 Barnardos Australia, *Submission 52*, p. 5.

82 Department of Family and Community Services, NSW, 'The Gap Between Knowing and Doing: Developing Practice in Open Adoption from OOHC in New South Wales' pp. 4, 16, <https://www.facs.nsw.gov.au/_data/assets/file/0007/384829/OOHC_Adoption_Practitioner_Study_Full_Report.pdf> viewed 4 October 2018.

- recognising the inherent value of birth parents in the lives of children and working to ensure these relationships are supported; and
 - egalitarian, cross agency and multidisciplinary training in assessment work and legal processes emphasising knowledge and information sharing – including court report writing, and undertaking registered counselling.⁸³
- 4.71 As a result of these measures, New South Wales has reduced the backlog and duration of outstanding out-of-home care adoption applications.⁸⁴ Median timeframes, from initial enquiry to an adoption order being made, have dropped from 5.1 years in 2015-16 to 3.2 years in 2017-18.⁸⁵ A target duration for non-contested adoptions of two years has been set.⁸⁶
- 4.72 As a result of a suite of initiatives and reforms, New South Wales was responsible for 131 of the 143 carer adoptions in Australia in 2016-17. 129 of these children were adopted from out-of-home care.⁸⁷ These initiatives included an:
- adoption taskforce;
 - out-of-home care adoption allowance;
 - open adoption hotline; and
 - accredited adoption service providers.⁸⁸
- 4.73 Mr Galvin told the Committee that the New South Wales Adoption Taskforce:
- ... performed a critical role in busting the myth that adoptions are too onerous, too complex and too protracted, while also acting as a catalyst for achieving record numbers of adoptions finalised in New South Wales in the past two financial years. Adoption time frames are also coming down to under 12 months in some cases, compared to over five years previously.⁸⁹
- ... was also a multidisciplinary team. It brought casework practitioners together with legal practitioners, and working in that environment and being able to have that dialogue reduced the time involved considerably.⁹⁰

83 EY, *Submission 51*, p. 7.

84 NSW Government, *Submission 22*, p. 6.

85 NSW Government, *Supplementary Submission 22.1*, Answer to Question on Notice, p. 1.

86 NSW Government, *Submission 22*, p. 6.

87 NSW Government, *Submission 22*, p. 4.

88 NSW Government, *Submission 22*, pp. 5-6.

89 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 1.

90 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 3.

- 4.74 In addition, Ms Simone Czech from the Department of Family and Community Services, NSW, advised the Committee that adoption:
- ... is not complex. It is good casework. It is about engaging the birth family. It is about engaging foster carers or prospective adoptive parents. It is about engaging children and it is about determining early a permanency goal for that child.⁹¹
- 4.75 Ms Czech acknowledged that the last step, submitting an application to the Supreme Court, is a little more complex. However, a range of paralegal legal staff are employed to help casework staff with that part of the process.⁹²
- 4.76 In summary, the evidence received by the Committee indicated that adoptions could be completed more effectively and in a more timely manner if caseworkers:
- increased their awareness and understanding of open adoption;⁹³
 - better understood and responded to the impact of trauma on families;⁹⁴
 - participated in workshops, forums and/or conferences (including at a national level);⁹⁵
 - undertook training, mentoring and professional development;⁹⁶
 - acquired and/or improved their legal skills;⁹⁷ and
 - maintained relevant accreditation.⁹⁸

91 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 7.

92 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 7.

93 EY, *Submission 51*, pp. 11-12.

94 Barnardos Australia, *Submission 52*, p. 9.

95 Name withheld, *Submission 20*, p. 14; NSW Government, *Submission 22*, pp. 3, 7; Hope For Our Children, *Submission 45*, p. 7; Barnardos Australia, *Submission 52*, pp. 4, 9; Department of Family and Community Services, NSW, 'The Gap Between Knowing and Doing: Developing Practice in Open Adoption from OOHHC in New South Wales' p. 42, <https://www.facs.nsw.gov.au/_data/assets/file/0007/384829/OOHC_Adoption_Practitioner_Study_Full_Report.pdf> viewed 4 October 2018.

96 Hope For Our Children, *Submission 45*, p. 7; EY, *Submission 51*, p. 11; Name withheld, *Submission 60*, p. 1.

97 Barnardos Australia, *Submission 52*, p. 8; Adopt Change, *Submission 77*, p. 18; Department of Family and Community Services, NSW, 'The Gap Between Knowing and Doing: Developing Practice in Open Adoption from OOHHC in New South Wales' p. 16-18, <https://www.facs.nsw.gov.au/_data/assets/file/0007/384829/OOHC_Adoption_Practitioner_Study_Full_Report.pdf> viewed 4 October 2018.

98 The Law Society of NSW, *Submission 44*, p. 2; Adopt Change, *Submission 77*, p. 18.

Committee comment

The legacy of past forced adoption policies and practices

- 4.77 While the Committee understands that there are lessons to be learned from past forced adoption practices so that the mistakes of the past are not repeated, this inquiry is focussed on a forward looking approach to adoption.
- 4.78 The Committee received numerous submissions and communications from people affected by past forced adoption policies and practices. Rightly, these people were very concerned that adoption as a viable option for children in out-of-home may repeat the mistakes of the past.

Parental consent

- 4.79 The Committee is satisfied that there are appropriate safeguards in place to ensure that past practices of not seeking consent from birth parents will not be repeated.
- 4.80 However, there will be situations when dispensation of parental consent will be required, and where it is the best interests of the child, this should not be a barrier to adoption.

Open adoption

- 4.81 Adoption is different in Australia now. As outlined in Chapter 2, all states and territories practice open adoption. The Committee is strongly of the view that open adoption provides children with stability and permanency, while retaining connection with their birth families.
- 4.82 The Committee affirms that every child should know about their family background and understands how important that is for identify formation and a sense of belonging. Open adoption provides children and their birth families with that sense of identity and connectedness.

Recommendation 4

The Committee recommends that a national law for adoption provides for 'open adoption' unless exceptional circumstances make an open adoption inappropriate.

Birth certificates

- 4.83 While open adoption is different to past adoption practices, the Committee is concerned that issuing new birth certificates, which sever

the legal ties between adopted children and their birth families, are a significant barrier to progressing open adoptions.

- 4.84 However, the Committee is encouraged that all states and territories are considering integrated birth certificates that include the names of both birth and adoptive parents so that children remain connected to their birth family.
- 4.85 The Committee is of the view that integrated birth certificates will address much of the legacy of past adoption practices as a barrier to adoption. However, the Committee notes that further work may be required to address whether and to what extent the legal relationship between children and their birth parent(s) may be retained through this option.

Recommendation 5

The Committee recommends that a national law for adoption provides for integrated birth certificates that include the names of both birth parents and adoptive parents, while conferring full parental and legal responsibility for adopted children on the adoptive parent(s).

Complex and time consuming processes

- 4.86 The Committee notes the success of New South Wales in reducing barriers to adoption by improving adoption practice and challenging the perception that adoption is complex and takes many years to achieve.
- 4.87 Clearly adoption can be processed in a timely manner, reducing the amount of time that children may 'bounce' around the out-of-home care system.
- 4.88 The New South Wales Government's adoption transformation initiatives should be replicated across Australia.

Recommendation 6

The Committee recommends that all states and territories improve the administration of adoptions and reduce the complexity and length of adoption processes.

