
The Parliament of the Commonwealth of Australia

Breaking barriers: a national adoption framework for Australian children

Inquiry into local adoption

House of Representatives
Standing Committee on Social Policy and Legal Affairs

October 2018
Canberra

© Commonwealth of Australia 2018

ISBN 978-1-74366-899-3 (Printed version)

ISBN 978-1-74366-900-6 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Foreword	ix
Membership of the Committee	xi
Terms of reference	xiii
List of abbreviations	xv
List of recommendations	xvii
1 Introduction	1
Conduct of the inquiry	1
Scope of the inquiry	2
Out-of-home care and adoption statistics	3
Out-of-home care	3
Adoption	4
Barriers to adoption	5
Report outline	6
2 Legislative and policy framework	7
International obligations	7
Roles of the Commonwealth, state and territory governments	8
National Framework and policy approaches	9
Guiding Principles for Permanency Best Practice	10
National Permanency Work Plan	10
Aboriginal and Torres Strait Islander Child Placement Principle	12
Adoption law in the states and territories	13
State and territory legislative reviews	16
Best interests of the child	17

Open adoption.....	18
Adoption from out-of-home care.....	20
Consent in adoption	23
Adoption of Aboriginal and Torres Strait Islander children	25
Timeframes for reunification with family	26
Birth certificates.....	27
Eligibility to adopt	28
Discharge of adoption	28
Recognition of adoption planning in other jurisdictions	29
Committee comment.....	30
Best interests of the child	30
National Framework and policy approaches	30
Adoption law	31
3 Adoption as a viable option for children in out-of-home care	33
Terminology.....	34
Out-of-home care	35
Definition	35
Impacts of out-of-home care	35
Permanency planning	38
Timeframes	42
Permanency options.....	44
Preservation.....	44
Reunification	45
Permanent care (third-party parental responsibility) orders.....	46
Long-term finalised guardianship or custody orders.....	49
Adoption.....	52
Permanency planning for Indigenous children	57
Adoption under the Aboriginal and Torres Strait Islander Placement Principle	58
Committee comment.....	61
Out-of-home care	61
Permanency planning	61

4	Policy and practice barriers to adoption	65
	The legacy of past forced adoption policies and practices.....	65
	Parental consent	67
	Open adoption.....	69
	Plenary adoption and simple adoption	71
	Birth certificates as a barrier to open adoption	74
	Complex and time consuming processes.....	78
	Committee comment.....	83
	The legacy of past forced adoption policies and practices	83
	Parental consent	84
	Open adoption.....	84
	Birth certificates.....	84
	Complex and time consuming processes	85
5	Evidence based decision making.....	87
	Current approaches to data collection.....	87
	National child protection data	87
	National adoptions data	88
	Opportunities to improve data collection	88
	Consistency in definitions.....	90
	Family preservation and reunification.....	91
	Data and research on children in out-of-home care.....	92
	Permanency planning	92
	Indigenous children in out-of-home care	92
	Children with disabilities.....	93
	Outcomes for children in out-of-home care	94
	Research about adoption	94
	Barriers to adoption.....	94
	Open adoption.....	95
	Sibling separation.....	96
	Parental consent	96
	Potential adopters	97
	Timeframes	97
	Outcomes for adopted children	98

Moving forward – pathways to improved data collection and research.....	99
The New South Wales Government approach.....	99
A national longitudinal study for out-of-home care and adoption.....	100
Committee comment.....	101
Addressing gaps in data – improvements in data collection.....	101
Labor Members’ Dissenting Report	103
Unrealistic expectations.....	105
The right to kin and culture.....	106
Learning the lessons of history.....	108
Child safety and wellbeing.....	109
Stability and permanency.....	111
Open adoption.....	112
The need for early intervention and support.....	114
Aboriginal and Torres Strait Islander Child Placement Principle.....	116
Community led solutions.....	117
Guiding principles.....	118
Appendix A: List of Submissions.....	121
Appendix B: List of Exhibits.....	127
Appendix C: Committee statement on the treatment of written evidence	131
Appendix D: List of public hearings	133
Tuesday, 22 May 2018 – Canberra, ACT.....	133
Tuesday, 29 May 2018 – Canberra, ACT.....	133
Tuesday, 19 June 2018 – Canberra, ACT.....	133
Friday, 22 June 2018 – Canberra, ACT.....	134
Tuesday, 26 June 2018 – Canberra, ACT.....	135
Tuesday, 14 August 2018 – Canberra, ACT.....	135
Tuesday, 21 August 2018 – Canberra, ACT.....	136
Tuesday, 11 September 2018 – Canberra, ACT.....	136

LIST OF TABLES

Table 2.1 Comparison of provisions for adoption of children from care in all jurisdictions..... 21
Table 3.1 Permanency-related planning and action in legislation and policy (2016) 34

LIST OF FIGURES

Figure 2.1 Guiding Principles for Permanency Best Practice..... 11
Figure 3.1 Permanency Planning Process as at June 2016 39



Foreword

All Australian children deserve to feel safe and loved and to have a strong sense of identity and belonging. Unfortunately there are tens of thousands of Australian children in out-of-home care who need a family they can belong to. It is not acceptable that children are bounced around the system from one foster home to another or experience significant trauma where their safety and welfare is at significant risk.

There is another option. Open adoption can provide belonging, safety and legal permanency to many children in out-of-home care. Under open adoption relationships with birth parents are encouraged, not hidden. Children gain their adoptive family, which gives them a sense of belonging whilst maintaining relationships with their birth parent(s) and extended families, their heritage, and their culture, strengthening their sense of who they are and where they fit in the world.

Evidence given to the Committee's inquiry demonstrated that open adoption provides many benefits to children. These include a stronger sense of security and belonging, as well as improved cognitive, educational, mental and physical outcomes.

Despite this, the number of adoptions now occurring is very low. Only 246 Australian children were adopted in 2016-17. It has been reported that Australia has the second lowest rate of adoption in the developed world.

During the course of the inquiry it was made clear that the process to adopt an Australian child is unnecessarily complex. States and territories have inconsistent and fragmented complex legislative requirements which make it prohibitive and difficult to navigate. However, adoption does not need to be complex or time consuming.

The Committee's report addresses the legislative, policy and practice barriers to adoption and recommends a national law to make adoption a more viable option for all Australian children. The barriers to adoption include the fear of repeating mistakes of past forced adoption policies, a lack of understanding of open


adoption, and complex and consuming administrative processes with lengthy timeframes. These barriers in the context of a child's life which is fleeting - make the case for open adoption compelling and necessary. The essential principles of a national law would be embedded in a national adoption framework where the safety and best interests of the child is a paramount consideration.

One of the most significant issues raised by adoptees, prospective adoptive parents and child protection professionals was that birth certificates still reflect past adoption practices by replacing birth parents' names with the names of adoptive parents as if the child was born to them. This legal severance from birth families has had ongoing impacts on adoptees. In the spirit of open adoption, national legislation could establish the use of integrated birth certificates, which include the names of birth and adoptive parents.

Adoption may not be the best option for all children in out-of-home care, but when it is, it provides life-long belonging, legal permanency and the security of a profound sense of place. It is essential that we provide this opportunity to all Australian children through a nationally consistent approach to adoption.

On behalf of the Committee, I thank all the individuals, non-government organisations, government departments, advocacy and not-for-profit groups, and others, who contributed evidence to our inquiry. We valued your participation, and we hope our work can help break down barriers to the goal we all share: a better future for all Australian children.

Ms Julia Banks MP
Chair



Membership of the Committee

Chair Ms Julia Banks MP

Deputy Chair Ms Sharon Claydon MP

Members Mr George Christensen MP


Hon Warren Entsch MP

Mr Jason Falinski MP

Dr Mike Freeland MP

Ms Emma Husar MP

Mr Tim Wilson MP



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.



List of abbreviations

AbSec	Aboriginal Child, Family and Community State Secretariat
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principle
EY	Ernst & Young
FISH	Family Inclusion Strategies in the Hunter
OOHC	Out-of-home care
SNAICC	Secretariat of National Aboriginal and Islander Child Care
VANISH	Victorian Adoption Network for Information and Self Help Inc.



List of recommendations

2 Legislative and policy framework

Recommendation 1

The Committee recommends that the Commonwealth work with state and territory governments to achieve agreement, through the Council of Australian Governments, to develop and enact a national law for adoption.

Recommendation 2

The Committee recommends that a national adoption framework be adopted as the model and starting point for a uniform national law.

Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that:

- the best interests and safety of the child are paramount and override all other considerations;
- returning a child to parents or family/kin must only be an option when it is appropriate and safe;
- adoption should be considered before long-term foster care or residential care;
- family preservation and cultural considerations are important, but not more important than the safety and wellbeing of the child;
- legal permanency is key in providing stability and permanency for children;
- adoption from foster care is a viable option where a child has an established and stable relationship with an authorised carer and adoption will promote the child's welfare; and
- decisions on whether a child may be able to safely return to their birth parent(s) must be made within a legislated timeframe, such as six

months of an interim care order for children under two years old, or within 12 months for older children.

3 Adoption as a viable option for children in out-of-home care

Recommendation 3

The Committee recommends that, when it is determined that it is not safe for a child in out-of-home care to be reunified with their parent(s) or placed in the care of kin, open adoption should be considered and progressed as a viable option in the best interests of the child.

4 Policy and practice barriers to adoption

Recommendation 4

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

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).

Recommendation 6

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

5 Evidence based decision making

Recommendation 7

The Committee recommends that the Australian Institute of Health and Welfare continue to work with relevant Commonwealth, state and territory agencies to improve data collection on adoptions and child protection in Australia, including by:

- collecting unit record data rather than aggregate data;
- agreeing on nationally consistent definitions;
- collecting data on: timeframes for finalising adoptions, sibling separation, parental consent (including dispensation of consent), adoption of Indigenous children, adoption of children with disabilities and special needs, and long-term outcomes for all adoptees; and
- maintaining registers of potential adoptive parents.

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).¹
- 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).²
- 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.³
- 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.⁴
- 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.⁵
-

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,⁶ 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).⁷ 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 2013.⁸
- 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.⁹

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.¹⁰
- 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).¹¹
 - The remaining children were on short-term guardianship, other care and protection orders or were not on an order.¹²

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.¹³
- 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).¹⁴

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.¹⁵ 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.¹⁶
- 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.¹⁷

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;

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> 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.

Legislative and policy framework

- 2.1 This chapter reviews existing state and territory legislative frameworks as well as national policy approaches that provide for adoption of Australian children.
- 2.2 It considers the key elements of the states' and territories' current legislation, and how a national law for adoption could provide a uniform approach to adoption for Australian children in out-of-home care.

International obligations

- 2.3 The United Nations Convention on the Rights of the Child sets out the human rights of all children and includes a number of articles relevant to adoptions within Australia.¹
 - Article 8 provides that children have the right to preserve their own identity, including nationality.
 - Article 9 provides that a child shall not be separated from their parents against their will, unless it is necessary for the best interests of the child.
 - Article 12 provides that children capable of forming their own views have a right to express those views and be heard in any judicial or administrative proceeding affecting the child.
 - Article 20 provides that for children who cannot remain in the family environment, alternative care should have regard to the child's ethnic, religious, cultural and linguistic background.
 - Article 21 provides that the best interests of the child must be the paramount consideration in adoption matters.²

1 Australian Human Rights Commission, *Submission 103*, p. 6.

- 2.4 As a Party to the Convention, Australia is required to ensure that its national (including state and territory) laws are compliant with its provisions.
- 2.5 Australia is also a signatory to the Declaration on the Rights of Indigenous Peoples. The Declaration sets out minimum standards for the survival, dignity and well-being of Indigenous peoples, including the principle of free, prior and informed consent; the right to culture and the right to self-determination.³

Roles of the Commonwealth, state and territory governments

- 2.6 The key role of the Commonwealth Government is to provide national leadership to improve the safety and wellbeing of Australia's children through the National Framework for Protecting Australia's Children 2009-2020, discussed below. The Commonwealth collaborates with states, territories and the non-government sector through the National Framework to deliver a more consistent national response for children in out-of-home care.⁴
- 2.7 The Commonwealth's national approach is vital, because under current arrangements there is no national law governing adoption of Australian children, and significant variation exists in adoption legislation and practice across Australia.⁵
- 2.8 The Commonwealth Government also supports families and children through:
- income support payments;
 - access to services such as childcare; and
 - specific programs which seek to strengthen family relationships and parenting skills.⁶
- 2.9 The state and territory governments have statutory responsibility for child protection systems, and administer legislation in relation to adoption and other permanent care options for children in out-of-home care.⁷

2 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

3 Australian Human Rights Commission, *Submission 103*, p. 6; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295.

4 Department of Social Services, *Submission 40*, p. 1.

5 Institute of Open Adoption Studies, *Submission 76*, p. 3.

6 Department of Social Services, *Submission 40*, p. 1.

National Framework and policy approaches

- 2.10 A National Framework for Protecting Australia's Children 2009-2020 (National Framework) was agreed in 2009.⁸
- 2.11 The National Framework is underpinned by the following principles:
- All children have a right to grow up in an environment free from neglect and abuse. Their best interests are paramount in all decisions affecting them.
 - Children and their families have a right to participate in decisions affecting them.
 - Improving the safety and wellbeing of children is a national priority.
 - The safety and wellbeing of children is primarily the responsibility of their families, who should be supported by their communities and governments.
 - Australian society values, supports and works in partnership with parents, families and others in fulfilling their caring responsibilities for children.
 - Children's rights are upheld by systems and institutions.
 - Policies and interventions are evidence based.⁹
- 2.12 The National Framework also recognises the importance of promoting the wellbeing of Aboriginal and Torres Strait Islander children, young people and families across all outcome areas.¹⁰
- 2.13 It was suggested that a national approach to adoption of children from out-of-home care should be aligned with, and complementary to, the National Framework.¹¹
- 2.14 The Committee understands that the Department of Social Services is working with state and territory governments and the non-government

7 Department of Social Services, *Submission 40*, p. 1.

8 Department of Social Services, *Submission 40*, p. 1.

9 Department of Social Services, 'Protecting Children is Everyone's Business – National Framework for Protecting Australia's Children 2009-2020', 2009, p. 12, <https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf> viewed 16 July 2018.

10 Department of Social Services, 'Protecting Children is Everyone's Business – National Framework for Protecting Australia's Children 2009-2020', 2009, p. 12, <https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf> viewed 16 July 2018.

11 EY (Ernst & Young), *Submission 51*, p. 5.

sector on what comes after the National Framework when it ends in 2020.¹²

Guiding Principles for Permanency Best Practice

- 2.15 On 25 August 2017, Commonwealth, state and territory Community Services Ministers¹³ agreed to:
- reduce state guardianship of children in out-of-home care by securing permanency outcomes, including adoption, for children who cannot be safely reunified with their families within a reasonable time;¹⁴
 - secure timeframes for permanent care decisions for children including through child protection legislation and/or policy and practice, and national public reporting on permanency timeframes;¹⁵ and
 - adopt the Guiding Principles for Permanency Best Practice, which are set out in Figure 2.1.¹⁶

National Permanency Work Plan

- 2.16 To put the Guiding Principles for Permanency Best Practice into action, and build on reforms already underway in the states and territories, on 1 June 2018 Community Services Ministers agreed to a National Permanency Work Plan that outlines 14 actions to deliver on five strategies to improve permanency outcomes.¹⁷
- 2.17 The five strategies of the National Permanency Work Plan are to:
- develop a permanency outcomes performance framework;
 - ensure that the Aboriginal and Torres Strait Islander Child Placement Principle is upheld and Aboriginal community controlled organisations

12 Ms Elizabeth Hefren-Webb, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 9.

13 Community Services Ministers from all jurisdictions meet to discuss and agree priorities for the safety and wellbeing of Australia's children and young people. Ministers are supported by the Children and Families Secretaries Group which comprises senior officials from relevant government departments. Commonwealth Community Services Ministers are: the Minister for Families and Social Services; the Assistant Minister for Social Services, Housing and Disability Services; and the Assistant Minister for Children and Families.

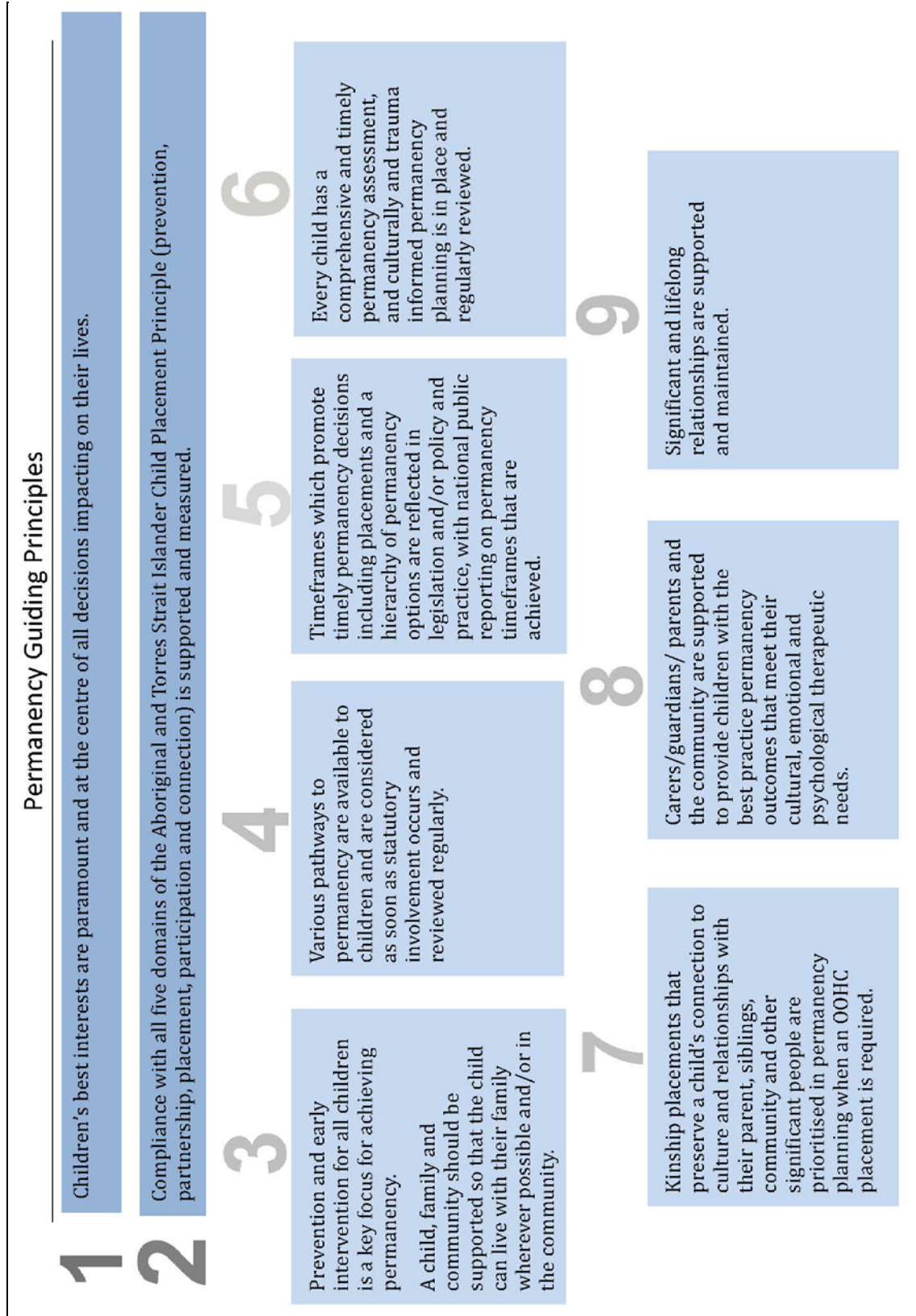
14 Department of Social Services, *Submission 40*, p. 4.

15 Department of Social Services, *Submission 40*, p. 4.

16 Department of Social Services, *Submission 40*, p. 4.

17 The Hon. Dan Tehan MP, the Hon. Jane Prentice MP and the Hon Dr David Gillespie MP, 'Community Services Ministers' Meeting Communique', 1 June 2018, <<https://formerministers.dss.gov.au/17966/community-services-ministers-meeting-communique-2>>.

Figure 2.1 Guiding Principles for Permanency Best Practice



Source Department of Social Services, Exhibit 10, p. 1.

- are supported to ensure culturally appropriate placements and supports for Indigenous children;
- promote timely and consistent decision-making for permanency;
- promote better permanency options, including consistent processes for family reunification to be explored and resolved as part of permanency planning; and
- develop an approach to recruitment, training and support of more permanent carers.¹⁸

Aboriginal and Torres Strait Islander Child Placement Principle

- 2.18 As noted above, the second principle of the Guiding Principles for Permanency Best Practice is that compliance with all five domains of the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) is supported and measured. The Principle was accepted by the states and territories in 1986 and incorporated into legislation in various forms over the following decade.¹⁹
- 2.19 Fundamental to the Principle is the recognition that Aboriginal and Torres Strait Islander people have the knowledge and experience to make the best decisions concerning their children.²⁰
- 2.20 The five domains of the Principle are:
1. Prevention: Protecting children's rights to grow up in family, community and culture by redressing the causes of child protection intervention.
 2. Partnership: Ensuring the participation of community representatives in service design, delivery and individual case decisions.
 3. Connection: Maintaining and supporting connections to family, community, culture and country for children in out-of-home care.
 4. Participation: Ensuring the participation of children, parents and family members in decisions regarding the care and protection of their children.
 5. Placement: Placing children in out-of-home care in accordance with the following established placement hierarchy:

18 Mrs Cath Halbert, Group Manager, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, pp. 9-10.

19 Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited, *About the Aboriginal and Torres Strait Islander Child Placement Principle*, p. [1], <<http://atsichsbrisbane.org.au/wp-content/uploads/2010/09/About-the-Aboriginal-and-Torres-Strait-Islander-Child-Placement-Principle.pdf>> viewed 4 October 2018.

20 Department of Social Services, *Submission 40*, p. 5.

- i. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members, or
- ii. with Aboriginal or Torres Strait Islander members of the child's community, or
- iii. with Aboriginal or Torres Strait Islander family-based carers.
- iv. If the above preferred options are not available, as a last resort the child may be placed with a non-Indigenous carer or in a residential setting.
- v. If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.²¹

2.21 During the course of the inquiry Commonwealth, state and territory Community Services Ministers met on 1 June 2018 and agreed:

- to implement 'active efforts' in jurisdictions to ensure compliance with all five elements of the Principle. This action recognises the rights of Aboriginal and Torres Strait Islander children to be raised in their own culture and the importance and value of their family, extended family, kinship networks, culture and community; and
- that it is important to support Aboriginal Community Controlled Organisations in having a role and responsibility towards their children.²²

Adoption law in the states and territories

2.22 State and territory legislative, policy and practice frameworks provide a number of permanent care options for children in out-of-home care. Options include:

- reunification with the child's family;
- legal orders that transfer guardianship or parental responsibility to a relative, carer or a third party; and
- adoption.²³

21 Australian Human Rights Commission, *Submission 103*, p. 19.

22 The Hon. Dan Tehan MP, the Hon. Jane Prentice MP and the Hon Dr David Gillespie MP, 'Community Services Ministers' Meeting Communique', 1 June 2018, <<https://formerministers.dss.gov.au/17966/community-services-ministers-meeting-communique-2>>.

23 Department of Social Services, *Submission 40*, pp. 2-3.

- 2.23 While all Australian states and territories have legislation allowing adoption from out-of-home care, the detail of the legislation varies between jurisdictions.²⁴
- 2.24 The current key legislation governing adoption across the states and territories is as follows:
- *Adoption Act 1993* (ACT)
 - *Adoption Act 2000* (NSW)
 - *Children and Young Persons (Care and Protection) Act 1998* (NSW)
 - *Adoption of Children Act 1994* (NT)
 - *Adoption Act 2009* (Qld)
 - *Adoption Act 1988* (SA)
 - *Adoption Act 1988* (Tas)
 - *Adoption Act 1984* (Vic)
 - *Adoption Act 1994* (WA).²⁵
- 2.25 Ms Elizabeth Hefren-Webb, Deputy Secretary, Department of Social Services advised that:
- Each state and territory has expressed a desire to maintain and improve their system as they see fit.²⁶
- 2.26 However, Mrs Cath Halbert, Group Manager, Department of Social Services, also stated that:
- ... states are working to align permanency issues.²⁷
- 2.27 Mr Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families, Northern Territory Government stated that:
- A key part to achieving national consistency in a national framework is recognising that we each operate different systems in attempting to achieve the same outcomes.²⁸

24 Barnardos Australia, *Submission 52*, p. 6; Adopt Change Limited (Adopt Change), *Submission 77*, pp. 9-12.

25 NSW Government, *Submission 22*, p. 3; Australian Institute of Health and Welfare (AIHW), 'Appendixes A and B: Adoptions Australia 2016-17', 2017, pp. 1-12, <<https://www.aihw.gov.au/getmedia/c54bf6ea-00f1-4e7f-a203-4103b8efa10a/aihw-cws-61-appendixes-a-b.pdf.aspx>> viewed 4 October 2018.

26 Ms Elizabeth Hefren-Webb, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 9.

27 Mrs Cath Halbert, Group Manager, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 10.

28 Mr Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families, Northern Territory Government, *Committee Hansard*, Canberra, 22 June 2018, p. 14.

- 2.28 However, the Committee heard concern from many submitters and witnesses about the lack of uniformity in the national laws for adoption. The Royal Australian and New Zealand College of Psychiatrists submitted that:
- ... it is widely acknowledged that the legal requirements and processes for adoption in Australia can be confusing and vary substantially between States and Territories.²⁹
- 2.29 Adopt Change Limited (Adopt Change) submitted that many children in out-of-home care are denied the opportunity of adoption by the lack of consistency and implementation of existing laws in Australia.³⁰
- 2.30 Anglicare Sydney suggested that state and territory:
- ... laws be consistent across the Nation and serve the best interests of the child and young person in providing a stable and permanent home.³¹
- 2.31 Evidence to the inquiry suggested that a national law for adoption could be based on the New South Wales Government's legislative approach to adoption. (Key elements of the New South Wales legal framework are discussed further below.)
- 2.32 Barnardos Australia submitted that national consistency in adoption legislation could best be achieved by:
- ... aligning State and Territory legislation to the standards of NSW where the child's best interests are clearly prioritised over the birth family's consent.³²
- 2.33 Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney told the Committee that there are:
- ... pillars or foundations of practice within the New South Wales system that could be well replicated in other jurisdictions across Australia, but they're all at different points because they are state based legislations at the moment around adoption.³³
- 2.34 The Centre for Independent Studies submitted:
- The NSW model should be emulated by policymakers in all states and territories as it is an implementable blueprint for genuine and overdue systemic change that will make child protection systems

29 The Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. [1].

30 Adopt Change, *Submission 77*, p. 9.

31 Anglicare Sydney, *Submission 67*, p. 12.

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

33 Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 28.

more effective and accountable nation-wide. To advance this desirable objective, the federal government should be encouraged by the Committee to explore all available avenues to influence state and territory policy making in this direction.³⁴

2.35 Additionally, the Committee heard from Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies that:

If the national framework encourages states and territories to emulate the New South Wales model, as I recommend it should, embracing the same priorities as in New South Wales will achieve an appropriate and overdue rebalancing of the principles of family preservation and permanency to ensure that child protection systems nationwide operate in a child centred way. However, what this specifically and crucially does not mean is that adoptions will occur as the fast resort in Australia. Adoptions will only occur as the last, but timely, resort to achieve permanency in the best interests of children after the best efforts to assist families have been tried but not succeeded in enabling children to go home safely and permanently.³⁵

State and territory legislative reviews

2.36 There have been 39 inquiries, reviews and royal commissions in Australia in the last decade looking at how to prevent children suffering abuse and neglect.³⁶

2.37 The Committee was advised that the Northern Territory intends to review all legislation related to children and families and amend its *Adoption of Children Act 1994* (NT) in 2019.³⁷ The Committee was also advised that the following state and territory reviews are underway or have been undertaken in recent times:

- Western Australia is currently undertaking a review of its legislation relating to adoption;³⁸
- South Australia is in the process of implementing changes arising from the *Adoption (Review) Amendment Act 2016* (SA) in response to the review of the *Adoptions Act 1988* and *Adoption Regulations 2004*;³⁹

34 The Centre for Independent Studies, *Submission 15*, p. 5.

35 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 2.

36 Hope For Our Children, *Submission 45*, p. 15.

37 Mr Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families, Northern Territory Government, *Committee Hansard*, Canberra, 22 June 2018, pp. 3-4.

38 WA Department of Communities, *Submission 53*, p. 2.

- in 2017 the Victorian Law Reform Commission tabled its report on the Review of the *Adoption Act 1984* (Vic) in the Victorian Parliament;⁴⁰
- in November 2016 the Queensland Parliament amended the *Adoption Act 2009* (Qld) in response to a review of the operation of the Act;⁴¹
- in 2016, the Australian Capital Territory Government's Cross-Directorate Domestic Adoptions Taskforce reviewed issues related to the timeliness of adoption in the Australian Capital Territory. The Australian Capital Territory Government is currently in the process of implementing these recommendations;⁴² and
- in 2014 the *Children and Young Persons (Care and Protection) Act 1998* (NSW) was amended to prioritise that children are able to grow up in stable environments outside of the out-of-home care system.⁴³

Best interests of the child

2.38 Article 21 of the Convention on the Rights of the Child provides that 'States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration ...'⁴⁴

2.39 The Australian Government's joint fifth and sixth report under the Convention on the Rights of the Child confirms that:

Australia continues to consider the best interests of the child in policy, administrative and particular legal decisions relating to individuals, and in the systems established to meet children's needs. Legislation and case law in all jurisdictions and across a range of domains, including child protection, criminal justice and health, recognises the importance of the child's best interests being considered in decision-making.⁴⁵

39 South Australia Department of Child Protection, 'Adoption (Review) Amendment Act 2016', <<https://www.childprotection.sa.gov.au/adoption/adoption-review-amendment-bill-2016>> viewed 4 October 2018.

40 Victorian Law Reform Commission, 'Adoption Act', 7 June 2017, <<http://www.lawreform.vic.gov.au/all-projects/adoption-act>> viewed 4 October 2018.

41 Queensland Government Department of Child Safety, Youth and Women, 'Adoption', <<https://www.csyw.qld.gov.au/child-family/adoption>> viewed 4 October 2018.

42 ACT Government, *Submission 35*, pp. 2-3.

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

44 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, art 21 (entered into force 2 September 1990).

45 Australian Government, 'Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict for the reporting period June 2012-15 Jan 2018', p. 9,

- 2.40 Central to adoption legislation in all states and territories is the requirement that in all decision making, the best interests of the child are to be the paramount consideration.⁴⁶
- 2.41 The Committee was informed that ‘there are many different perspectives on what is in a child’s best interests and thus no single agreed definition’;⁴⁷ and that ‘much has been written about the imprecise nature of the term “best interests of the child”’.⁴⁸
- 2.42 In the Australian Capital Territory, New South Wales, the Northern Territory, Queensland and South Australia, adoption legislation includes provisions to guide decision makers in assessing the best interests of the child.⁴⁹ Although the extent to which guidance is provided varies between these states and territories, considerations include:
- the likely effects of the decision on the life course of the child;
 - the child’s physical, emotional and educational needs;
 - the child’s and parents’ views;
 - access to information about ethnic or cultural heritage;
 - relationships with parents, siblings other relatives, and with the adoptive parents; and
 - that alternative placement options have been considered.
- 2.43 Most jurisdictions, including New South Wales, provide in legislation that adoption is a service for a child, meaning (and in some cases specifying) that no adult has the (inherent) right to adopt a child.⁵⁰

Open adoption

- 2.44 Historically, under closed adoption, an adopted child’s original birth certificate was sealed and an amended birth certificate issued that

<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/AUS/5-6&Lang=en> viewed 4 October 2018.

- 46 Australian Human Rights Commission, *Submission 103*, p. 9; *Adoption Act 1993 (ACT)*, s. 5; *Adoption Act 2000 (NSW)*, s. 7(a); *Adoption of Children Act 1994 (NT)*, s. 8; *Adoption Act 2009 (QLD)*, ss. 5(a), 6(1); *Adoption Act 1988 (SA)*, s. 3(1)(a); *Adoption Act 1988 (Tas)*, s. 8; *Adoption Act 1984 (Vic)*, s. 9; *Adoption Act 1994 (WA)*, s. 3(1)(a).
- 47 Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, p. 12.
- 48 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 3.
- 49 *Adoption Act 1993 (ACT)*, ss. 5(2), 6; *Adoption Act 2000 (NSW)*, s. 8(2); *Adoption of Children Act 1994 (NT)*, s. 8(2); *Adoption Act 2009 (QLD)*, ss. 6–7; *Adoption Act 1988 (SA)*, s. 3(2).
- 50 See *Adoption Act 1993 (ACT)*, s. 4(d); *Adoption Act 2000 (NSW)*, ss. 7(b), 8(1)(c); *Adoption of Children Act 1994 (NT)*, s. 8(1); *Adoption Act 1988 (SA)*, ss. 3(1)(b), 3(2)(d); *Adoption Act 1984 (Vic)*, s. 32; *Adoption Act 1994 (WA)*, s. 1(3).

established the child's new identity and relationship with their adoptive family.⁵¹ This had profound, lasting and negative impacts on adoptees. Open adoption, on the other hand, acknowledges the origins of children and allows information sharing or contact between birth and adoptive families.⁵²

- 2.45 EY (Ernst & Young) stated that open adoption:
- ... acknowledges the origins of children and connections with biological parents and extended families are encouraged. Links with the child's culture and identity are developed as part of the obligations of adoptive parents.⁵³
- 2.46 Open adoption is now facilitated in all states and territories, although the degree to which this occurs varies across the jurisdictions.⁵⁴
- 2.47 Open adoption is supported in New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and Victoria. In Western Australia all adoptions are in the 'spirit of openness' and in the Australian Capital Territory all adoptions have been considered open since 1993.⁵⁵
- 2.48 The Committee understands that in all jurisdictions there may be exceptional circumstances in which open adoption is not considered appropriate. The Australian Institute of Health and Welfare (AIHW) reports that five of 246 adoptions in 2016-17 did not allow contact or information exchange between birth and adoptive families.⁵⁶
- 2.49 Open adoption is further discussed in Chapters 3 and 4.

51 Australian Institute of Family Studies, 'Forced Adoption National Practice Principles', April 2016, p. 6, <<https://aifs.gov.au/publications/forced-adoption-national-practice-principles>> viewed 4 October 2018.

52 EY, *Submission 51*, p. 3; Relationships Australia South Australia, *Submission 69*, p. 11; Berry Street, *Submission 70*, p. [3]; Institute of Open Adoption Studies, *Submission 76*, p. 6; Rainbow Families, *Submission 95*, p. 3.

53 EY, *Submission 51*, p. 3.

54 AIHW, 'Adoptions Australia 2016-17', 2017, p. 1, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 5 October 2018.

55 AIHW, 'Appendixes A and B: Adoptions Australia 2016-17', 2017, pp. 13-14, <<https://www.aihw.gov.au/getmedia/c54bf6ea-00f1-4e7f-a203-4103b8efa10a/aihw-cws-61-appendixes-a-b.pdf.aspx>> viewed 5 October 2018.

56 AIHW, 'Adoptions Australia 2016-17', 2017, pp. 27-28, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 5 October 2018.

Adoption from out-of-home care

- 2.50 Out-of-home care is defined as:
- Overnight care for children aged 0–17, where the state makes a financial payment, or where a financial payment has been offered but has been declined by the carer.⁵⁷
- 2.51 There are legislative requirements across the states and territories that certain options must be considered before adoption, for children in out-of-home care.
- 2.52 In Victoria and New South Wales a ‘hierarchy of long term alternatives’ must be considered before adoption. These include family preservation, restoration to parents or guardianship by kin. However, adoption is considered before permanent care (Victoria) or parental responsibility of the Minister (New South Wales).⁵⁸
- 2.53 Queensland legislation allows for a case plan to be developed for each child that may include adoption. The Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia all allow for adoption to be considered along with other care orders if adoption is in the best interests of the child compared to other long-term care options.⁵⁹
- 2.54 The Australian Capital Territory, New South Wales, the Northern Territory, Tasmania and Western Australia permit ‘foster to adopt’. Foster to adopt provides that where a child has been in the day-to-day care of a foster carer for a period of time (usually two years) and where the carer desires to adopt the child, the child can be adopted.⁶⁰
- 2.55 Adoption from foster care can occur in some circumstances in Queensland, South Australia and Victoria, though the legislation is unclear about what is specifically required for an adoption to occur where the prospective adoptive parent(s) and the child already know each other.⁶¹
- 2.56 Table 2.1 illustrates the variability between jurisdictions in relation to adoption from out-of-home care.

57 AIHW, *Submission 41*, p. 7.

58 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 4.

59 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 4.

60 Adopt Change, *Submission 77*, p. 6.

61 Adopt Change, *Submission 77*, p. 6.

Table 2.1 Comparison of provisions for adoption of children from care in all jurisdictions

Jurisdiction	Provisions for adoption of children from care
New South Wales <i>Adoption Act 2000</i> ; Adoption Regulation 2015.	Children may be adopted by their carers if: <ul style="list-style-type: none"> • the birth parents consent • the Supreme Court dispenses with their parents' consent – including on the basis that the child is in care of foster parent/s and has established a stable relationship • the child consents (being aged over 12 years and, if the child has been with the carers for 2 years, this is the only consent required) and adoption is seen to be in the child's best interest, and if, all alternatives having been considered, adoption is preferable to any other order. Adoption plans are required.
Victoria <i>Adoption Act 1984</i> ; Adoption Regulations 2008; <i>Adoption Amendment Act 2013</i> ; <i>Adoption Amendment Act 2015</i> .	No specific legislation related to carers; nor any capacity for consent of the child to their adoption. Legislation allows for dispensation of parent's consent grounds including neglect, ill-treatment and failure to discharge obligations of a parent but these grounds do not include the relationship of the child to carers.
<i>South Australia Adoption Act 1988</i> ; Adoption Regulations 2004.	Legislation allows for dispensation of parent's consent, including on the grounds of neglect, ill-treatment and failure to discharge obligations of a parent. Children over 12 years can give consent to their adoption. Grounds do not include the relationship of the child to carers. Same-sex adoption for 2016.
Western Australia <i>Adoption Act 1994</i> ; Adoption Regulations 1995; <i>Family Law Act 1975</i> ; <i>Family Court Act 1997</i> .	Carer adoptions can occur when it is considered that the best interests of the child are served by the child being adopted by eligible and approved carers. The carers must have had the full-time care of the child for at least 3 consecutive years. The Department for Child Protection must have arranged or approved the placement of the child with the carer and must be satisfied that the child will not return to live with the birth family or extended family. It is required that the birth parents give their consent to the adoption or that there is an order from the Family Court of Western Australia dispensing with consent. Unless dispensed with by the Family Court, an adoption plan is a legal requirement.
Northern Territory <i>Adoption of Children Act 1994</i> ; <i>Adoption of Children Amendment Act 2006</i> .	The Act allows for dispensation of parents' consent, including on the grounds of neglect, ill-treatment and failure to discharge obligations of a parent. The grounds do not include the relationship of the child to carers. There is no specific legislation related to adoption by carers, nor any capacity for consent of the child to their adoption.
Queensland <i>Adoption Act 2009</i> ; Adoption Regulations 2009.	Consent of parents can be dispensed with on a number of grounds, including that the parent is not, within an appropriate timeframe, willing and able to protect the child from harm and meet the child's need for long-term, stable care. The Court may also dispense with consent if it feels the parent is unreasonably withholding consent. No specific legislation related to carers; nor any requirement for consent of the child to their adoption. The legislation has provision for adoption plans in certain situations, but these are not enforceable.
Australian Capital Territory <i>Adoption Act 1993</i> ; <i>Adoption Amendment Act 2009</i> .	Legislation allows for dispensation of parent's consent on grounds including neglect, ill-treatment and failure to discharge obligations of a parent. These grounds do not include the relationship of the child to carers. There is no capacity for consent of the child to their adoption.

Jurisdiction	Provisions for adoption of children from care
Tasmania <i>Adoption Act 1988</i> ; <i>Adoption Amendment Act 2007</i> ; Adoption Regulations 2016.	Allows for dispensation of parent's consent, including neglect, ill-treatment and failure to discharge obligations of a parent, but grounds do not include the relationship of the child to carers. A policy has been established regarding children in out-of-home care for whom adoption is considered to be in the child's best interests. The policy provides advice and clarifies the requirements regarding adoption by foster carers. All applications for an Adoption Order in favour of a foster carer adoption must be made through the Department of Health and Human Services. There is no requirement for consent of the child to their adoption.

Source *Barnardos Australia, Submission 52, pp.12-13.*

2.57 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, told the Committee that:

One area of inconsistency [across state and territory legislation] is when adoption would be considered for children in out-of-home care. To particularly highlight the New South Wales example, there is a very clear process to follow when adoption would be considered, whereas in other states and territories it's less clear when adoption would be considered for children in out-of-home care.⁶²

2.58 The permanency process, in order of preference, for children in out-of-home care followed by the New South Wales Government is:

1. returning them to parents or family/kin, where appropriate and safe.
2. arranging a permanent legal guardian, for Aboriginal children, or
3. supporting and facilitating adoption.

For a smaller number of children (over time), when preservation, restoration, guardianship or open adoption is not possible:

4. providing long-term foster care or residential care (Intensive Therapeutic Care) under parental responsibility of the Minister.⁶³

2.59 Anglicare Sydney similarly commented that some states and territories do not presently have in place any legal basis for adoption from foster care.⁶⁴ Adopt Change submitted that adoption should be the default position for children for whom adoption is a suitable option and who have carers wishing to consider adoption.⁶⁵

62 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, Faculty of Arts and Social Sciences, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, p. 10.

63 NSW Government, *Submission 22*, pp. 7-8.

64 Anglicare Sydney, *Submission 67*, p. 12.

65 Adopt Change, *Submission 77*, p. 10.

- 2.60 With regard to consistency across jurisdictions on adoption from out-of-home care, Adopt Change advised:

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.⁶⁶

- 2.61 The Committee was informed that almost all jurisdictions refer to adoption, particularly if a child is in out-of-home care, as an open adoption.⁶⁷

Consent in adoption

- 2.62 The Committee was advised that consent is required from parents (Queensland, Tasmania, Victoria), persons with parental responsibility (New South Wales, Western Australia), or parents and guardians (Australian Capital Territory, Northern Territory, South Australia) for an adoption to occur.⁶⁸

- 2.63 The Institute of Open Adoption Studies, in its review of Supreme Court case files of open adoptions from out-of-home care completed in 2017, found that of 89 adoption case files, 14 cases were contested by the birth parents in court. The files also indicate that in four of these contested cases, birth parents were no longer opposed to the adoption once they were satisfied with particular conditions after negotiations (for example, agreement on post-adoption contact with birth family and agreement on the child's name after the adoption order was made).⁶⁹

- 2.64 Submitters' views about consent to adoption are discussed further in Chapter 4.

Dispensation of parental consent

- 2.65 The Committee was advised that all Australian jurisdictions allow for the dispensation of parental consent to adoption on the grounds that the parents cannot be identified or located or are not capable of properly

66 Adopt Change, *Submission 77*, p. 10.

67 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 1.

68 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 4.

69 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 1.

- considering the question of consent.⁷⁰ When parents do not consent to the adoption of their children, the process becomes more complex.⁷¹
- 2.66 Some jurisdictions give courts the ability to dispense with consent if parents are found to have abandoned, deserted or persistently neglected or ill-treated the child.⁷²
- 2.67 New South Wales and Western Australia are the only states where a child's established relationship with their carer is a consideration for the dispensation of parental consent.⁷³
- 2.68 The Australian Capital Territory Government, through a cross-directorate working group, is reviewing the dispensation of consent provisions to better respond to the complexity of out-of-home care situations.⁷⁴
- 2.69 Adopt Change submitted that the New South Wales legislative approach would bring meaningful change to adoptions in Australia, in particular:
- ... 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.⁷⁵
- 2.70 Barnardos Australia recommended that all states and territories should align their legislation to the standards of New South Wales where:
- ... children's consent and the new relationship with the carer is a ground for dispensation of parental consent.⁷⁶

Children's participation

- 2.71 The Committee heard that children's participation in adoption decisions is addressed in all state and territory legislation, to varying extents.
- 2.72 All jurisdictions include the principle in legislation that children's views, wishes or feelings must be considered and that children should have an opportunity to participate in the decision-making process.⁷⁷
-

70 Institute of Open Adoption Studies, *Submission 76*, p. 19; ACT Government Community Services Directorate, 'Final Report: Review of the Domestic Adoption Process in the ACT', February 2017, p. 32, <https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/1030875/Final-Report-Review-of-the-Domestic-Adoption-Process-in-the-ACT.pdf> viewed 25 September 2018.

71 Institute of Open Adoption Studies, *Submission 76*, p. 21.

72 For example, South Australia, see: *Adoption Act 1988* (SA), s. 18(c).

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

74 ACT Government, *Submission 35*, p. 2.

75 Adopt Change, *Submission 77*, p. 11.

76 Barnardos Australia, *Submission 52*, p. 7.

- 2.73 In New South Wales, the Northern Territory, South Australia and Western Australia, children over the age of 12 years are required to give consent to their adoption, if they are deemed competent to do so. The Australian Capital Territory, Queensland, Tasmania and Victoria have no provision within their legislation for a child to consent to their adoption, at any age.⁷⁸
- 2.74 Parental consent may be dispensed with under certain circumstances if the child consenting to adoption is over 12 in New South Wales and over 16 in Western Australia.⁷⁹
- 2.75 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, informed the Committee that state and territory legislation:
- ... is inconsistent in terms of whether children are offered the opportunity to consent for their own adoption. New South Wales is the only jurisdiction where children who are aged 12 and older, if they have sufficient capacity, can provide sole consent to their own adoption; therefore, the consent of the birth parents is not needed.⁸⁰

Adoption of Aboriginal and Torres Strait Islander children

- 2.76 All states and territories have separate requirements for the adoption of Aboriginal and Torres Strait Islander children. Some state legislation recognises that adoption is not customary in Aboriginal communities (New South Wales, Queensland, Tasmania, Victoria and Western Australia) and will not be actively considered. However, legislation will allow for adoption after meeting appropriate safeguards.⁸¹
- 2.77 All jurisdictions have general provisions regarding the maintenance of cultural identity and connection when Aboriginal or Torres Strait Islander children are adopted, including a form of the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle).

77 Institute of Open Adoption Studies, *Submission 76*, p. 18; Australian Human Rights Commission, *Submission 103*, p. 9.

78 Institute of Open Adoption Studies, *Submission 76*, p. 18.

79 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 4.

80 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, Faculty of Arts and Social Sciences, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, p. 10.

81 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 4.

- 2.78 However, evidence stated that implementation is inconsistent and ineffective, and that the Principle is misunderstood across jurisdictions.⁸² The Institute of Open Adoption Studies submitted that there are considerable variations in the implementation of the Principle across jurisdictions and concerns about compliance with and monitoring of the Principle.⁸³
- 2.79 All jurisdictions require that decisions to adopt Aboriginal or Torres Strait Islander children be made in consultation with the community.⁸⁴
- 2.80 Adoption of Aboriginal and Torres Strait Islander children is discussed further in Chapter 3.

Timeframes for reunification with family

- 2.81 On 1 June 2018, Commonwealth, state and territory Community Services Ministers recognised:
- ... that abused and neglected children deserve to grow up in a family that is permanent, safe and stable, if they cannot safely be reunified with their families within a reasonable time.⁸⁵
- 2.82 Legislation in New South Wales, Tasmania and Victoria includes timeframes that seek to limit the period during which a child may be reunified with their birth parent(s). In Victoria the timeframe is up to 12 months, or 24 months in exceptional circumstances, and in Tasmania up to two years.⁸⁶
- 2.83 New South Wales specifies that for children younger than two years of age, the Children's Court is required to make a decision, within six months of an interim order, and to accept the statutory department's assessment of whether there is a realistic possibility of restoration. For children aged two and older, the period is within 12 months of the interim order.⁸⁷

82 Secretariat of National Aboriginal and Islander Child Care (SNAICC – National Voice for our Children), *Submission 72*, p. [5].

83 Institute of Open Adoption Studies, *Submission 76*, pp. 23-24.

84 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 6; *Children's Protection Act 1993* (SA), s. 5; *Children, Young Persons and Their Families Act 1997* (Tas), s. 9.

85 The Hon. Dan Tehan MP, the Hon. Jane Prentice MP and the Hon Dr David Gillespie MP, 'Community Services Ministers' Meeting Communique', 1 June 2018, <<https://formerministers.dss.gov.au/17966/community-services-ministers-meeting-communique-2>>.

86 SNAICC, *Submission 72*, p. [12].

87 Institute of Open Adoption Studies, *Submission 76*, p. 21; *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 83(5).

- 2.84 On 1 June 2018 the Community Services Ministers also agreed to develop a nationally consistent approach to guide timely decision making so that children have a sense of stability as soon as possible.⁸⁸
- 2.85 Timeframes for reunification are discussed further in Chapter 3.

Birth certificates

- 2.86 As part of the adoption process, all states and territories issue new birth certificates with the adoptive parents named as parents of the child in lieu of the birth parents.⁸⁹
- 2.87 Original birth certificates are kept on record and may be requested on application in all states and territories.⁹⁰
- 2.88 Birth certificates that include the names of the birth and adoptive parents are referred to as 'integrated' birth certificates.⁹¹
- 2.89 South Australia is in the process of changing its adoption legislation to include the names of birth parents and adoptive parents on an 'integrated' birth certificate.⁹²
- 2.90 The Australian Capital Territory, New South Wales, Northern Territory, Queensland and Victorian governments are in various stages of considering integrated birth certificates that recognise both birth parents and adoptive parents and maintain the identity and heritage of children who are adopted.⁹³

88 Ministers for the Department of Social Services: The Hon. Dan Tehan MP, the Hon. Jane Prentice MP and the Hon Dr David Gillespie MP, 'Community Services Ministers' Meeting Communique', 1 June 2018.

89 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 6.

90 Institute of Open Adoption Studies, *Submission 76*, Appendix 2, p. 7.

91 See for example: Berry Street, *Submission 70*, p. [4]; Adopt Change, *Submission 77*, pp. 20-21.

92 Ms Cathy Taylor, Chief Executive, Department for Child Protection, South Australian Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10; South Australia Department for Child Protection, 'Adoption (Review) Amendment Act 2016, <<https://www.childprotection.sa.gov.au/adoption/changes-naming-and-birth-certificates>> viewed 5 October 2018.

93 ACT Government, *Exhibit 7*, p. 3, <<http://www.communityservices.act.gov.au/home/consultation-act-adoption-process/government-response-to-the-review-of-the-domestic-adoption-process-in-the-act>> viewed 5 October 2018; Ms Sarah Anderson, Senior Manager, Human Services Policy, Community Services Directorate, Australian Capital Territory Government, *Committee Hansard*, Canberra, 22 June 2018, p. 10; Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *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, Victoria, *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.

- 2.91 Concerns raised by submitters in relation to birth certificates are discussed in Chapter 4.

Eligibility to adopt

- 2.92 The Australian Human Rights Commission is of the view that eligibility to adopt should be non-discriminatory and that adults should not be excluded from eligibility to adopt for reasons of their marital or relationship status, their sexuality or their age.⁹⁴
- 2.93 Single people may be eligible to adopt in all states and territories.⁹⁵
- 2.94 The Committee was advised that as of April 2018, adoption by same-sex couples via joint petition is legal in every state and territory.⁹⁶

Discharge of adoption

- 2.95 All jurisdictions have legislation to facilitate discharge of adoption in certain circumstances, although it varies between the states and territories.⁹⁷
- 2.96 All jurisdictions allow for adoptions to be discharged on the grounds of fraud, duress, or other improper means.⁹⁸
- 2.97 South Australia is in the process of amending its legislation to allow adoptees to apply for the discharge of an adoption order where it is in their best interests. This may include where an adopted person has been abused in the adoptive family, or has suffered a loss of identity or belonging as a result of the adoption.⁹⁹
- 2.98 However, the Committee heard that the process for adult adoptees to discharge their adoption is onerous, costly, intrusive and emotionally taxing.¹⁰⁰

94 Australian Human Rights Commission, *Submission 103*, pp. 24-25.

95 *Adoption Act 1993 (ACT)*, s. 18(1); *Adoption Act 2000 (NSW)*, s. 27; *Adoption of Children Act 1994 (NT)*, s. 14(1); *Adoption Act 2009 (QLD)*, s. 68; *Adoption Act 1988 (SA)*, s. 12(3); *Adoption Act 1988 (Tas)*, s. 20(4); *Adoption Act 1984 (Vic)*, s. 11(3); *Adoption Act 1994 (WA)*, s. 38(2).

96 Rainbow Families, *Submission 95*, p. 5.

97 Adoptee Advocacy and Information Service, South Australia Inc. (AAISSA), *Submission 94*, pp. 6-7.

98 *Adoption Act 1993 (ACT)*, s. 39L(1)(a); *Adoption Act 2000 (NSW)*, s. 93(4)(a); *Adoption of Children Act 1994 (NT)*, s. 44(1)(a); *Adoption Act 2009 (QLD)*, s. 219(1)(a); *Adoption Act 1988 (SA)*, s. 14(1); *Adoption Act 1988 (Tas)*, s. 28(2)(a); *Adoption Act 1984 (Vic)*, s. 19(1)(a); *Adoption Act 1994 (WA)*, s. 77(2)(a).

99 South Australia Department for Child Protection, 'Adoption (Review) Amendment Act 2016, <<https://www.childprotection.sa.gov.au/adoption/adoption-review-amendment-bill-2016>> viewed 5 October 2018.

100 Name withheld, *Submission 57*, p. 8; Ms Sharyn White, *Submission 58*, p. [3].

- 2.99 A number of submissions recommended that it should be easier for adult adoptees to discharge their adoption.¹⁰¹ This was notably a concern for people affected by past forced adoption policies and practices.

Recognition of adoption planning in other jurisdictions

- 2.100 The Committee was advised that state and territory legislation does not recognise adoption planning undertaken in other states or territories.
- 2.101 Anglicare Sydney provided the following example:
- ... a child placed with carers through Anglicare Sydney's Foster Care Program with adoption identified on their case plan moved interstate, as the prospective adoptive father's work required relocation from Sydney to Melbourne. The barrier to an adoption order being sought in those circumstances was the fact that the prospective adoptive parents were domiciled outside the NSW jurisdiction. While the child resides in Victoria, the adoption cannot be pursued until they turn 18 years of age and may pursue adoption under Victorian State law.¹⁰²
- 2.102 When prospective adoptive parents are required to permanently move interstate, assessments, reports and other adoption planning work completed in support of an adoption are not recognised. The different requirements of states and territories results in delays, and adds to the cost of adoption.¹⁰³
- 2.103 This issue was highlighted in the Australian Capital Territory's *Final Report: Review of the domestic adoption process in the ACT*, which stated:
- Several responses commented on the value of nationally consistent adoption legislation, or at least transferable adoption procedures to reduce restrictions for people who express an interest in adoption in more than one jurisdiction. This is currently not facilitated as the *Adoption Act 1993* requires people expressing an interest in adoption to be a resident of the ACT.

101 Name withheld, *Submission 5*, p. 4; Australian Adoptee Rights Action Group, *Submission 7*, p. 5; Association for Adoptees Inc., *Submission 19*, p. 17; Mr William Hammersley, *Submission 34*, p. [1,4]; Name withheld, *Submission 38*, pp. [4-5]; Name withheld, *Submission 57*, p. [1]; Ms Sharyn White, *Submission 58*, p. [3]; Name withheld, *Submission 88*, p. 2; Name withheld, *Submission 93*, p. 6; AAISSA, *Submission 94*, pp. 7-8; Ms Kay Hanning, *Submission 106*, p. [3].

102 Anglicare Sydney, *Submission 67*, p. 12.

103 NSW Government, *Submission 22*, p. 10.

Most jurisdictions (VIC, TAS, QLD and WA) do not facilitate cross-border adoptions. An applicant must be a resident of the jurisdiction to be eligible to adopt.¹⁰⁴

Committee comment

Best interests of the child

- 2.104 During the course of the inquiry, and as reflected in the evidence, the Committee was firmly of the view that permanency decisions must be made in the best interests of the child.
- 2.105 The Committee believes that it is essential that the best interests and safety of children are ensured, not just considered, in all decisions affecting their wellbeing.

National Framework and policy approaches

- 2.106 The Committee acknowledges the work of Commonwealth, state and territory Community Services Ministers towards achieving stability and permanency for children in out-of-home care through the National Framework for Protecting Australia's Children 2009-2020 and Guiding Principles for Permanency Best Practice.
- 2.107 The Committee notes that Community Services Ministers from the Commonwealth, states and territories have agreed on actions to implement the five strategies of the National Permanency Work Plan, including to progress national consistency, by promoting:
- timely and consistent decision-making for permanency; and
 - better permanency options, including consistent processes for family reunification to be explored and resolved as part of permanency planning.
- 2.108 The Committee considers that this valuable work to strengthen national consistency in approaches to children in out-of-home care would be significantly advanced by the Commonwealth, states and territories agreeing to pursue nationally uniform adoption legislation.

104 ACT Government Community Services Directorate, 'Final Report: Review of the Domestic Adoption Process in the ACT', February 2017, p. 26, <https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/1030875/Final-Report-Review-of-the-Domestic-Adoption-Process-in-the-ACT.pdf> viewed 5 October 2018.

Adoption law

- 2.109 The evidence received by the Committee demonstrates that adoption legislation varies between the states and territories. Inconsistencies in adoption law make adoption complex and confusing, creating unnecessary barriers to providing permanent, stable homes for children through adoption.
- 2.110 The approaches that are most inconsistent in relation to adoption from care relate to consent of the child, maximum timeframes for reunification and dispensation of parental consent.
- 2.111 The Committee agrees that the safety and best interests of the child should always be the paramount concern of decision makers. The Committee's view is that in upholding this principle, decision makers need to ensure that:
- permanency decisions are made in child-centric timeframes and not unnecessarily delayed by continued efforts towards family reunification where a positive outcome is unlikely;
 - children are not made to wait for permanent placements for reasons such as searching for a family with a particular cultural background where a suitable alternative placement is available; and
 - providing children with a permanent family and legal certainty is prioritised.
- 2.112 The Committee notes that the adoption law in New South Wales reflects an evidence-based approach, and that the New South Wales approach has resulted in an increase in the numbers of children finding safe, permanent homes through adoption.
- 2.113 The Committee was also supportive of the clarity in the New South Wales approach that specifies that where children cannot be returned to their birth parents or family/kin, open adoption is considered ahead of long-term foster or residential care.
- 2.114 The Committee notes the success of adoption reforms undertaken in New South Wales and is of the view that New South Wales' adoption legislation contains a number of useful elements that could inform a national law for adoption. A national law could be implemented either by conferral of the necessary constitutional power on the Commonwealth by the states and territories, or by agreement to and enactment of uniform (identical) legislation in all jurisdictions.
- 2.115 The Committee also notes that enacting a national law for adoption would ensure that completed adoption assessments are able to be recognised in other states and territories when prospective adoptive parents move interstate.

Recommendation 1

The Committee recommends that the Commonwealth work with state and territory governments to achieve agreement, through the Council of Australian Governments, to develop and enact a national law for adoption.

Recommendation 2

The Committee recommends that a national adoption framework be adopted as the model and starting point for a uniform national law.

Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that:

- the best interests and safety of the child are paramount and override all other considerations;
- returning a child to parents or family/kin must only be an option when it is appropriate and safe;
- adoption should be considered before long-term foster care or residential care;
- family preservation and cultural considerations are important, but not more important than the safety and wellbeing of the child;
- legal permanency is key in providing stability and permanency for children;
- adoption from foster care is a viable option where a child has an established and stable relationship with an authorised carer and adoption will promote the child's welfare; and
- decisions on whether a child may be able to safely return to their birth parent(s) must be made within a legislated timeframe, such as six months of an interim care order for children under two years old, or within 12 months for older children.

Adoption as a viable option for children in out-of-home care

- 3.1 This chapter provides an overview of the permanency planning hierarchy for children in out-of-home care including:
- reunification (also referred to as restoration);
 - permanent care orders (also known as third-party parental responsibility orders);
 - long-term finalised guardianship or custody orders; and
 - adoption.¹
- 3.2 The Committee heard that adoption is a lifelong solution² and can be an appropriate option for securing stability and permanency for children in long-term out-of-home care.³

1 Australian Institute of Health and Welfare (AIHW), 'Child protection Australia 2016-17', 2017, p. 78, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 6 September 2018.

2 See for example: Dr Karleen Gribble, *Submission 28*, p. [3]; Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24.

3 See for example: Dr Philip Mendes, *Submission 4*, p. 1; Name withheld, *Submission 10*, p. [1]; The Centre for Independent Studies, *Submission 15*, p. 2; Dr Karleen Gribble, *Submission 28*, p. [2]; ACT Government, *Submission 35*, p. 1; Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. [1]; EY (Ernst & Young), *Submission 51*, p. 1; Barnardos Australia, *Submission 52*, p. 1; Rainbow Families NSW, *Submission 95*, p. 3.

Terminology

3.3 The following table illustrates how terminology used to describe permanency planning options for children in out-of-home care (OOHC) varies between the states and territories.

Table 3.1 Permanency-related planning and action in legislation and policy (2016)

Jurisdiction	Planning	Actions	
		<i>Reunification</i>	<i>Alternative care</i>
NSW	Permanency planning	Family preservation Restoration	Permanent placement: Guardianship Adoption Parental responsibility to the Minister
Vic	Permanency planning (case planning with state permanency objective)	Family preservation Family reunification	Alternative care arrangements: Permanent care (including care by Secretary) Long-term OOHC Adoption
Qld	Permanency planning	Reunification	Long-term alternative care: Long-term guardianship order to the Chief Executive Long-term guardianship order to a suitable member of the child's family (other than the parent of a child) or to a suitable person Adoption
WA	Permanency planning Parallel process: primary (reunification wherever possible) and secondary (OOHC) permanency plans	Reunification (primary permanency plan)	Long-term OOHC (secondary permanency plan): Protection order (until 18) Protection order (special guardianship) Parenting order (Family Court of WA) Carer adoption
SA	Placement planning Permanency planning	Reunification	OOHC long-term placement options (alternative care): Other person guardianship Guardianship of the Minister to 18 years
Tas	Case planning processes Stability planning	Reunification	Permanent care arrangements: Guardianship of the secretary to 18 years Guardianship of permanent carer Adoption
ACT	Care plans—stability proposals	Restorations Stability proposals	Long-term placement: Long-term parental responsibility provision Enduring parental responsibility provision Family law parenting order Adoption

Jurisdiction	Planning	Actions	
		Reunification	Alternative care
NT	Care planning Permanency/stability planning	Family preservation Reunification	Placement arrangement: Permanent care order Protection order—long-term parental responsibility direction Adoption

Source Australian Institute of Health and Welfare, 'Permanency planning in child protection: A review of current concepts and available data 2016', *Child Welfare Series No. 64*, 2016, pp. 9-10, <<https://www.aihw.gov.au/getmedia/792f5576-eeca-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true>> viewed 8 October 2018.

3.4 The terminology used in this chapter is based on the national definitions used by the Australian Institute of Health and Welfare (AIHW) and the Commonwealth Department of Social Services.

Out-of-home care

Definition

3.5 The AIHW defines out-of-home care as:

Overnight care for children aged 0–17 years, where the state makes a financial payment or where a financial payment has been offered but has been declined by the carer.⁴

3.6 Out-of-home care can include residential care, family group homes, foster care, relative or kinship care, independent living and other placement types such as boarding schools or hospitals.⁵

3.7 As noted in Chapter 1, as at 30 June 2017 there were 47 915 children in out-of-home care in Australia.⁶

Impacts of out-of-home care

3.8 The Committee heard that a stable and permanent home helps a child to develop secure attachments, a strong sense of identity and belonging and to repair from trauma.⁷

4 AIHW, 'Child Protection Glossary' <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/child-protection/glossary>> viewed 10 October 2018.

5 AIHW, 'Child Protection Glossary' <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/child-protection/glossary>> viewed 10 October 2018.

6 Department of Social Services, *Submission 40*, p. 2.

- 3.9 Hope For Our Children submitted that once children are in the out-of-home care system, particularly foster care, they are likely to experience multiple placements.⁸ Similarly, Adopt Change Limited provided evidence that, according to a 2011 study of children who had been in state out-of-home care in Victoria and Western Australia:
- 40 per cent had experienced between two and five placements;
 - 14 per cent had experienced between six and 10 placements; and
 - 32 per cent had experienced over 11 placements.⁹
- 3.10 Barnardos Australia expressed the view that the ‘biggest risk’ for children in out-of-home care is the lack of permanency and stability.¹⁰ Indeed, a number of submitters advised that children in out-of-home care who experience multiple placements, or are in care for extended periods of time, are at higher risk of poor physical, social and emotional outcomes.¹¹
- 3.11 Ms Kathryn Mandla, Branch Manager, Children’s Policy Branch, Department of Social Services, explained some of the impacts of instability in long-term out-of-home care:
- ... the research is pretty consistent on this – that when children have extended periods in out-of-home care, when they drift in care, it's been linked with negative outcomes for mental health and wellbeing, and educational attainment. They often have trouble finding suitable accommodation and often have poor employment outcomes, life satisfaction and relational stability. In relation to some of the more severe impacts, we know there's a link between drifting in care and homelessness, disproportionately high rates of substance abuse, and vulnerability to further abuse and violence.¹²
- 3.12 A number of submitters noted the importance of permanency and stability in forming secure parent/caregiver attachments.¹³ Instability in

7 See for example: Mr William Hammersley, *Submission 34*, p. [3]; Dr Nicola Ross, *Submission 49*, p. [2]; Name withheld, *Submission 60*, p. 2; Relationships Australia South Australia, *Submission 69*, p. 7; Institute of Open Adoption Studies, *Submission 76*, p. 8.

8 Hope For Our Children, *Submission 45*, p. 11.

9 Adopt Change Limited, *Submission 77*, p. 3.

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

11 Department of Social Services, *Submission 40*, p. 2; EY, *Submission 51*, p. 1; Jakob’s Voice, *Submission 63*, pp. 5-6; Anglicare Sydney, *Submission 67*, p. 7; Adopt Change, *Submission 77*, p. 3, 14; NSW Committee on Adoption and Permanent Care Inc., *Submission 89*, p. 4.

12 Ms Kathryn Mandla, Branch Manager, Children’s Policy Branch, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 8; see also Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 8.

13 Name withheld, *Submission 23*, p. [6]; Hope For Our Children, *Submission 45*, p. 11; Relationships Australia SA, *Submission 69*, pp. 7-8; Adopt Change, *Submission 77*, p. 15; Australian Human Rights Commission, *Submission 103*, p. 14.

placements for children in out-of-home care, especially for younger children, may risk children failing to develop strong and secure attachments. According to attachment theory, disruption in the child-caregiver relationship in the early years can have significant impacts on social, emotional and cognitive development.¹⁴ For example, children that fail to form secure attachments may have:

- difficulty developing healthy relationships later in life;
- lower self-esteem;
- higher anxiety;
- more behavioural difficulties;
- poorer educational outcomes; and
- a higher risk of homelessness, addiction and entry into the juvenile justice system.¹⁵

3.13 Adopt Change noted that many children in out-of-home care have experienced trauma prior to entering the system, which can compromise their emotional and neurological development.¹⁶ Such children may be more vulnerable to placement breakdown, and therefore multiple placements, which can in turn re-traumatise them.¹⁷ Adopt Change, the Institute of Open Adoption Studies and Relationships Australia South Australia all submitted that secure attachments and meaningful, sustained and positive relationships can mediate the impacts of trauma and help children to heal.¹⁸

3.14 Children who have experienced trauma and may have complex needs, including psychological difficulties, may be more likely to continue to experience instability in out-of-home care placements. A report by the Australian Institute of Family Studies on outcomes for children and young people in care found that:

- children who had six or more placement changes were 3.38 times more likely to experience further placement disruption;
- placement disruption is greater for boys and for children in the country; and

14 Australian Institute of Family Studies (AIFS), 'Children's attachment needs in the context of out-of-home care', <<https://aifs.gov.au/cfca/publications/childrens-attachment-needs-context-out-home-care>> viewed 6 September 2018.

15 Hope For Our Children, *Submission 45*, p. 11; Anglicare Sydney, *Submission 67* p. 7; Relationships Australia SA, *Submission 69*, p. 7.

16 Adopt Change, *Submission 77*, pp. 12-13.

17 Adopt Change, *Submission 77*, p. 13.

18 Relationships Australia SA, *Submission 69*, p. 8; The Institute of Open Adoption Studies, *Submission 76*, p. 8; Adopt Change, *Submission 77*, p. 13.

- young people with mental health and behavioural problems were least likely to achieve placement stability.¹⁹
- 3.15 Adopt Change submitted that findings such as these demonstrate that children with complex needs that can potentially be mediated by permanent, stable relationships are instead more likely to remain within the out-of-home care system.²⁰
- 3.16 A number of submitters suggested that the significant consequences of instability in out-of-home care demonstrate the critical importance of providing stability and permanency of care to children and young people who are unable to live with their birth families.²¹
- 3.17 The Committee heard that permanency can provide children with a sense of security and belonging, prevent children drifting in care, and encourage the development of healthy relationships and identity.²² This sense of stability and permanency is best for positive development, and is a strong predictor of improved outcomes for young people after they leave care.²³

Permanency planning

- 3.18 Permanency planning refers to the approach undertaken by state and territory departments responsible for child protection to achieve stable long-term care arrangements.²⁴
- 3.19 Permanency planning aims to reduce the amount of time a child is in out-of-home care, and includes prevention and reunification approaches as well as alternative long-term care considerations.²⁵
- 3.20 There are a number of pathways for permanency planning, with slight differences between each state and territory. Figure 3.1 provides a

19 AIFS, 'Outcomes for children and young people in care', October 2007, <<https://aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care>> viewed 8 October 2018.

20 Adopt Change, *Submission 77*, p. 14; see also Institute of Open Adoption Studies, *Submission 76*, p. 8.

21 Hope For Our Children, *Submission 45*, p. 4; Anglicare Sydney, *Submission 67*, p. 7; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 4; Connecting Foster and Kinship Carers SA Inc., *Submission 91*, p. 1.

22 EY, *Submission 51*, p. 4; Anglicare Sydney, *Submission 67*, p. 7.

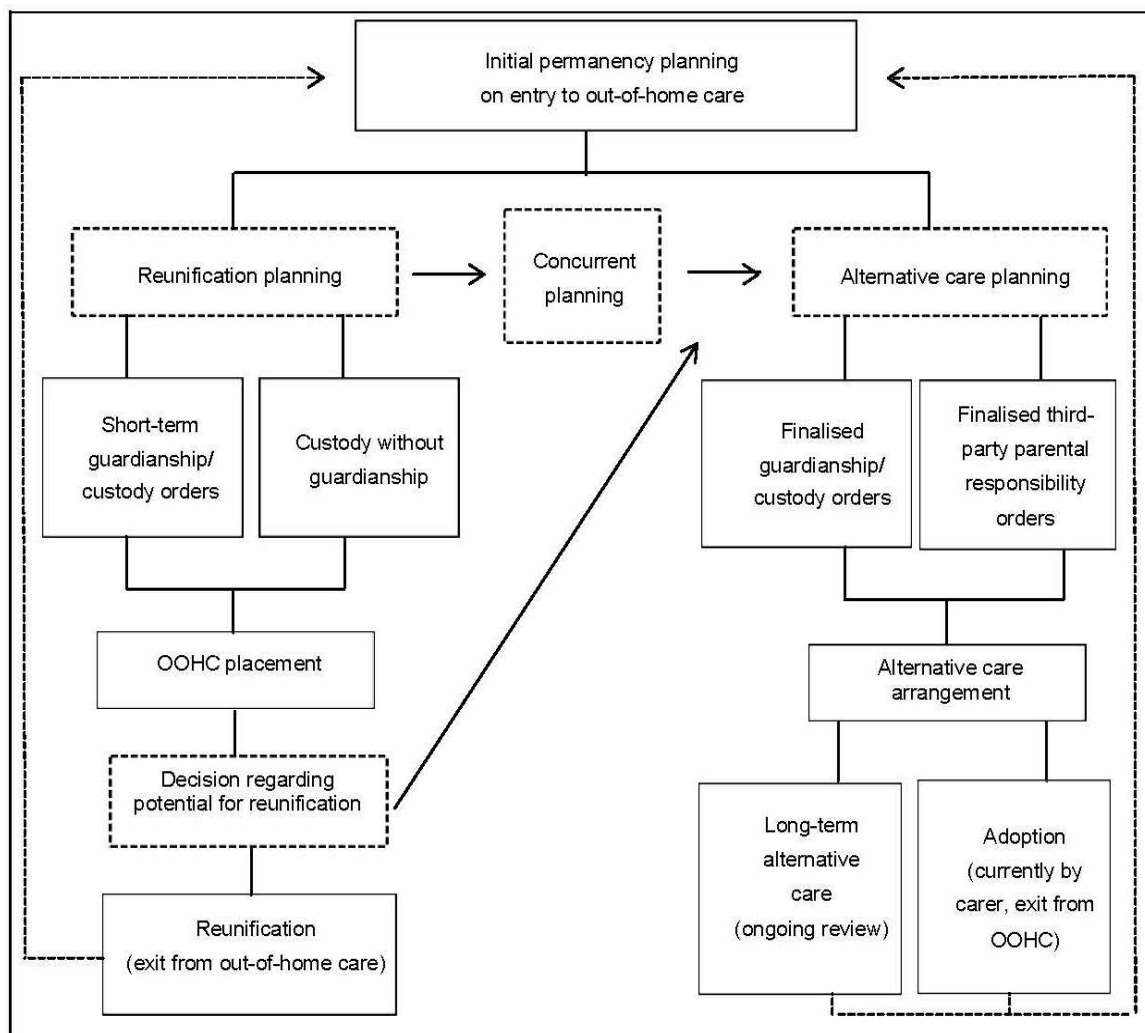
23 Department of Social Services, *Submission 40*, p. 2; Australian Human Rights Commission, *Submission 103*, p. 13.

24 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

25 Penny Mackieson, *Submission 61*, p. 10; Australian Institute of Health and Welfare, 'Permanency planning in child protection', p. 8, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 10 October 2018.

summary of the common steps involved in the permanency planning process.

Figure 3.1 Permanency Planning Process as at June 2016



Notes

1. Intervening steps and time frames vary across jurisdictions and plans for each child.
2. The term 'short-term orders' is not used or defined in the NSW *Children and Young Persons (Care and Protection) Act 1998*. Orders are either interim orders or final orders and are made for a specified period of time.
3. New South Wales does not classify children on guardianship orders (a subset of third-party parental responsibility orders) as being in scope for the national OOHC collection. Western Australia does not classify children under third-party parental responsibility orders as being in scope for the national OOHC collection. The term 'alternative care' (rather than 'out-of-home care') has been used to reflect this variation.
4. The implementation in some jurisdictions of concurrent or parallel planning and/or dual authorisation for carers may facilitate children moving from a long-term guardianship/custody order to adoption by carer.
5. In South Australia care orders do not provide a pathway to adoption, which is seen as a separate process.

Source Australian Institute of Health and Welfare, 'Permanency planning in child protection: A review of current concepts and available data 2016', p 8, <<https://www.aihw.gov.au/getmedia/792f5576-eecc-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true>> viewed 8 October 2018.

- 3.21 All states and territories undertake some form of permanency planning. While there are variations in terminology all states and territories consider the following permanency options:
- reunification or restoration;
 - third-party parental responsibility orders;
 - long-term finalised guardianship, custody or care (often until 18 years of age); and
 - adoption (excluding South Australia, which views adoption as a separate process).²⁶
- 3.22 The jurisdictions vary somewhat in their permanency hierarchies, with some placing adoption as a preference to long-term foster care. For example, New South Wales' permanent placement principles are (in order of preference):
1. returning a child to parents/kin, where appropriate and safe;
 2. arranging a permanent legal guardian, for Aboriginal children, or
 3. supporting and facilitating adoption.
- For a smaller number of children, when preservation, restoration, guardianship or open adoption is not possible:
4. providing long-term foster care or residential care under parental responsibility of the Minister.²⁷
- 3.23 A number of submitters noted the importance of planning for a permanent care option starting as early as possible after a child enters out-of-home care.²⁸ Early permanency planning may: reduce the number of placement changes a child experiences; prevent 'drifting in care'; and limit or mitigate the impact out-of-home care on the child's development and wellbeing.²⁹
- 3.24 While all jurisdictions undertake permanency planning, the Committee heard from some submitters that permanency planning is not always

26 AIHW, 'Permanency planning in child protection', 2016, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 6 September 2018.

27 NSW Government, *Submission 22*, pp. 7-8.

28 See for example: Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, p. 10; Association of Children's Welfare Agencies, *Submission 101*, p. 5; Australian Human Rights Commission, *Submission 103*, p. 4.

29 Institute of Open Adoption Studies, *Submission 76*, p. 8; Australian Human Rights Commission, *Submission 103*, p. 16.

carried out effectively, or in a child-centric manner.³⁰ For example, the Association for Children's Welfare Agencies submitted that there is a need for capacity building amongst case workers in the assessment of the most suitable permanency pathway.³¹ Additionally, the Committee heard that child-centric permanency planning for Aboriginal and Torres Strait Islander children is limited by a lack of proper mapping and identification of kin as a permanency option.³²

3.25 The Committee heard evidence that permanency planning should have regard for different types of permanency – legal, physical and relational.³³ Ms Penny Mackieson noted that of these, relational permanency was recently found to be the most important aspect of permanency for children and young people, whilst legal permanency was important for adult carers.³⁴ Similarly, Family Inclusion Strategies in the Hunter (FISH) and The Benevolent Society stated that relational permanence and continuity in relationships are critical for children, and should not be considered less important than physical or legal permanence.³⁵

3.26 However, the Committee also heard that legal permanence, such as is provided by adoption, is important in providing a sense of stability to children in out-of-home care. For example, Ms Renee Carter, Chief Executive Officer, Adopt Change, commented that permanency options, such as adoption, should be a 'service for children' and provide legal security and a sense of belonging to children.³⁶ Adopt Change submitted that adoption, as a permanency planning option, 'brings legal security and stability' that other permanency options cannot provide.³⁷

3.27 Barnardos Australia also commented on the legal permanence of adoption and submitted that:

Adoption carries a legitimacy and a true sense of legal belonging without which many foster children do not feel true safety...only

30 Name withheld, *Submission 60*, p. 3; Association of Children's Welfare Agencies, *Submission 101*, p. 5.

31 Association of Children's Welfare Agencies, *Submission 101*, p. 5.

32 Ms Natalie Lewis, Director, Secretariat of National Aboriginal and Islander Child Care (SNAICC), *Committee Hansard*, Canberra, 14 August 2018, p. 8.

33 Ms Penny Mackieson, *Submission 61*, p. 11; The Benevolent Society, *Submission 86*, p. 10.

34 Ms Penny Mackieson, *Submission 61*, p. 11; see also VANISH, *Submission 56*, pp. 11-12.

35 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, pp. [4-5]; The Benevolent Society, *Submission 86*, p. 10.

36 Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 6.

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

adoption can provide true stability without the risk of ongoing legal challenge.³⁸

3.28 Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, told the Committee that the legal security provided by adoption was important:

... it's the only way, and our children tell us this, that children feel safe that a social worker is not going to come and knock on the door and say, 'You might be going somewhere else'.³⁹

3.29 Berry Street and The Benevolent Society submitted that permanency planning must be undertaken with the best interests of the child in mind. Decisions regarding permanency should be individualised, timely and child-centric.⁴⁰

3.30 The Committee received evidence in support of the New South Wales Government's approach to permanency planning. For example, Adopt Change submitted that New South Wales has been 'leading the way' in permanency planning.⁴¹ Similarly, Anglicare Sydney, Hope For Our Children and Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, submitted that the New South Wales Government's permanent placement principles should be the basis for a national approach to adoption.⁴²

Timeframes

3.31 A number of submitters told the Committee that timing is a key consideration in permanency planning. Planning must begin as soon as a child enters the out-of-home care system, with the final permanency decision being made within a timeframe guided by the child's age, developmental needs, and time in care.⁴³

3.32 Mrs Cath Halbert, Group Manager, Department of Social Services informed the Committee that all states and territories understand the importance of timing in permanency planning. Mrs Halbert stated:

I think it's fair to say that all jurisdictions have moved to an approach where they're planning for permanency even while

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

39 Ms Deidre Cheers, Chief Executive Officer, Barnardos Australia, *Committee Hansard*, Canberra, 22 June 2018, p. 23.

40 Berry Street, *Submission 70*, p. [5]; The Benevolent Society, *Submission 86*, p. 6.

41 Adopt Change, *Submission 77*, p. 11.

42 Hope For Our Children, *Submission 45*, p. 4; Anglicare Sydney, *Submission 67*, p. 12; Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 2.

43 Hope For Our Children, *Submission 45*, p. 13; EY, *Submission 51*, p. 4; Berry Street, *Submission 70*, p. [5]; Adopt Change, *Submission 77*, p. 18-19; The Benevolent Society, *Submission 86*, p. 6.

they're trying to reconcile the child with their family. They're trying for the ultimate outcome for the child, but if that's not to be achieved, then they're well down the path of planning by the time that decision is made.⁴⁴

3.33 As noted in Chapter 2, New South Wales, Tasmania and Victoria provide timeframes for permanency planning, including reunification attempts, of up to two years.⁴⁵

3.34 Under the Permanency Support Program in New South Wales each child has a case plan with the aim of achieving permanency within two years. Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, explained permanency planning time frames, introduced in 2014, to the Committee:

The legislation requires Family and Community Services to decide whether there's a realistic possibility of restoration within six months of making an interim order for children under the age of two years and within 12 months of making an interim order for older children.⁴⁶

3.35 Ms Czech clarified that the time frames relate to the period of time Family and Community Services are actively working with the child's family to determine whether restoration is possible. Ms Czech provided the following example:

If a child less than two years [old] was before the court today, and Family and Community Services officers decided restoration was a realistic possibility, there may, for example, be a two-year plan to work with parents and return that child home. So it [restoration] doesn't necessarily happen in the time frame. The time frame is more about the decision-making process.⁴⁷

3.36 A number of submitters expressed support for the New South Wales approach to timeframes for permanency decisions.⁴⁸

44 Mrs Cath Halbert, Group Manager, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 12.

45 SNAICC, *Submission 72*, p. [12].

46 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 6.

47 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 6.

48 The Centre for Independent Studies, *Submission 15*, p. 6; Hope For Our Children, *Submission 45*, p. 4; EY, *Submission 51*, p. 14; Institute of Open Adoption Studies, *Submission 76*, p. 21; Adopt Change, *Submission 77*, p. 19.

- 3.37 The Victorian Adoption Network for Information and Self Help (VANISH) suggested that sustained change may take more than two years and that there should not be arbitrary time frames on reunification. Rather, it should be decided on a case-by-case basis.⁴⁹

Permanency options

Preservation

- 3.38 All jurisdictions have policies to support family preservation so that, when it is in the best interests of the child, they can remain with their birth parents.⁵⁰
- 3.39 The primary aim of family preservation is to prevent children from entering the out-of-home care system in the first place.⁵¹ Anglicare Sydney explained that the role of family preservation services is to help vulnerable families ‘overcome barriers which are preventing healthy family relationships and functioning’.⁵²
- 3.40 However, the Committee also heard evidence suggesting that the current focus on pursuing family preservation at all costs can risk subjecting children to harm, further trauma, and disadvantage.⁵³
- 3.41 For example, Hope For Our Children submitted that the family preservation model has:
- ... trivialised the importance of children’s experience of recurrent assault, torture, deprivation of liberty, humiliation, fear, neglect and chaos, all of which guarantee tragic life outcomes, as mere “family dysfunction”. Such treatment in any other setting would be considered a crime and a violation of HR [human rights].⁵⁴
- 3.42 Similarly, Dr Jeremy Sammut told the Committee that children who are being reported to child protection departments remain at risk because:
- ... nothing is happening because the doctors, nurses, teachers and other social workers are reporting to the department, and the

49 VANISH, *Submission 56*, p. 9.

50 Berry Street, *Submission 70*, p. [8].

51 AIHW, *Submission 41*, p. 10; Ms Penny Mackieson, *Submission 61*, p. 10; Anglicare Sydney, *Submission 67*, p. 4

52 Anglicare Sydney, *Submission 67*, p. 4.

53 Hope For Our Children, *Submission 45*, pp. 16-17, 21; Name withheld, *Submission 99*, p. [2]; Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, pp. 8, 10.

54 Hope For Our Children, *Submission 45*, p. 17.

department is not doing anything because they are practising family preservation.⁵⁵

3.43 Dr Sammut further stated that:

... there is a culture of resistance, particularly within departments, around adoption, and the belief that family preservation should be pursued at all costs.⁵⁶

Reunification

3.44 Reunification, or restoration, is the priority for children in out-of-home care across all jurisdictions.⁵⁷ It refers to a planned process to safely return a child home after time in care to be with their birth parent(s), family, or former guardian.

3.45 Reunification occurs when it is in the child's best interests, and where it will safeguard their long-term stability and permanency.⁵⁸ The main aim is to restore and preserve the family unit, following the overarching principle that the most ideal home for a child is with their birth family.⁵⁹

3.46 The Committee heard from multiple submitters that where it is safe, reunification should be considered the best option for children in out-of-home care.⁶⁰

3.47 For reunification to occur, appropriate support services must be provided. Such services work with the family to address issues that may be preventing the family from functioning effectively. These may include housing, financial management, parent training, drug and alcohol rehabilitation, mental health services and domestic violence programs.⁶¹

55 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 8.

56 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 10.

57 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

58 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

59 Anglicare Sydney, *Submission 67*, p. 4.

60 Family Inclusion Network Queensland (Townsville) Inc., *Submission 17*, p. 7; EY, *Submission 51*, p. 1; Anglicare Victoria, *Submission 68*, p. [2]; Adopt Change, *Submission 77*, p. 21; Victorian Aboriginal Child Care Agency (VACCA), *Submission 78*, p. 3.

61 Australian Association of Social Workers, *Submission 24*, p. 2; VANISH, *Submission 56*, p. 9; SNAICC, *Submission 72*, p. [16]; Feminist Legal Clinic Inc., *Submission 73*, p. 2; The Benevolent Society, *Submission 86*, p. 9.

- 3.48 The Association of Children's Welfare Agencies submitted that appropriate family reunification must involve ensuring that support services are timely, accessible and provided to the birth family.⁶² It stated that a clear decision cannot be made about the child's future permanency if reunification efforts have not been properly attempted.
- 3.49 In general, there was agreement amongst submitters that where reunification cannot happen safely, and in a timely manner, other options for permanency should be considered for children in out-of-home care.⁶³

Permanent care (third-party parental responsibility) orders

- 3.50 As at 30 June 2017, 87 per cent of children who had been in out-of-home care for two or more years were on long-term care orders, 24 per cent of which were third party parental responsibility orders.⁶⁴
- 3.51 The AIHW defines third-party parental responsibility orders as:
An order that transfers all duties, powers, responsibilities, and authority to which parents are entitled by law to a nominated person(s) whom the court considers appropriate. The nominated person may be an individual, such as a relative, or an officer of the state or territory department responsible for child protection. Third-party parental responsibility may be ordered in the event that a parent is unable to care for a child, with parental responsibility then transferred to a relative, or other nominated person.⁶⁵
- 3.52 The most common form of third party responsibility orders are permanent care orders, which the AIHW defines as:
Orders granting permanent guardianship and custody of a child to a third party. Unlike adoption orders, permanent care orders do not change the legal status of the child, and they expire when the child turns 18 or marries. An application may be made to revoke or amend a permanent care order.⁶⁶

62 Association of Children's Welfare Agencies, *Submission 101*, p. 6.

63 EY, *Submission 51*, p. 1; Adopt Change, *Submission 77*, p. 21; Jigsaw Queensland Inc., *Submission 79*, p. 3.

64 AIHW, 'Child protection Australia 2016-17', 2017, p. 52, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

65 AIHW, 'Child protection Australia 2016-17', 2017, p. 74, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 10 October 2018.

66 AIHW, 'Adoptions Australia 2016-17', 2017, p. 53, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 October 2018.

- 3.53 Terminology differs between the states and territories. Examples of terminology used for such orders include:
- orders allocating parental responsibility – New South Wales;
 - permanent care orders – Northern Territory and Victoria;
 - long-term guardianship orders – Queensland and South Australia;
 - special guardianship orders – Western Australia
 - transfer of guardianship orders – Tasmania; and
 - enduring parental responsibility orders – Australian Capital Territory.⁶⁷
- 3.54 A 2016 review of permanency planning in child protection found that at 30 June 2015, most children on a permanent care order were placed with a relative, kin, foster carer or were in other home-based care.⁶⁸
- 3.55 The Committee heard that some states and territories promote permanent care orders over adoption.⁶⁹ The AIHW reported that for children being cared for by relatives, permanent care orders are preferred because adoption will risk distortion of biological relationships between family members.⁷⁰
- 3.56 A number of other submitters expressed preference for permanent care orders over adoption or long-term foster care.⁷¹ For example, Ms Evelyn Robinson, OAM, believed that a permanent open and honest care arrangement, rather than adoption, can provide children with the safety and stability needed for long-term healthy adjustment.⁷² Berry Street and Ms Penny Mackieson submitted that permanent care orders provide a suitable alternative option to adoption because the child continues to have contact with their birth family, and there is no mandatory change to the child's identity and birth certificate.⁷³ Similarly, Relationships Australia

67 Department of Social Services, *Submission 40*, pp. 3-4.

68 AIHW, 'Permanency planning in child protection A review of current concepts and available data', 2016, p. 15, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 10 October 2018.

69 Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 3; Mr Mick Naughton, Director, Children and Families Policy, Children, Families, Disability and Operations Division, Department of Health and Human Services, Victoria, *Committee Hansard*, Canberra, 22 June 2018, p. 2.

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

71 Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Name withheld, *Submission 12*, p. [1]; Name withheld, *Submission 20*, p. 2; Name withheld, *Submission 36*, p. [6]; Berry Street, *Submission 70*, p. [7].

72 Ms Evelyn Robinson, OAM, *Submission 9*, p. [1].

73 Ms Penny Mackieson, *Submission 61*, p. 7, 20; Berry Street, *Submission 70*, p. [5].

SA submitted that such orders are ‘more likely to support the child or young person’s development’ in cases where the child cannot live with their birth family.⁷⁴

- 3.57 The Committee heard that while permanent care orders may provide more permanency and stability than care options such as foster care, there are some key aspects that set it apart from adoption.
- 3.58 A number of submitters noted that permanent care orders are not truly ‘permanent’ in the sense that they do not provide a lifelong legal relationship. That is:
- they can be revoked;⁷⁵
 - there can be legal difficulties with:
 - ⇒ travelling or moving interstate⁷⁶
 - ⇒ applying for a passport⁷⁷
 - ⇒ claiming child support (if a couple separates) or paid parental leave;⁷⁸
 - they cease as soon as the child reaches 18 years of age;⁷⁹ and
 - they do not give adequate protections in the event of the death of a carer or the death of the child.⁸⁰
- 3.59 Dr Karleen Gribble, Adjunct Associate Professor, School of Nursing and Midwifery, Western Sydney University and Adopt Change submitted that legal barriers such as these can add unnecessary bureaucracy and legal costs, and contribute to a child’s sense of insecurity, reminding them that they do not ‘belong’ to the carer’s family.⁸¹ In turn this may undermine the stability and permanency sought by the permanent care order.

74 Relationships Australia SA, *Submission 69*, p. 13.

75 Barnardos Australia, *Submission 52*, p. 5; Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 6.

76 Name withheld; *Submission 30*, p. 2; Adopt Change, *Submission 77*, p. 9.

77 Name withheld, *Submission 3*, p. [2]; Name withheld, *Submission 59*, p. [2]; Institute of Open Adoption Studies, *Submission 76*, p. 12.

78 Institute of Open Adoption Studies, *Submission 76*, p. 12.

79 Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Barnardos Australia, *Submission 52*, p. 5; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 5.

80 Barnardos Australia, *Submission 52*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 13.

81 Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Adopt Change, *Submission 77*, p. 12.

Long-term finalised guardianship or custody orders

- 3.60 Noting the differences in terminology between states and territories, the AIHW defines long-term finalised guardianship or custody orders (also known as guardianship under the Minister) as involving:
- the transfer of legal guardianship to the relevant state or territory department or non-government agency. These orders involve considerable intervention in the child's life and that of their family, and are sought only as a last resort.⁸²
- 3.61 The AIHW notes that a guardianship order transfers responsibility for the welfare of the child to the guardian, but does not necessarily grant the right to make decisions about the day-to-day care of the child. This is given under custody orders.⁸³
- 3.62 The AIHW defines custody orders as:
- [orders that] place children in the custody of the state or territory department responsible for child protection, or a non-government agency. These orders usually involve the child protection department being responsible for the daily care and requirements of the child, while the parent retains legal guardianship.⁸⁴
- 3.63 As at 30 June 2017, 87 per cent of the children who had been in out-of-home care for two or more years were on long-term care and protection orders, 62 per cent of which were on long-term finalised guardianship or custody orders. Of these, 89 per cent were in home-based relative or kinship care or long-term foster care and eight per cent were in residential or family group homes.⁸⁵

Relative or kinship care

- 3.64 As at 30 June 2017, 47 per cent of children in home-based care were in relative or kinship care.⁸⁶ A number of submitters expressed support for relative or kinship care as the best option for children who must be removed from their families when restoration is not possible.⁸⁷

82 AIHW, *Submission 41*, p. 7.

83 AIHW, 'Child protection Australia 2016-17', 2017, p. 73, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 18 September 2018.

84 AIHW, *Submission 41*, p. 7.

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

86 Department of Social Services, *Submission 40*, p. 2.

87 Barnardos Australia, *Submission 52*, p. 8; Ms Dorothy Kowalski, *Submission 55*, p. [2]; Name withheld, *Submission 57*, p. 3; Mrs Jo Fraser, *Submission 75*, p. [1].

- 3.65 Some states and territories consider guardianship under kin or relatives to be akin to a third-party parental responsibility order and preference it as a permanency option. For example in New South Wales and Victoria guardianship in relative/kinship care is prioritised before adoption and parental guardianship under the Minister in the hierarchy of permanency options.⁸⁸ According to the New South Wales Government's *Pathways of Care Longitudinal Study*, relative/kinship care was determined to be the fastest growing form of out-of-home care in New South Wales.⁸⁹

Long-term foster care

- 3.66 Approximately 38 per cent of children in home-based out-of-home care in June 2016-17 were in foster care.⁹⁰ As noted earlier in this chapter, the Committee heard evidence that long-term foster care is not always a suitable option for children in out-of-home care.⁹¹
- 3.67 Associate Professor Karleen Gribble stated that:
- ... where family reunification isn't possible, long-term foster care is failing children. In fact, a system that is designed to support them can result in another form of abuse or system of abuse upon children. ... we can look at outcomes for children in long-term foster care and recognise that it actually serves children quite poorly...⁹²
- 3.68 The Institute of Open Adoption Studies also submitted that there is a lower rate of adoption breakdown compared to other placement types, including long-term foster care.⁹³ The Institute expressed support for adoption as a permanency option before long-term foster care.⁹⁴ Similarly, Anglicare Sydney and Adopt Change stated that when other permanency options have been exhausted, adoption is preferable to long-term foster

88 Anglicare Sydney, *Submission 67*, p. 3; Anglicare Victoria, *Submission 68*, p. [2]; Permanent Care and Adoptive Families, *Submission 87*, p. 1.

89 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 5; NSW Government, 'Pathways of Care Longitudinal Study', <<https://www.facs.nsw.gov.au/resources/research/pathways-of-care>> viewed 12 October 2018.

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

91 See for example: Department of Social Services, *Submission 40*, p. 2; Hope For Our Children, *Submission 45*, p. 11; EY, *Submission 51*, p. 1; Jakob's Voice, *Submission 63*, pp. 5-6; Anglicare Sydney, *Submission 67*, p. 7; Adopt Change, *Submission 77*, p. 3, 14; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 4.

92 Associate Professor Karleen Gribble, *Committee Hansard*, Canberra, 22 June 2018, p. 32.

93 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 4.

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

care and the risk of ‘bouncing’ around in the system.⁹⁵ Further, Barnardos Australia commented that it had moved to a policy of open adoption because it realised, through its long-term foster care programs, that children needed more security than was provided by long-term foster care.⁹⁶

- 3.69 The Committee received some evidence regarding the assessment of potential foster carers. The Association for Adoptees Inc. submitted that ‘the screening, training and follow up’ of foster carers is insufficient.⁹⁷ The Aboriginal Child, Family and Community State Secretariat (AbSec) advised that, during the recent Royal Commission into Institutional Responses to Child Sexual Abuse, the Royal Commissioner had noted that the screening processes for foster carers are not ‘foolproof’, and can miss key risks posed by prospective carers.⁹⁸
- 3.70 Ms Penelope Mackieson, Chair of VANISH, also commented that there can be flaws in the quality of the assessment of foster carers, allowing foster carers ‘doing it only for the money’ to become approved.⁹⁹ The Association of Children’s Welfare Agencies advised that in response to concerns about the quality of assessment of foster carers, it had reviewed its ‘Step-by-Step’ assessment and training process, but noted that the expectations embedded in the ‘Step-by-Step’ tool were not uniformly assumed across Australia. The Association further submitted that caseworkers must be properly trained and equipped to undertake a thorough assessment process.¹⁰⁰

Residential or family group homes

- 3.71 According to the AIHW, residential care and family group homes can be defined as:

Residential care: Placement in a residential building whose purpose is to provide placements for children and where there are paid staff.

Family group homes: Homes for children provided by a department or community-sector agency that have live-in,

95 Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 6.

96 Barnardos Australia, *Submission 52*, p. 1.

97 Association for Adoptees Inc., *Submission 19*, p. 4.

98 Aboriginal Child, Family and Community State Secretariat (AbSec), *Submission 46*, p. 11.

99 Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 9.

100 Association of Children’s Welfare Agencies, *Submission 101*, p. 5.

non-salaried carers, who are reimbursed and/or subsidised for providing care.¹⁰¹

- 3.72 As at 30 June 2017, eight per cent of children on a long-term guardianship order were living in residential care or family group homes.¹⁰²
- 3.73 The Committee heard that older children in out-of-home care, who may have ‘bounced around’ the system, were more likely to be in residential care.¹⁰³ The AIHW submitted that young people aged 15-17 were more likely to be in residential care than other children.¹⁰⁴
- 3.74 Additionally, the Committee received evidence that children with complex needs are more likely to live in residential care, having suffered abuse and neglect, with long histories of departmental involvement.¹⁰⁵ Ms Barbara Bennett, Deputy Secretary, Department of Social Services, commented that residential living arrangements are ‘not really a satisfactory outcome’ for children.¹⁰⁶ Indeed, the AIHW reported that children in other forms of home-based out-of-home care have better developmental outcomes than those residing in residential care.¹⁰⁷

Adoption

- 3.75 As explained in Chapter 1, for the purposes of this report adoption encompasses all forms of legal adoption in Australia.
- 3.76 The Department of Social Services submitted that adoption is the most secure and ongoing option of permanent care, in cases where a child cannot be reunified with their birth family.¹⁰⁸

101 AIHW, ‘Child protection Australia: 2016-17’, p. 43, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

102 AIHW, ‘Child protection Australia: 2016-17’, 2017, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

103 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 10.

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

105 Hope For Our Children, *Submission 45*, p. 14; AIHW, ‘Child protection Australia: 2016-17’, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 18 September 2018.

106 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 7.

107 AIHW, ‘Child protection Australia: 2016-17’, 2017, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

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

- 3.77 The Committee heard that adoption is life-long¹⁰⁹ and as part of sound permanency planning, adoption is one way to provide safety and stability for some children in out-of-home care.¹¹⁰
- 3.78 Associate Professor Karleen Gribble submitted that adoption can provide a number of benefits to children, including that:
- adoption provides stability for children in out-of-home care, with adoption disruptions being rare;
 - adoption provides life-long belonging for children in out-of-home care, and equal status with other children born into the family; and
 - in contrast to permanent care orders, the legal recognition of the child's status in the family continues beyond 18 years of age.¹¹¹
- 3.79 Some submitters expressed support for adoption above other permanency options, including permanent care orders. For example, Barnardos Australia submitted that adoption is the only permanency option that can provide 'true stability' by removing the risk of legal challenges.¹¹²
- 3.80 Dr Jeremy Sammut, Senior Research Fellow at the Centre for Independent Studies, also expressed strong support for adoption over long-term foster care and permanent care orders. He stated:
- ... adoption is a better option because it goes closest to recreating the biological bonds between parent and child that are intrinsic to families. For children as well, by recreating that relationship as best we can, it's a relationship for life. It's not just until they're 18. With adoption, you've bought it: you're a family, and you deal with all the vicissitudes and problems that happen, but it's permanent, and it provides increased stability.¹¹³
- 3.81 These views were supported by Adopt Change, who submitted:
- Outcomes for children who have grown up in foster care, compared with children who have been adopted, strongly indicate

109 See for example: Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24.

110 Miss Shannon Jade Burns, *Submission 2*, p. 2; Dr Philip Mendes, *Submission 4*, p. 1; Name withheld, *Submission 10*, p. [2]; The Centre for Independent Studies, *Submission 15*, p. 2; Associate Professor Karleen Gribble, *Submission 28*, p. [2]; ACT Government, *Submission 35*, p. 1; Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. [1]; Barnardos Australia, *Submission 52*, p. 1; Name withheld, *Submission 60*, p. 2; Institute of Open Adoption Studies, *Submission 76*, p. 4; Rainbow Families NSW, *Submission 95*, p. 3.

111 Associate Professor Karleen Gribble, *Submission 28*, pp. [2-3].

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

113 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 6.

that adoption provides greater benefits to those children both in terms of general well-being, as well as specific areas such as cognitive competence and education outcomes.

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 well-being expressed by those growing up as adopted compared with those fostered long term.¹¹⁴

Open adoption

- 3.82 The Committee was advised that most adoptions that have proceeded in recent years have been considered 'open adoptions'.
- 3.83 Open adoption is a form of adoption in which:
- information sharing or contact between the birth parents and adoptive parents is facilitated;¹¹⁵
 - the origins of children are acknowledged;¹¹⁶
 - connections with birth parents and extended families are encouraged;¹¹⁷ and
 - links with the child's culture and identity are developed as part of the obligations of adoptive parents.¹¹⁸
- 3.84 EY (Ernst & Young) submitted that open adoption practices, which do not disconnect children from their biological heritage, are more beneficial for a child than long-term foster care. EY suggested that with appropriate planning, including contact with birth families, open adoption could be of benefit to more children in out-of-home care than it currently is.¹¹⁹
- 3.85 A number of submitters advised the Committee that there is a significant body of research that demonstrates the benefits of open adoption in bringing stability and permanency to the lives of children in out-of-home care. The ACT Government and Anglicare Sydney submitted that such research has demonstrated the long term social and emotional benefits for children who have been adopted from out-of-home care.¹²⁰ Similarly the Institute for Open Adoption Studies submitted that there is robust evidence that open adoption, particularly early in a child's life, can

114 Adopt Change, *Submission 77*, pp. 7-8.

115 Berry Street, *Submission 70*, p.[3].

116 EY, *Submission 51*, p. 3.

117 EY, *Submission 51*, p. 3.

118 EY, *Submission 51*, p. 3.

119 EY, *Submission 51*, p. 4.

120 ACT Government, *Submission 35*, p. 2; Anglicare Sydney, *Submission 67*, pp. 6-7.

- improve children's developmental outcomes and provide a stronger sense of security and belonging.¹²¹
- 3.86 Barnardos Australia also submitted that, as part of moving toward a policy of open adoption, the organisation monitored international research studies in adoption.¹²² Barnardos noted that the literature demonstrates that children who are adopted may have:
- higher stability rates and lower placement breakdowns;
 - improved cognitive and educational outcomes; and
 - improved mental and physical health.¹²³
- 3.87 Other submitters suggested that there is a need for a cautious approach. Family Inclusion Strategies in the Hunter (FISH) expressed concern that there is limited research regarding the experience of open adoption from out-of-home care in Australia, particularly the practice of 'openness' after the adoption is complete.¹²⁴ Similarly, Dr Nicola Ross and The Benevolent Society expressed a need for a cautious approach to open adoption because of limited research into the outcomes of open adoption in Australia.¹²⁵
- 3.88 EY agreed that the evidence for outcomes of open adoption in Australia is sparse and noted that this is due to of the limited number of open adoptions that have occurred to date.¹²⁶ However Mr Mark Galvin, Partner at EY, noted that the evidence that does exist, from studies conducted by Barnardos Australia and the Institute of Open Adoption Studies, indicates that outcomes for children in open adoptions are more positive than those children remaining in out-of-home care.¹²⁷ Mr Galvin further noted that other permanency options, such as permanent care orders, also have limited evidence regarding post-order safety, welfare and contact.¹²⁸
- 3.89 The need for further research about adoption in Australia, including open adoption, is discussed further in Chapter 5.
- 3.90 While a number of submitters expressed support for adoption, particularly open adoption, there was a general consensus that adoption

121 Institute of Open Adoption Studies, *Submission 76*, pp. 4, 16.

122 Barnardos Australia, *Submission 52*, p. 1.

123 Barnardos Australia, *Submission 52*, p. 1.

124 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, pp. [6-7].

125 Dr Nicola Ross, *Submission 49*, pp. 1-2; The Benevolent Society, *Submission 86*, p. 14.

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

127 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 4.

128 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 6.

should not be seen as the panacea for children in care.¹²⁹ The Committee also heard that open adoption may not be appropriate for all children in long-term out-of-home care.¹³⁰ For example, older children may experience more breakdowns of adoptions than young children.¹³¹

- 3.91 The Committee heard several key concerns regarding the use of adoption to provide permanency and stability to children in out-of-home care. These concerns were raised both as arguments against adoption, as well as points of consideration for any potential national framework for adoption. The concerns included that:
- adoption severs legal ties between a child and their biological family;¹³²
 - adoption can remove a child's identity, including by replacing their birth certificate;¹³³ and
 - adoption may impact identity development and mental health.¹³⁴
- 3.92 Such concerns appear to primarily arise from the legacy of past forced adoption policies in Australia. These policies caused significant harm to both the adopted children and to the parents from whom the children were removed.
- 3.93 The legacy of past forced adoptions, including issues of identity and birth certificates, are discussed further in Chapter 4.

129 VANISH, *Submission 56*, p. 12; Feminist Legal Clinic, *Submission 73*, p. 4; Australian Human Rights Commission, *Submission 103*, p. 20; Ms Nikki Hartmann, Manager, Post Adoption and Forced Adoption Support Services, Relationships Australia SA, *Committee Hansard*, Canberra, 19 June 2018, p. 7; Ms Cathy Taylor, Chief Executive, Department for Child Protection, South Australian Government, *Committee Hansard*, Canberra, 22 June 2018, p. 5; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 1; Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 2.

130 Dr Patricia Fronek and Professor Denis Cuthbert, *Submission 6*, p. 10; Barnardos Australia, *Submission 52*, p. 6; The Institute of Open Adoption Studies, *Submission 76*, p. 4; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 1.

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

132 See for example: Family Inclusion Network (Townsville), *Submission 17*, p. 2; Name withheld, *Submission 21*, p. [1]; VANISH, *Submission 56*, p. 18; Ms Penny Mackieson, *Submission 61*, pp. 5-6; Origins Supporting People Separated by Adoption Inc., *Submission 66*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 10; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 3; Adoptee Advocacy and Information Service SA, *Submission 94*, p. 3.

133 See for example: Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 5; Name withheld, *Submission 21*, p. [1]; Associate Professor Karleen Gribble, *Submission 28*, p. [4]; VANISH, *Submission 56*, p. 17.

134 See for example: VANISH, *Submission 56*, p. 9; Jakob's Voice, *Submission 63*, p. 6.

Permanency planning for Indigenous children

- 3.94 As discussed in Chapter 2, The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) provides a hierarchy, in order of preference, for the placement of Indigenous children to ensure that they remain connected to their family, community, culture and country.¹³⁵
- 3.95 While the Principle is reflected in legislation and policy in all Australian jurisdictions,¹³⁶ and was supported by many submitters,¹³⁷ concerns were raised about the effectiveness of its implementation.
- 3.96 AbSec and others submitted that compliance with the Principle remains poor.¹³⁸
- 3.97 The Secretariat of National Aboriginal and Islander Child Care (SNAICC) stated that the Principle was misunderstood and that implementation was inconsistent and ineffective. Concerns included:
- failure to identify Aboriginal and Torres Strait Islander children;
 - inadequate efforts to consistently look for placement options in consultation with family and community at each stage of the management of a child's care arrangements; and
 - lack of culturally appropriate kinship carer identification and assessment processes.¹³⁹
- 3.98 The Aboriginal Legal Service advised that the absence of cultural competence among casework staff, and a reticence to consult with extended family networks and the Aboriginal community, means that opportunities for placements consistent with the Principle are missed.¹⁴⁰ SNAICC and AbSec commented that the statutory child protection system

135 AIHW, 'Child protection Australia 2016-17', 2018, p. 49, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/contents/table-of-contents-print-report>> viewed 10 October 2018.

136 EY, *Submission 51*, p. 12; Institute of Open Adoption Studies, *Submission 76*, p. 23; AIHW, 'Adoptions Australia 2016-17', 2017, p. 47, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 October 2018.

137 AbSec, *Submission 46*, p. 16; EY, *Submission 51*, p. 12; SNAICC, *Submission 72*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 26; The Benevolent Society, *Submission 86*, p. 3, 11-12, 16; Aboriginal Legal Service (NSW/Act) Limited, *Submission 100*, p. 6; Association of Children's Welfare Agencies, *Submission 101*, p. 4; Australian Human Rights Commission, *Submission 103*, pp. 19, 24; Central Australian Aboriginal Congress Aboriginal Corporation, *Submission 105*, p. 2.

138 AbSec, *Submission 46*, p. 16; see also Aboriginal Medical Services Alliance NT, *Submission 92*, p. [3].

139 SNAICC, *Submission 72*, pp. 5-6.

140 Aboriginal Legal Service (NSW/ACT), *Submission 100*, p. 6.

is not currently best placed to undertake the required mapping and identification of kin needed to identify suitable placements for Aboriginal children.¹⁴¹ Ms Natalie Lewis, Director of SNAICC, stated that ‘sometimes cultural competency is knowing when you’re not best placed to do something’ and suggested that delegating the responsibility for mapping of kin to an appropriate agency would help to increase the proportion of Aboriginal children placed with kin.¹⁴²

- 3.99 In 2012, the United Nations Committee on the Rights of the Child found that poor implementation of the Principle was of serious concern in relation to the rights of Aboriginal and Torres Strait Islander children being placed in care.¹⁴³

Adoption under the Aboriginal and Torres Strait Islander Placement Principle

- 3.100 Over the past 25 years, 125 Indigenous children have been adopted. Half were adopted by Indigenous Australians and the other half adopted by other Australians.¹⁴⁴ In 2016-17, four Indigenous children were adopted. Of these children, one was adopted by Indigenous Australians and three were adopted by other Australians.¹⁴⁵
- 3.101 The Committee received mixed views on whether adoption of Aboriginal and Torres Strait Islander children is possible under the Principle.
- 3.102 The Australian Human Rights Commission advised that the Western concept of adoption is foreign to traditional Aboriginal and Torres Strait Islander child rearing practices that rely extensively on extended family networks.¹⁴⁶
- 3.103 The Australian Law Reform Commission’s 1986 report *Recognition of Aboriginal Customary Laws* stated:

It is common for a member of a child’s extended family, often a grandmother, to look after a child or children for periods of time where the parents are unable to do so for one reason or another. Sometimes these arrangements may extend for longer periods of

141 Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec); *Committee Hansard*, Canberra, 14 August 2018, p. 12; Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p.12.

142 Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p 12.

143 Institute of Open Adoption Studies, *Submission 76*, p. 24.

144 AIHW, ‘Adoptions Australia 2016-17’, 2017, p. 47, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 July 2018.

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

146 Australian Human Rights Commission, *Submission 103*, p. 17.

time, to the point where the child might be identified as permanently in the custody of the person(s) looking after him or her and thus regarded as having been adopted. But it would not usually be correct to describe such placements as 'adoptions', since there is no severing of the parent-child relationship but rather a long term arrangement for substitute care. If an equivalent must be found in the State child welfare systems it would be fostering rather than adoption.¹⁴⁷

- 3.104 The Committee was also advised that Torres Strait Islander peoples have a customary approach to adoption which involves the permanent placement of children with members of the extended family who are regarded by the community as the child's parents.¹⁴⁸
- 3.105 AbSec advised that it does not consider adoption as it is currently conceptualised and administered to be in the best interests of Aboriginal children and families.¹⁴⁹ Similarly, SNAICC submitted that adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.¹⁵⁰
- 3.106 The Institute of Open Adoption Studies similarly advised that adoption is not considered culturally appropriate for Aboriginal and Torres Strait Islander children, for whom placement with kin is preferred.¹⁵¹
- 3.107 The Committee heard that The Benevolent Society does not support adoption as an appropriate option for Aboriginal and Torres Strait Islander children¹⁵² and Barnardos Australia does not take referrals for Aboriginal children for open adoption.¹⁵³
- 3.108 In relation to whether the Principle allows for the adoption of Aboriginal and Torres Strait Islander children, Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women, Queensland Government, advised the Committee that adoption legislation in Queensland:

147 Australian Human Rights Commission, *Submission 103*, p. 17; Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws', Report 31, 1986, <<https://www.alrc.gov.au/publications/report-31>> viewed 12 October 2018.

148 Australian Human Rights Commission, *Submission 103*, p. 17.

149 AbSec, *Submission 46*, p. 17.

150 SNAICC, *Submission 72*, p. 14.

151 Institute of Open Adoption Studies, *Submission 76*, p. 4.

152 The Benevolent Society, *Submission 86*, p. 11.

153 Barnardos Australia, *Submission 52*, p. 7.

... certainly doesn't preclude adoption of those children but it ensures that the Aboriginal and Torres Strait Islander child placement principle is complied with in relation to making adoption decisions for Aboriginal and Torres Strait Islander children.¹⁵⁴

- 3.109 EY noted that legislation does not prevent the open adoption of Aboriginal children, but in practice this pathway is available almost exclusively to non-Aboriginal children.¹⁵⁵
- 3.110 The New South Wales Government advised that when returning an Aboriginal child to their family is not possible, and they are unable to live with relatives or kin, a placement with a non-related person in the Aboriginal community or a suitable person may be considered.¹⁵⁶
- 3.111 The Central Australian Aboriginal Congress urged the Committee to:
... disregard the negative and frequently ignorant public commentary around the issue of the adoption of Aboriginal children by non-Indigenous families as this is not impeded by the Aboriginal Child Placement Principle.¹⁵⁷
- 3.112 The AIHW reports that since 1992-93, of 125 Indigenous children adopted, 50 per cent were adopted by Indigenous Australians and 50 per cent by other Australians.¹⁵⁸
- 3.113 Importantly, the Committee was advised that the safety of Aboriginal and Torres Strait Islander children is paramount over cultural considerations.¹⁵⁹ Ms Natalie Lewis, Director, SNAICC stated:
Every jurisdiction holds that child safety and wellbeing is a paramount principle. Our children have the same right and expectation of safety as all Australian children. In this there is no ambiguity and there is no double standard.¹⁶⁰

154 Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women, Queensland, *Committee Hansard*, Canberra, 22 June 2018, p. 9.

155 EY, *Submission 51*, p. 12.

156 NSW Government, *Submission 22*, p. 8.

157 Central Australian Aboriginal Congress Aboriginal Corporation, *Submission 105*, p. 1.

158 AIHW, 'Adoptions Australia 2016-17', 2017, p. 47, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

159 AbSec, *Submission 46*, p. 19; Professor Judith Cashmore, Socio-Legal Research and Policy, Sydney Law School, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, pp. 11-12.

160 Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p. 1.

Committee comment

- 3.114 The Committee notes the differences in legislation and terminology used by states and territories to describe the out-of-home care system.
- 3.115 The Committee encourages the states and territories to seek consistency in the terminology used for care and adoption. The Committee notes that a uniform national adoption law would assist toward that end.

Out-of-home care

- 3.116 The Committee notes the large number of children in out-of-home care as at June 2017. The Committee is concerned to hear that some children in out-of-home care may experience more than 11 placements during their time in care.
- 3.117 The Committee considers the instability of out-of-home care placements to be of extreme concern, due to the clear negative impacts this may have on children's future mental health, relationships, social behaviours and educational functioning.
- 3.118 The Committee understands that permanency can provide children with a strong sense of security and belonging and that this may help to ameliorate the negative consequences of time in out-of-home care.

Permanency planning

- 3.119 The Committee believes that it is essential for planning for permanency to begin as early as possible in a child's contact with the child protection system. The Committee is pleased that all states and territories initiate permanency planning processes at this time.
- 3.120 The Committee notes that the states and territories differ in their approaches to permanency planning, with many states or territories considering adoption to be the last step in the permanency planning process. However the Committee is concerned that prioritising long-term foster care, care under the parental responsibility of the Minister or residential care before adoption may not be in the best interests of the child.

Preservation and reunification

- 3.121 The Committee considers that it is in the best interests of the child to remain with family, but only if it is safe for them to do so.

Permanent care orders

- 3.122 The Committee considers permanent care orders to be an important permanency option for children in out-of-home care. Permanent care orders may provide more permanency and stability to children in out-of-home care than other options, such as foster care.
- 3.123 The Committee understands that permanent care orders are the preferred permanency pathway for children being cared for by relatives, to prevent distortion of biological relationships.
- 3.124 However, the Committee is concerned that permanent care orders are not truly 'permanent' and lifelong. The Committee is particularly troubled that permanent care orders can be revoked, do not give adequate protections to either the carer or the child in the event of a death, and may present legal difficulties for families wishing to travel or claim social welfare support. The Committee understand that such legal barriers could undermine the permanency and stability that a permanent care order is intended to provide.
- 3.125 The Committee is of the view that permanent care orders have a place in permanency planning, particularly for children who may move from out-of-home care into the care of relatives. However, the Committee believes that the appropriateness of a permanent care order must be considered on an individual, child-focussed, basis. It is vital that the safety and wellbeing of the child is prioritised, and permanent care orders do not always provide the stability and permanency needed.

Long-term finalised guardianship orders

- 3.126 The Committee considers that long-term finalised guardianship orders, excluding kinship care, are generally not a suitable option for children in out-of-home care. The Committee is concerned by evidence detailing the instability and insecurity of foster care placements, the risks that may be posed by insufficient assessment of foster carers, and the link to poor developmental outcomes for children in residential care.

Adoption

- 3.127 The safety and wellbeing of children is paramount. The Committee considers that the impact of being in long-term out-of-home care and experiencing multiple placements is too high a risk to a child's safety and wellbeing. The Committee is of the view that childhood is fleeting and that a safe, secure, permanent and stable option must be provided to children entering the out-of-home care system, within a child-centred timeframe.

- 3.128 The Committee is of the opinion that, when undertaken with the best interests of the child at the forefront of consideration, adoption can provide permanency and stability for many children in out-of-home care.

Open adoption

- 3.129 The Committee believes that 'open adoption' is the only form of adoption that should be considered, unless exceptional circumstances exist that render open adoption inappropriate. The Committee notes that instead of removing a child's identity or severing their connection to their biological heritage, open adoption encourages ongoing connection with biological family.
- 3.130 The Committee is encouraged by research indicating that when planned appropriately, open adoption can improve a child's developmental outcomes, wellbeing and sense of security and stability.
- 3.131 While the Committee acknowledges that adoption is not the panacea for children in out-of-home care in Australia, the Committee believes that it may be an appropriate option for many children within the system.
- 3.132 The Committee particularly supports the approach of New South Wales, in which the facilitation of adoption is prioritised above long-term foster care or residential care under the responsibility of the minister. The Committee feels that it is clear that long-term care under the parental responsibility of the minister may be detrimental for children's long-term health and wellbeing.
- 3.133 The Committee is strongly of the view that, as with all children, the safety of Aboriginal and Torres Strait Islander children is the paramount consideration.
- 3.134 Cultural considerations, while important, should not preclude Aboriginal and Torres Strait Islander children from the opportunity to have a safe and permanent home through adoption.
- 3.135 The Committee considers that adoption should be made more available for Aboriginal and Torres Strait Islander children in out-of-home care, and that this is consistent with the Aboriginal and Torres Strait Islander Child Placement Principle.
- 3.136 If any child's safety and wellbeing is at risk, open adoption should be considered as an option to provide safety, permanency and stability.

Recommendation 3

The Committee recommends that, when it is determined that it is not safe for a child in out-of-home care to be reunified with their parent(s) or placed in the care of kin, open adoption should be considered and progressed as a viable option in the best interests of the child.

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, <http://www.territorystories.nt.gov.au/bitstream/10070/244510/1/Anderson-210313-Support_for_adoption_apology_on_behalf_of_nation.pdf> viewed 3 October 2018.

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

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].

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

- 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;
 - financial and other support;
 - possible emotional effects, both short and long term, of relinquishing the child for adoption;

9 See for example: Dr Patricia Fronek 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.

- 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].

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

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

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 OOHC 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.

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

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:

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

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

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:
- ... 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:
-

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.

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;
- 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

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.

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 the creation of new birth certificates.⁴⁸ Similarly, the Committee was advised that foster parents, prospective adoptive parents, kinship carers,

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.

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

- 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
- 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:

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].

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.

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

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 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.

- 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

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 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

- 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 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

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.

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

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

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

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.

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.

- 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:
- 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

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.

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

- 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;
 - 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

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.

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

- 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
- 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
-

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.

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.

- 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

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.

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 OOH 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 OOH 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.

- 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.

Evidence based decision making

- 5.1 During the Committee's inquiry, many submitters and witnesses raised with the Committee the need for stronger data and research relating to adoption in Australia, in order to inform the making of best-practice policy and law.
- 5.2 This chapter considers how nationally agreed approaches to data collection and research could improve outcomes for children in out-of-home care and adopted children.

Current approaches to data collection

- 5.3 The Australian Institute of Health and Welfare (AIHW) is a national agency established under the *Australian Institute of Health and Welfare Act 1987* (Cth) to provide 'reliable, regular and relevant information and statistics on Australia's health and welfare'.¹
- 5.4 The AIHW manages Australia's national child protection and adoptions data collections.²
- 5.5 In addition to data collection and analysis, the AIHW also works to improve the quality and consistency of statistical information.³

National child protection data

- 5.6 The AIHW maintains the Child Protection National Minimum Data Set (CP NMDS), which is compiled from individual children's files (unit record data) from states and territories (other than New South Wales,

1 Australian Institute of Health and Welfare (AIHW), *Submission 41*, p. 3.

2 AIHW, *Submission 41*, p. 3.

3 AIHW, *Submission 41*, p. 3.

which provides aggregate data only).⁴ Jurisdictions provide data relating to:

- notifications of child protection matters;
- investigation and substantiation of cases;
- care and protection orders;
- living arrangements (including out-of-home care);
- foster and relative/kinship carers; and
- national standards for out-of-home care.⁵

National adoptions data

- 5.7 The AIHW's Adoptions Australia data collection is an aggregate data collection comprising information on finalised adoptions since 1990-91.⁶
- 5.8 An annual *Adoptions Australia* report has been produced since 1993, and now includes 25 years of trend data, with some caveats for data gaps.⁷
- 5.9 States and territories provide annual data about intercountry, local and known child adoptions to the AIHW for inclusion in the collection.⁸

Opportunities to improve data collection

- 5.10 The Committee was informed that there are concerns about the amount and quality of data collected to support decision making in relation to adoption and out-of-home care.
- 5.11 In its submission, Hope For Our Children noted that:
- In 2018 there is still no high-quality surveillance epidemiological data. There is also no auditing of outcomes, no national definitions or reporting data, practically no research to support the effectiveness of support services and no clear, accountable re-notification or re-substantiation statistics.⁹
- 5.12 Victorian Adoption Network for Information and Self Help Inc. (VANISH) submitted that:

4 AIHW, *Submission 41*, pp. 4-5.

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

6 AIHW, *Submission 41*, p. 5.

7 AIHW, *Submission 41*, p. 5.

8 AIHW, *Submission 41*, p. 5.

9 Hope For Our Children, *Submission 45*, p. 3.

Australian state/territory and national data is scarce, if not non-existent, regarding the characteristics of families that are subject to child protection intervention.¹⁰

- 5.13 The AIHW's submission highlighted that until New South Wales supplies unit record data for the CP NMDS (expected in 2019 after the implementation of new information management systems), the current data is of limited usefulness in analysing national outcomes and pathways through the child protection system.¹¹
- 5.14 The AIHW also advised that, as the adoptions collection is in aggregate data form, it cannot be linked with child protection data. The AIHW suggested that collecting unit-level rather than aggregate data would enable better understanding of the movement of children between the child protection system and adoption.¹²
- 5.15 The Centre for Independent Studies submitted that either the AIHW or the Productivity Commission could be tasked with developing a simpler and more meaningful 'key effectiveness data dashboard' that would provide data reporting on the national framework's 'goals, priorities, and outcomes'.¹³
- 5.16 Barnardos Australia suggested that as part of a national framework for adoption from out-of-home care, the AIHW could provide data on placement stability by state and territory, along with further information on the characteristics of known child adoptions.¹⁴
- 5.17 The Australian Human Rights Commission suggested a number of changes to the national adoption data collection, requesting:
- rates of adoption broken down by adoption type;
 - characteristics of adopted children and adoptive families;
 - success and breakdown rates for adoptions; and
 - an ongoing monitoring and review mechanism to gauge outcomes.¹⁵

10 Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, p. 19.

11 AIHW, *Submission 41*, p. 10.

12 AIHW, *Submission 41*, p. 10.

13 The Centre for Independent Studies, *Submission 15*, pp. 5-6.

14 Barnardos Australia, *Submission 52*, p. 8.

15 Australian Human Rights Commission, *Submission 103*, p. 25.

Consistency in definitions

- 5.18 The AIHW identified that a key problem with the collection and use of data on children in care and adopted children is inconsistencies in a number of definitions used by the states and territories.¹⁶
- 5.19 New South Wales and Western Australia do not define children on permanent third party care orders (orders granting permanent guardianship and custody that do not change the legal status of the child, and that expire when the child turns 18 or marries)¹⁷ as being in 'out-of-home care'. The AIHW is concerned that this inconsistency impairs comparison of interventions and outcomes.¹⁸
- 5.20 There is also no formal definition of what constitutes a child with 'special needs' as it relates to adoption¹⁹ or out-of-home care.
- 5.21 The Committee was informed that special needs, as related to adoption, has no legal definition in Australia, preventing national reporting on adoption statistics for these children. The AIHW outlines that special needs may comprise:
- mental or physical disabilities;
 - behavioural problems;
 - emotional disorders; and
 - other reasons that increase the difficulty of finding a suitable adoptive family, such as being an older child, or a child from a sibling group requiring placement together.²⁰
- 5.22 The AIHW also reported that many children who have experienced multiple placements might be considered as having 'special needs'.²¹
- 5.23 Moreover, AIHW advised that data is not collected on family reunification as there is no nationally agreed definition.²²
-

16 AIHW, *Submission 41*, p. 10.

17 AIHW, 'Adoptions Australia 2016-17', 2017, p. 53, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>>, viewed 10 July 2018.

18 AIHW, *Submission 41*, p. 10.

19 AIHW, 'Adoptions Australia 2016-17 - Quality Statement', 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

20 AIHW, 'Adoptions Australia 2016-17 - Quality Statement', 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

21 AIHW, 'Adoptions Australia 2016-17 - Quality Statement', 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

22 AIHW, *Submission 41*, p. 10.

5.24 Ms Louise York, Group Head, Community Services Group, AIHW told the Committee that:

In part, a lot of the issues with the data are about the lack of comparability of the legislation, policies and processes in the state[s] and us trying to make sense of that in the data. At the jurisdictional level, investment in more data is probably where it is required.²³

5.25 The AIHW advised that it is working with states and territories to address concerns about data gaps, data quality and inconsistent definitions.²⁴

Family preservation and reunification

5.26 The AIHW advised the Committee that no national data is collected on services to support family preservation (which, if successful, avoids the need for other care arrangements).²⁵

5.27 Submitters were concerned that data on restoration and reunification is not adequately collected or monitored. Hope For Our Children told the Committee that children in out-of-home care who have experienced multiple failed reunification attempts are not currently tracked,²⁶ and Family Inclusion Strategies in the Hunter (FISH) expressed concern about poor data collection of family restoration rates.²⁷

5.28 The Centre for Independent Studies recommended that the national framework include evidence-based data, including:

- repeat notifications of child protection cases;
- rates of family restoration and restoration breakdowns;
- re-entries into care;
- placement moves; and
- length of stay in care.²⁸

5.29 The Benevolent society stated that the AIHW is working to improve reporting by including a 'permanency/reunification' indicator.²⁹

23 Ms Louise York, Group Head, Community Services Group, AIHW, *Committee Hansard*, Canberra, 22 May 2018, p. 10.

24 AIHW, *Submission 41*, p. 4, 10.

25 AIHW, *Submission 41*, p. 10.

26 Hope For Our Children, *Submission 45*, p. 12.

27 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, p. [4].

28 The Centre for Independent Studies, *Submission 15*, p. 5.

29 The Benevolent Society, *Submission 86*, p. 14.

Data and research on children in out-of-home care

Permanency planning

- 5.30 Submitters told the Committee that further research needs to be undertaken on foster care, to help assess ways to reduce the numbers of children entering out-of-home care, and to best assist children who require placement into the future.³⁰
- 5.31 The United Nations Committee on the Rights of the Child has expressed concern over the lack of data recording the decision making process leading to an out-of-home care placement in Australia.³¹ The UN Committee urged Australia to collect information on the reasons children are placed in out-of-home care in order to work towards reducing the numbers of children being placed.³²
- 5.32 Similarly, Dr Nicola Ross and Ms Jessica Cocks agreed that Australia needs further research into child protection processes, given the large numbers of children who are affected by the child welfare system.³³
- 5.33 Hope For Our Children suggested that more needs to be done to determine the level of child welfare concerns along with outcomes of existing policies in order to develop 'evidence-based best practice'.³⁴
- 5.34 The Institute of Open Adoption Studies suggested that:
- ... future research is needed to examine the characteristics and circumstances of children and young people who remain in long-term foster care, or who have benefited from such arrangements to support informed decisions about which permanent placement is most appropriate for a given child.³⁵

Indigenous children in out-of-home care

- 5.35 The Institute of Open Adoption Studies submitted that there is no protocol in place to assess implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.³⁶ While the AIHW reports on the

30 Hope For Our Children, *Submission 45*, p. 3; Institute of Open Adoption Studies, *Submission 76*, p. 17; Australian Human Rights Commission, *Submission 103*, p. 11.

31 Australian Human Rights Commission, *Submission 103*, p. 11.

32 Australian Human Rights Commission, *Submission 103*, p. 11.

33 Ms Nicola Ross, private capacity, *Committee Hansard*, 11 September 2018, p. 5; Ms Jessica Cocks, President, Family Inclusion Strategies in the Hunter (FISH), *Committee Hansard*, 11 September 2018, p. 5.

34 Hope For Our Children, *Submission 45*, p. 3.

35 Institute of Open Adoption Studies, *Submission 76*, p. 17.

36 Institute of Open Adoption Studies, *Submission 76*, p. 24.

percentage of Indigenous children placed with kin or other Indigenous caregivers (including Indigenous residential care), there is no measure to determine adherence to processes for achieving 'familial and cultural connections'.³⁷

- 5.36 The Department of Social Services told the Committee that it is working in conjunction with the Secretariat of National Aboriginal and Islander Child Care (SNAICC) to develop a tool to help ensure consistent application of the Principle.³⁸
- 5.37 The United Nations Committee on the Rights of the Child recommended that data collection include data on Indigenous children in foster care, and that the information should be used to develop culturally sensitive policy.³⁹

Children with disabilities

- 5.38 The AIHW reports that data on the disability status of children in out-of-home care are not uniformly captured by states and territories. A preliminary analysis of disability status is available for 2016-17, based on data available for six jurisdictions. However, differences may exist in how disability is defined and how information is captured.⁴⁰
- 5.39 The New South Wales Government advised that capture of data around children with disabilities is poor, but that recent changes to information technology systems should improve data collection in the future.⁴¹
- 5.40 The AIHW also submitted that there are no national data on the disability status of adopted children. Data collection in the states and territories is not routinely or consistently collected and therefore is not required for national reporting on adoption.⁴²
- 5.41 The AIHW is working with jurisdictions to improve the availability of data on the disability status of adopted children.⁴³

37 Institute of Open Adoption Studies, *Submission 76*, p. 24.

38 Mrs Cath Halbert, Group Manager, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 10.

39 Australian Human Rights Commission, *Submission 103*, p. 10.

40 AIHW, 'Child protection Australia 2016-17', 2017, p. 46, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 20 September 2018.

41 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 13.

42 AIHW, *Supplementary Submission 41.1*, Answer to Question on Notice, p. 1.

43 AIHW, *Supplementary Submission 41.1*, Answer to Question on Notice, p. 1.

Outcomes for children in out-of-home care

- 5.42 The Committee heard that there is no national approach to research on outcomes for Australian children in out-of-home care including placement types such as kinship care, guardianship and other permanency orders. The Institute of Open Adoption Studies was concerned that there is an overreliance on international literature, which is based on different legislation and welfare systems.⁴⁴
- 5.43 Similarly, the AIHW highlighted a lack of available data on outcomes for children in out-of-home care, or after an out-of-home care placement. The AIHW suggested that long term indicators for outcomes might include:
- educational attainment;
 - employment status;
 - receipt of income support;
 - involvement with the youth justice system;
 - use of health and welfare services;
 - rate of homelessness;
 - rate of drug and alcohol abuse;
 - instances of mental illness; and
 - suicide rates.⁴⁵
- 5.44 The AIHW, the Department of Social Services and states and territories are collaborating to develop a framework for reporting and evaluation of permanency outcomes.⁴⁶

Research about adoption

Barriers to adoption

- 5.45 The *Barriers to Adoption in Australia* study undertaken by Adopt Change Limited (Adopt Change) in 2017 surveyed adoptive and prospective adoptive parents' experiences of the adoption process.⁴⁷
- 5.46 The study's key finding stated that 'though research on open adoption is growing, there remain significant gaps in the evidence base'.⁴⁸

44 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 7.

45 AIHW, *Submission 41*, pp. 10-11.

46 AIHW, *Submission 41*, p. 10.

47 Adopt Change Limited, *Submission 77*, p. 8.

- 5.47 The study found that further research on barriers to adoption (discussed above in Chapter 4) is required, and that the views of prospective adoptive parents were underrepresented in research studies on adoption.⁴⁹
- 5.48 Adopt Change also noted that the *Barriers to Adoption in Australia* study was told that there is a lack of awareness among prospective adoptive parents about access to post-adoption support.⁵⁰
- 5.49 In its report *Post-adoption support for adoptive families in Australia: Is it time for the 'Triple-A' approach?*, Adopt Change noted that there is a lack of data to establish changing or current demand for post-adoption support. The report advised that the AIHW and the Australian Bureau of Statistics do not provide quantitative insights on post-adoption support.⁵¹

Open adoption

- 5.50 The Committee was advised that while there is 'solid emerging research that open adoption is more beneficial for children than long-term foster care', the benefits to children of open adoption require further research.⁵²
- 5.51 As noted in Chapter 3, several submitters expressed concern that there has been limited research into open adoption outcomes. For example:
- The Institute of Open Adoption Studies recommended a longitudinal study.⁵³
 - Ms Simone Czech of the New South Wales Department of Family and Community Services told the Committee that the Department is interested in further research into outcomes for children who experience open adoption.⁵⁴

48 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 2, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf>, viewed 17 September 2018.

49 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 6, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf>, viewed 17 September 2018.

50 Adopt Change, *Exhibit 20: 'Barriers to Adoption in Australia'*, September 2017, p. 34, <https://engonetac.blob.core.windows.net/assets/uploads/files/Barriers_research_2017_v2.pdf>, viewed 17 September 2018.

51 Adopt Change, 'Post-adoption support for adoptive families in Australia: Is it time for the 'Triple-A' approach?' p. 3, <<https://engonetac.blob.core.windows.net/assets/uploads/files/Adopt%20Change%20Post%20Adoptive%20Research%202016%20-%202017052017.pdf>>, viewed 21 September 2018.

52 EY (Ernst & Young), *Submission 51*, p. 1.

53 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 6.

54 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 3, 8.

- EY (Ernst & Young) told the Committee that the two main aspects of open adoption requiring research are the sustainability of relationships between adoptees and birth families after an adoption, and the safety and wellbeing of children post adoption.⁵⁵
 - Dr Nicola Ross highlighted a gap in knowledge as to the ease of supporting contact with birth families, to 'reinforce those aspects of the adoption that actually make it open in the first place'.⁵⁶
- 5.52 Barnardos Australia also recommended that a national research project be established to study the attitudes and beliefs of caseworkers that result in decisions either for or against open adoption.⁵⁷

Sibling separation

- 5.53 As part of reporting under a national framework for adoptions from out-of-home care, Barnardos Australia recommended that the AIHW record details of sibling separation.⁵⁸
- 5.54 The Institute of Open Adoption Studies also advised that there is a lack of research into sibling co-placement.⁵⁹

Parental consent

- 5.55 The AIHW *Adoptions Australia 2016-17* report contained data related to parental consent and dispensation of parental consent in relation to local adoptions only (adoptions where the child generally has had no prior contact with the adoptive parents).⁶⁰
- 5.56 Family Inclusion Strategies in the Hunter (FISH) was concerned about the numbers of parental consents dispensed with, and commented that the data is 'opaque', and that 'practice continues to be shrouded in some secrecy'.⁶¹
- 5.57 As noted in Chapter 4, a complication relating to parental consent lies in suggestions that many birth parents will support an adoption, but not

55 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 4.

56 Dr Nicola Ross, private capacity, *Committee Hansard*, Canberra, 11 September 2018, p. 3.

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

58 Barnardos Australia, *Submission 52*, p. 8.

59 The Institute of Open Adoption Studies, *Submission 76*, p. 11.

60 AIHW, 'Adoptions Australia 2016-17', 2017, p. 27, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>>, viewed 17 September 2018.

61 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, p. [6, 10].

formally consent, due to concerns over how providing consent will be perceived by the child.⁶²

Potential adopters

- 5.58 National data is not collected on the number of people who have registered to adopt a child.⁶³
- 5.59 The AIHW acknowledges that the availability of information on prospective adoptive parents for local adoptions and carers approved to adopt has not yet been explored.⁶⁴
- 5.60 EY told the Committee that research on the numbers of foster parents currently caring for a child who would consider becoming adoptive parents would be beneficial.⁶⁵

Timeframes

- 5.61 The AIHW submitted that while national data are available on the length of time for intercountry adoptions to be finalised, there are no national data on the timeframes associated with adoptions of children from Australia.⁶⁶
- 5.62 The AIHW *Adoptions Australia 2016-17 Report – Quality Statement* identified that data capture is complex where it relates to timeframes to process adoptions from care, due to uncertainty about the point in the permanency planning process at which an adoption is deemed to have commenced. The availability of data for timeframes to process local adoptions is yet to be considered.⁶⁷

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

63 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, 22 May 2018, p. 7.

64 AIHW, 'Adoptions Australia 2016-17 – Quality Statement', 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

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

66 AIHW, *Submission 41*, p. 10.

67 AIHW, 'Adoptions Australia 2016-17 – Quality Statement', 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

Outcomes for adopted children

- 5.63 As discussed above, the Committee heard that there is no national approach in Australia to research the outcomes of children in various placement types, including open adoption.⁶⁸
- 5.64 Jakob's Voice submitted that:
- While short term social and economic indicators might support adoption over out-of-home care, the psychological impact on adoptees is not sufficiently well researched, and the long term social and economic outcomes are unknown.⁶⁹
- 5.65 The AIHW, the Australian Adoptee Rights Action Group and Mr William Hammersley were all concerned that limited data are available on outcomes for adoptees.⁷⁰
- 5.66 The Adoptee Advocacy and Information Service South Australia and The Benevolent Society both suggested that comprehensive national research be undertaken to assess and report on outcomes for adopted children.⁷¹
- 5.67 Some submitters shared specific concerns with the Committee about data and research gaps:
- The Royal Australian and New Zealand College of Psychiatrists is concerned that there has not been enough research undertaken in Australia into the mental health of adopted children, and that further research would help direct support to adoptees who may be at risk of mental illness.⁷²
 - Mrs Jo Fraser submitted that the rate of adoption breakdown in Australia is unknown, and expressed concern that follow up for adoptive families ceases twelve months after an adoption is finalised.⁷³ However, the Institute of Open Adoption Studies indicated that there has been some research in this area, which suggested a lower rate of breakdown for adoption compared with other types of placements. More stable placements are reported for children placed at a younger age.⁷⁴

68 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 6.

69 Jakob's Voice, *Submission 63*, p. 10.

70 Australian Adoptee Rights Action Group, *Submission 7*, p. 3; Mr William Hammersley, *Submission 34*, p. 1; AIHW, *Submission 41*, pp. 10-11.

71 The Benevolent Society, *Submission 86*, p. 15; Adoptee Advocacy and Information Service South Australia Inc., *Submission 94*, p. 1.

72 The Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. 2.

73 Mrs Jo Fraser, *Submission 75*, p. 2.

74 The Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 4.

- 5.68 The *Adoptions Australia 2016-17 Report – Quality Statement* explained that gathering data to assess long term outcomes for adopted children is difficult because after an adoption is finalised, it is difficult to identify an adoptee in administrative data, as they are legally no different from a child living with non-adoptive parents.⁷⁵
- 5.69 Similarly, the Aboriginal Child, Family and Community Care State Secretariat (AbSec) submitted that as adopted children are not considered to be in out-of-home care, approaches to data collection may not provide sufficient accountability and transparency when reporting on the safety, welfare and wellbeing of children placed on adoption orders.⁷⁶

Moving forward – pathways to improved data collection and research

The New South Wales Government approach

- 5.70 The Committee heard that the New South Wales Government has been investing in sector-wide research to inform an evidence-based approach to adoption. This includes the establishment of the Institute of Open Adoption Studies, a number of fora to discuss adoption, and commissioning research.⁷⁷
- 5.71 The New South Wales Department of Family and Community Services has also funded the *Pathways of Care Longitudinal Study* to improve decision-making and the support provided to children and young people who cannot live safely at home. This study:
- is the first large- scale longitudinal study of children in out-of-home care in Australia;
 - links data on child protection, out-of-home care placements, health, education and offending, and matches it to first-hand accounts from children, caregivers, caseworkers and teachers;
 - collects information on safety, permanency and wellbeing, and tracks children’s experiences and outcomes from birth; and

75 AIHW, ‘Adoptions Australia 2016-17 – Quality Statement’, 2017, <<http://meteor.aihw.gov.au/content/index.phtml/itemId/687176>>, viewed 17 September 2018.

76 Aboriginal Child, Family and Community Care State Secretariat (AbSec), *Submission 46*, p. 13.

77 NSW Government, *Submission 22*, pp. 6-7; Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, *Committee Hansard*, Canberra, 22 June 2018, p. 3.

- is interested in child developmental indicators including physical health, socio-emotional wellbeing and cognitive/learning ability.⁷⁸

A national longitudinal study for out-of-home care and adoption

- 5.72 The Institute of Open Adoption Studies suggested that a national longitudinal study drawing on administrative data and supplemented with qualitative research, could effectively report on outcomes and experiences of care and adoption for children, families and professionals.⁷⁹
- 5.73 The Institute submitted that targeted longitudinal research would be the 'most effective means of addressing the gaps in knowledge'.⁸⁰
- 5.74 Associate Professor Amy Conley Wright, Director of the Institute, was of the view that it will be 'critical to invest in research that follows children's experiences over time and their long-term outcomes'.⁸¹ Associate Professor Conley Wright suggested that longitudinal data is required to understand the outcomes for children in care and assess support arrangements and policies.⁸²
- 5.75 Similarly, Ms Sue Madden of Anglicare Sydney told the Committee that to inform best practice in adoption, Anglicare recommends that a longitudinal study be undertaken to evaluate long-term outcomes for children adopted from out-of-home care.⁸³
- 5.76 The Institute of Open Adoption Studies recommended a partnership approach, modelled on the Australian Research Council Centres of Excellence, consisting of government agencies, universities, research bodies and industry partners that could collate information in a similar way to the New South Wales longitudinal study.⁸⁴

78 Institute of Open Adoption Studies, *Submission 76*, pp. 8-9; NSW Government, 'Pathways of Care Longitudinal Study', <<https://www.facs.nsw.gov.au/resources/research/pathways-of-care>> viewed 12 October 2018.

79 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 3.

80 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 6.

81 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, Faculty of Arts and Social Sciences, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, p. 9.

82 Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, Faculty of Arts and Social Sciences, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, p. 9.

83 Anglicare Sydney, *Submission 67*, p. 15; Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 25.

84 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 6.

Committee comment

- 5.77 The Committee acknowledges the collaborative efforts of the AIHW, Commonwealth, state and territory governments to improve data collection and research on child protection and adoption.
- 5.78 However, the Committee agrees with many submitters that there is further work to be done. In particular, there is a need to improve our understanding of the circumstances and outcomes for children in out-of-home care and children who are adopted, in order to make better permanency decisions and achieve better outcomes.

Addressing gaps in data – improvements in data collection

- 5.79 The Committee is concerned that there are gaps in AIHW's Adoptions Australia data collection. These include: the length of time taken for adoptions to be finalised, data on sibling separations, clarity around consent and dispensation of consent, the number of people wanting to adopt, information on adoption of Indigenous children, information on adoption of children with disabilities and special needs, and long-term outcomes for adopted children.
- 5.80 The Committee is encouraged that work is underway to improve data collection on children with disabilities. However, further work is required to agree a nationally consistent definition of special needs. Identifying special needs will help keep siblings together, give children who have experienced trauma the support that they need and ensure that mental health concerns are identified and addressed.
- 5.81 The Committee is of the view that all jurisdictions need to invest more in data collection and that data should be provided to the Australian Institute of Health and Welfare as unit records, rather than aggregate data. This will improve national reporting and comparability between all jurisdictions.
- 5.82 The Committee is concerned that the lack of consistent terminology across the states and territories in legislation, policies and process limits the usefulness of statistics. This is a potential barrier to the development of evidence-based nationally consistent policies to improve outcomes for adopted children and children in out-of-home care across Australia.

Recommendation 7

The Committee recommends that the Australian Institute of Health and Welfare continue to work with relevant Commonwealth, state and territory agencies to improve data collection on adoptions and child protection in Australia, including by:

- collecting unit record data rather than aggregate data;
- agreeing on nationally consistent definitions;
- collecting data on: timeframes for finalising adoptions, sibling separation, parental consent (including dispensation of consent), adoption of Indigenous children, adoption of children with disabilities and special needs, and long-term outcomes for all adoptees; and
- maintaining registers of potential adoptive parents.

Ms Julia Banks MP
Chair

16 October 2018



Labor Members' Dissenting Report

- 1.1 Labor members of the Committee cannot support the Government members' report, which ultimately poses a return to Australia's reprehensible legacy of permanently removing First Nations children from their families.
- 1.2 In March 2018, then-Assistant Minister for Children and Families, David Gillespie, sparked community outrage with an unprompted public call to open up adoptions of Indigenous children in out-of-home care.¹ The proposal was quickly condemned by experts and First Nations representatives alike, with the Chief Executive of the peak body for First Nations child protection in New South Wales, AbSec, calling it 'incredibly offensive'.²
- 1.3 Labor members of the Committee have long feared that the Inquiry into Local Adoption – which was referred to the Parliament by the very same Minister only a few weeks after his inflammatory media comments – is little more than a means to legitimise and push this preconceived ideological agenda. This concern was confirmed by the first term of reference, of which there were only two, which pre-empts the outcome of the Inquiry by calling for consideration of 'stability and permanency for children in out-of-home care with local adoption as a viable option'.
- 1.4 Regretfully – but as predicted – the Government members' report went on to recommend we open up adoption to children in out-of-home care – a policy that would have a detrimental and disproportionate impact on First

1 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 8 November.

2 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 8 November.

Nations communities, given their children are ten times more likely to be in out-of-home-care.³

- 1.5 Labor members of the Committee simply cannot countenance this recommendation, which would cast aside the evidence-based Aboriginal and Torres Strait Islander Child Placement Principle, sever children's links to their family and culture, and risk creating another Stolen Generation.
- 1.6 The Government members' report not only wilfully ignores the weight of evidence from submitters, it also flies in the face of human rights conventions and the recommendations of countless inquiries that connection to culture, kin, and country is critical to the safety and wellbeing of First Nations children.
- 1.7 The proposed plan in the Government members' report rests almost solely on diverting children from out-of-home care into 'open adoption', which ostensibly aim to deliver an 'open exchange of information and contact between the child and their birth parents and families'.
- 1.8 However, as there are no routine post-adoption monitoring or enforcement practices in place, it is not surprising that many witnesses told the Committee that the lived experience of so-called open adoption is very different. As Family Inclusion Strategies in the Hunter (FISH) explains: 'simply making a law that says any care arrangements will be open will not achieve openness'.⁴
- 1.9 The Committee heard from a number of witnesses that there is scant agreement on what even constitutes open adoption – let alone how it actually works in practice, or what the long-term outcomes may be.
- 1.10 Labor members of the Committee are very disappointed that the Government members' report would wholeheartedly commit the Government to making open adoption a central feature of the national child protection system despite the lack of evidence regarding their viability, appropriateness and long-term impacts on children.
- 1.11 We would also caution that the interventionist policies as advocated in the Government members' report stand in direct conflict with the undeniable reality that the only way to truly achieve long-term sustainable outcomes is by working in genuine partnership with First Nations communities and organisations – not by imposing permanent removal of their children.
- 1.12 Labor members of the Committee are also very discouraged that, despite placing the disgraceful number of children in out-of-home care at the

3 Australian Institute of Health and Welfare (AIHW), 'Child protection Australia 2016-17', 2017, p. 48, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>>, viewed 19 November 2018.

4 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, p. [7].

centre of this inquiry, the Government members' report is utterly silent on the root causes of this shameful record and makes no recommendations to remedy the lack of early intervention and prevention supports that contribute to the massive number of children in out-of-home care – particularly First Nations children.

- 1.13 While Labor members of the Committee are horrified by the shocking number of children in out-of-home-care, we are convinced by the evidence that what is needed is a greater investment in support services before families break down, rather than removal of children from their families when the situation has become irretrievable.
- 1.14 We are deeply concerned the Government members' proposal would only serve to increase profound distrust in, and engagement with, the child protection system. Critically, it would discourage families in distress from reaching out for help early in the fear that it may lead to the permanent removal of their children.

Unrealistic expectations

- 1.15 In New South Wales, which has been leading the push toward open adoption, there were almost 18,000 children in out-of-home care in 2017.⁵ But in 2016-17, only 177 were adopted.⁶ In this light, Labor Committee members contend that the idea that opening up adoptions will have a material impact on the number of children in out-of-home care is fanciful at best. Yet this has been the consistent argument put by Government members.
- 1.16 The Government members' report also ignores the reality that children in out-of-home care rarely fit the criteria of what most people who want to adopt a child are looking for. The brutal reality is that prospective adopters generally prefer to adopt babies.⁷ To expect that a large number of individuals or couples will be willing to adopt older children – who are very likely to have experienced intergenerational trauma resulting in complex and challenging needs – is utterly unrealistic.

5 Australian Institute of Family Studies (AIFS), 'Children in Care CFCA Resource Sheet – September 2018', <<https://aifs.gov.au/cfca/publications/children-care>> viewed 19 November 2018.

6 AIHW, 'Adoptions Australia 2016-17', 2017, p. 15, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 19 November 2018.

7 Dr Nicola Ross, *Submission 49*, p. [2]; Feminist Legal Clinic Inc., *Submission 73*, p. [4].

The right to kin and culture

Cultural identity is not just an add-on to the best interests of the child. We would all agree that the safety of the child is paramount. No child should live in fear. No child should starve. No child should live in situations of neglect. No child should be abused. But if a child's identity is denied or denigrated, they are not being looked after. Denying cultural identity is detrimental to their attachment needs, their emotional development, their education and their health.⁸

- 1.17 Not only is the majority proposal naïve, it is likely to be extremely damaging to First Nations children, as it would sever critical links with culture.
- 1.18 This was the advice of many submitters to the inquiry including AbSec, Grandmothers Against Removals, Aboriginal Legal Service, FISH and the Secretariat of National Aboriginal and Islander Child Care (SNAICC). All of these groups raised explicit objection to the adoption of First Nations children in care, and stressed the importance of children growing up within their culture, their families and their communities.
- 1.19 Labor Committee members are persuaded that opening up adoption to First Nations children in care would not only cause profound damage by separating children from their culture, it would critically compromise fundamental human rights.
- 1.20 Specifically, the *Declaration of the Rights of Indigenous People*, which Australia formally endorsed in 2009, affirms 'the right of self-determination',⁹ or the right to 'freely pursue their economic, social and cultural development'.¹⁰ It also recognises '*in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child'.¹¹
- 1.21 In addition, the United Nations Convention on the Rights of the Child explicitly asserts that:

8 Bamblett, Muriel and Lewis, Peter, 'A Vision for Koorie Children and Families: Embedding Rights, Embedding Culture', *Just Policy: A Journal of Australian Social Policy*, No. 41, September 2006, pp. 4-26, <<https://search.informit.com.au/fullText;dn=294344454178951;res=IELHSS>> viewed 19 November 2018.

9 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 3.

10 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 3.

11 *United Nations Declaration on the Rights of Indigenous Peoples*, Preamble.

... a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.¹²

1.22 The Implementation Handbook on the Convention of the Rights of the Child goes further, noting that:

One of the difficulties facing indigenous populations, even today, is that the State, representing the dominant majority, sometimes believes that full integration is in their best interests, regardless of the effect this may have on their culture. Forced integration is a breach of rights and the Committee has recommended that States with significant indigenous populations adopt enforceable legislation to protect their rights.¹³

1.23 While the Government members' report has lofty promises of no forced adoptions, it's difficult to see how gaining consent could be possible in practice, given the vehement opposition among Aboriginal organisations and communities to the proposal of removing children from their culture.

1.24 Similarly, the proposal in the Government members' report to legislate short time limits of six or twelve months in which to determine whether children can return to their birth parents (Recommendation 2) makes the prospect of securing consent even more unlikely.

1.25 AbSec argues that 'the coercive nature of the statutory child protection system suggests that any such permanent orders are more often than not forcibly imposed on families, rather than being entered into with the free, prior and informed consent of children and their families'.¹⁴

1.26 On the issue of consent, Labor members of the Committee would also draw particular attention to comments made by FISH, which supports birth parents who have had children removed from their care. In its submission, FISH alleges that New South Wales – which Government committee members have modelled their recommendations on – has been 'relentless in its efforts to reduce the need to obtain parental consent when children are adopted from care'.¹⁵

12 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 30.

13 UNICEF, Implementation Handbook for the Convention on the Rights of the Child, <https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf>, p. 461.

14 AbSec (Aboriginal Child, Family and Community Care State Secretariat), *Submission 46*, p. 6.

15 FISH, *Submission 85*, p. [6].

- 1.27 The submission goes on to say that ‘many, if not most of the adoptions from care in New South Wales, occur without parental consent’.¹⁶ This is especially disturbing given what we know about the impact of past policies of child removal.

Learning the lessons of history

- 1.28 In 2008, the Parliament apologised for the deep trauma inflicted on a generation of First Nations’ people. Labor members of the Committee are gravely worried that if we proceed down the path proposed by the Government members’ report, there is a serious risk that a future parliament will be called upon to apologise for the trauma inflicted by the policy of permanent separations being proposed in the Government members’ report in 2018.
- 1.29 It is impossible to overstate the deep and abiding pain inflicted by forced separation practices of successive governments, which has been extensively documented in a number of reports, including the Australian Human Rights Commission’s *Bringing them Home* report (1997); the Senate Community Affairs References Committee Reports on Forgotten Australians (2004) and Commonwealth Contribution to Former Forced Adoption Policies and Practices (2012); and the *Family Matters Report* (2017).
- 1.30 Consistently, these reports caution against permanent removal and urge governments to keep children connected to their family, community and culture wherever possible.
- 1.31 On this specific issue, the national peak body for Aboriginal and Torres Strait Islander children SNAICC warned that:
- Regardless of the intentions that underpin permanency measures, the permanent removal of Aboriginal and Torres Strait Islander children from their families presents harrowing echoes of the Stolen Generations across communities.¹⁷
- 1.32 Aboriginal Legal Service (NSW/ACT) Limited (ALS) argue that not only will this proposal not solve the out-of-home care crisis, but that ‘the ongoing intergenerational transmission of trauma as a result of such practices materially contributes to the overrepresentation of Aboriginal

16 FISH, *Submission 85*, p. [6].

17 Secretariat of National Aboriginal and Islander Child Care (SNAICC – National Voice for our Children), Policy Position Statement, *Submission 72*, p. 3.

children in the child protection and out of home care systems'¹⁸ in the first place.

- 1.33 This is supported by the Australian Institute of Health and Welfare, which identified 'the legacy of past policies of forced removal' and the 'intergenerational effects of previous separations from family and culture' as contributing factors in the high rates of First Nations' children in out of home care.¹⁹
- 1.34 On the obvious similarities between his proposal and the destructive policies that led to the Stolen Generation, former Assistant Minister David Gillespie said:
- We need to shake this reluctance about the fear of being accused of creating a Stolen Generation or another forgotten generation.²⁰
- 1.35 It is deeply concerning that, despite overtly recognising that he risks creating another Stolen Generation, the Minister explicitly proposes ignoring criticism, and proceeding with this thoroughly irresponsible and damaging policy regardless.
- 1.36 Labor members of the Committee are convinced by the prescription of ALS that breaking damaging intergenerational cycles of trauma must necessarily involve 'healing, strengthening and reconnecting families and communities'²¹ rather than further separating them.

Child safety and wellbeing

- 1.37 While the Government members' report purports to prioritise 'safety' for children, many submitters to the inquiry pointed out that severing cultural links would do just the opposite.
- 1.38 The peak legal services provider for First Nations people in New South Wales and the Australian Capital Territory, ALS, wrote that 'strong connection to family, culture and community are central to the safety, welfare and well-being of Aboriginal young people'.²²

18 Aboriginal Legal Service (NSW/ACT) Limited (ALS), *Submission 100*, p. 4.

19 AIHW, 'Child protection Australia 2015-16', p. 27, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/contents/table-of-contents>> viewed 19 November 2018.

20 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 9 November.

21 ALS, *Submission 100*, p. 4.

22 ALS, *Submission 100*, p. 4.

- 1.39 This is supported by the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, which warned in its Final Report of ‘insufficient recognition in the child protection system of the essential importance of Aboriginal and Torres Strait Islander culture in keeping children safe, despite legislative and policy requirements to do so’.²³
- 1.40 Indeed, some submissions argued that it is precisely policies like enforced permanent removals as proposed in the Government members’ report that can inflict serious and lasting harm to children. As ALS point out, ‘harm to children often has inter-generational causes linked to the breakdown of culture and community connectedness and identity’.²⁴
- 1.41 AbSec also argue that a move to legislate the permanent legal removal of children puts children at greater safety risk because ‘adoption orders are characterised by the absence of key safeguards to ensure the safety and wellbeing of Aboriginal children’.²⁵
- 1.42 Labor members of the Committee also share the concerns of a number of inquiry participants that transferring children out of the out-of-home care system into permanent adoption is a fundamental abrogation of government responsibility that would do nothing to improve child safety or wellbeing.
- 1.43 As Dr Nicola Ross explains:
- Local adoption is attractive to governments who often perceive it as a panacea to many economic and social problems. It effectively privatises the issue and solves the pressing need to find homes for children removed from their parents, but has hidden costs that children, parents and adoptive parents have to bear.²⁶
- 1.44 On a similar theme, AbSec argues that a push to have children in care adopted:
- ... could be seen as a deliberate action of the state to defer responsibility for the growing number of children in care, removing key monitoring and oversight mechanisms and failing to transparently report on numbers, let alone more in-depth

23 Royal Commission into the Institutional Responses to Child Sexual Abuse, ‘Volume 12, Contemporary out-of-home care’, p. 22, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf> viewed 19 November 2018.

24 ALS, *Submission 100*, p. 4.

25 AbSec, *Submission 46*, p. 1.

26 Dr Nicola Ross, *Submission 49*, p. 2.

reviews of their circumstances following an adoption order being made.²⁷

- 1.45 The Feminist Legal Clinic also noted grave concerns about child safety:

A return to increased local adoption will hide rather than cure the scourge of child abuse... It will also leave another generation of children exposed to risk in unmonitored placements, permanently cut off from their mothers and families.²⁸

- 1.46 Labor members of the Committee are of the belief that, not only are local adoptions not in the best interests of First Nations children, but they may present a genuine safety risk for these children.

Stability and permanency

- 1.47 The Government members' assertion that 'legal permanency is key in providing stability and permanency for children' has been rejected by many submitters to the inquiry.

- 1.48 On this issue, AbSec cautions against conflating stability with legal permanency, saying:

We seek to disentangle the often conflated legal frameworks for permanency from the (in our view) more important developmental frameworks, which emphasise a broader set of relational and environmental factors for consideration, as well as the existing evidence of the appropriate safeguards to ensure children in out-of-home care are safe and adequately supported, regardless of the nature of their legal order.²⁹

- 1.49 Similarly, SNAICC said that mainstream notions of stability in no way reflect the experience of an Aboriginal or Torres Strait Islander child.³⁰ The SNAICC submission outlines that stability is 'grounded in the permanence of their identity in connection with family, kin, culture and country'³¹ and argues that the means to achieve stability isn't in permanently removing children from their culture.

27 AbSec, *Submission 46*, p. 13.

28 Feminist Legal Clinic, *Submission 73*, p. 4.

29 AbSec, *Submission 46*, p. 13.

30 SNAICC, *Submission 72*, p. 3.

31 SNAICC, Policy Position Statement, *Submission 72*, p. [11].

- 1.50 Similarly, Dr Nicola Ross submits that, while all forms of care are subject to disruption, many children do well in kinship care or long-term stable foster care.³²
- 1.51 FISH calls on recent evidence from the United Kingdom to argue ‘that legal permanence created by adoption per se is not a significant factor in achieving actual permanence and stability for the many children and young people’.³³
- 1.52 AbSec also rejected the suggestion that the lack of legal permanency is a key contributing factor to instability for children in out-of-home-care:
... the current instability experienced by many children and young people in OOHC [out-of-home] care is not due to a lack of legal permanence or a lack of commitment from foster or kinship carers in the absence of a legal order, but rather a failure of the child protection system to provide the necessary supports that empower families and communities to meet the changing needs of children and young people in OOHC care over the course of their development.³⁴
- 1.53 The Grandmothers Against Removals submission succinctly captures the inherent conflict between coerced child removals and Government members’ stated goal of stability for children:
Stability and permanency planning for First Nations children means supporting families to stay together, not tearing them apart.³⁵
- 1.54 Labor members of the Committee are persuaded that legal permanency is not a necessary and sufficient condition for stability. We also accept the significant evidence that connection to family and culture has a much more critical impact on stability for First Nations children than legal permanency.

Open adoption

- 1.55 The Government majority members have portrayed open adoption as the panacea that would allow adopted children to maintain their birth links and relationships. However, there is a dearth of local evidence to support

32 Dr Nicola Ross, *Submission 49*, p. 2.

33 FISH, *Submission 85*, p. [5].

34 AbSec, *Submission 46*, p. 13.

35 Grandmothers Against Removals, *Submission 48*, p. 3.

this proposition. Indeed, many submitters point to an inherent disconnect between the promises of open adoption and the actual lived experience.

1.56 Grandmothers Against Removals argued that the very concept of open adoption is 'meaningless' and asserted that even agreement not to change children's names or remove birth families from their lives is hollow as this can happen anyway after the adoption has gone through.

1.57 This sentiment was reiterated in contributions from other submitters:

Castle (2014) found that even voluntarily relinquishing birth mothers found it very difficult indeed to maintain regular contact and an openness in relationship with their children despite the existence of a post adoption contact plan.³⁶

Unfortunately, we continue to see the devastating effects of separating siblings from each other and the cutting of ties with birth families. The reality is that adoption is a strong disincentive to maintenance of birth family relationships.³⁷

There is limited evidence to date that newer forms of 'open adoption' will be successful in supporting ongoing relationships, although quality research into these new models would be of value.³⁸

There has been no research that we are aware of to explore the experience and practice of the openness of arrangements when a child is adopted from out of home care in Australia. However research from the US suggests that open adoptions from out of home care are considerably less open than adoptions that occur privately despite the existence of legislation and rules that requires adoption arrangements to be more open.³⁹

1.58 FISH emphasised how little is actually known about how open adoptions function in practice. Its submission urged against making rash decisions in the absence of a solid evidence base:

At this stage in Australia there is no consensus, or even much discussion, about what we actually mean when we are talking about *open* adoption. There is an urgent need to better understand what we mean by openness and how this is actually experienced by children and their families. Until this happens we should be extremely wary about growing the numbers of adoption from care.

36 FISH, *Submission 85*, p. [7].

37 The Law Society of New South Wales, *Submission 44*, p. 1.

38 FISH, *Submission 85*, p. [7].

39 FISH, *Submission 85*, p. [7].

Little is known about the actual experience of open adoption and almost nothing is known about open adoption from out of home care. Our traditional understanding and practice of adoption in Australia has been founded on consent and the voluntary relinquishment of infants by their parents (usually mothers) to the care of alternate families. This is very different to adoption following the involuntary removal of children from their families and the subsequent adoption of that child, sometimes without consent from family.⁴⁰

- 1.59 Labor members of the Committee recognise that the New South Wales Government has provided seed funding to establish the Institute of Open Adoption Studies.⁴¹ However, we note that the explicit role of the Institute is described as ‘to bridge the knowledge gaps around the benefits of open adoption’ as well as ‘increasing awareness about the benefits of adoption from out-of-home care’.⁴² Labor members fear that this presumption of inherently positive outcomes from open adoption risks colouring research assumptions and could diminish the value of findings.
- 1.60 We urge the Government to ensure that objective local research is undertaken into the viability, appropriateness and effectiveness of open adoption *before* making it a central feature of the national child protection system.

The need for early intervention and support

- 1.61 There can be no argument that the rate of First Nations children in care has reached a crisis point. These children are ten times more likely to be in out-of-home care than other children, and the number of First Nation children in care has doubled since the 2008 Apology.⁴³
- 1.62 Despite this, the Government majority members’ report failed to make any recommendations for investment in preventive measures, nor did they put

40 FISH, *Submission 85*, p. [6].

41 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 3.

42 Institute of Open Adoption Studies, ‘FAQs’, <<https://www.facs.nsw.gov.au/about/reforms/children-families/IOAS/chapters/faqs>> viewed 9 November 2018.

43 Productivity Commission, ‘Report on Government Services 2018’, Chapter 16 – Child Protection Services, <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/community-services/child-protection/rogs-2018-partf-chapter16.pdf>> viewed 19 November 2018.

forward any proposals to address the root causes of this distressing state of affairs.

1.63 Labor members are under no illusion that there are any quick fixes. But we are persuaded by evidence nothing will change until we focus on helping families before they reach crisis point and children end up in care – rather than coerced removals after they have fallen apart.

1.64 As the Law Society of New South Wales submitted:

... it is far preferable to invest resources into supporting Indigenous families and kin to stay together than to look to adoptions of Indigenous children by non-indigenous families as a 'solution'.⁴⁴

1.65 Labor members of the Committee support SNAICC's call for 'appropriate investment in early intervention, intensive family support and healing services'.⁴⁵

1.66 This simply isn't happening. Indeed, the shocking reality is that governments 'continue to invest significantly more in separating children from their families than supporting families at risk',⁴⁶ with only 17 per cent of state and national child protection funding in 2015-16 going toward support services for children and their families. The remaining 83 per cent of the funding was spent on investigation, court orders and out-of-home care services.⁴⁷

1.67 Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) clearly articulated the way forward in its submission:

We must work to ensure that the drivers of child protection intervention are addressed, rather than continuing with a poorly designed and resourced system that reacts when it's too late, after families have already reached breaking point and children have been harmed.⁴⁸

1.68 Similarly, UNICEF Australia urged that all state, territory and federal governments:

... must take every measure possible to ensure that families and children across Australia are provided with adequate services and

44 The Law Society of New South Wales, *Submission 44*, p. 4.

45 SNAICC, *Submission 72*, p. 3.

46 AbSec, *Submission 46*, p. 5.

47 Family Matters, 'Report 2017: Measuring trends to turn the tide on over-representation of Aboriginal and Torres Strait Islander Children in Out of Home Care in Australia', p. 10, <<http://www.familymatters.org.au/wp-content/uploads/2017/11/Family-Matters-Report-2017.pdf>> viewed 9 November 2018.

48 Aboriginal Medical Services Alliance of the Northern Territory (AMSANT), *Submission 92*, p. 1.

supports to help them with caregiving responsibilities so as to preserve family unity, and to keep children connected to their identity and culture.⁴⁹

- 1.69 Labor members of the Committee also recognise arguments made by multiple submitters of the grave need for greater investment in supporting kinship carers. Indeed, a failure to support kinship carers was recognised as a common failure of child protection systems by the Royal Commission into Institutional Responses to Child Sexual Abuse.⁵⁰

Aboriginal and Torres Strait Islander Child Placement Principle

- 1.70 When the ground-breaking *Bringing Them Home* report into the Stolen Generations was released in 1997, Australia was shocked to learn that Aboriginal and Torres Strait Islander children represented one in every five children living in out-of-home care. Today – 21 years later – they are one in every three.
- 1.71 The causes of over representation are complex, including the legacy of past policies of forced removal, intergenerational effects of separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child-rearing practices.
- 1.72 The consequences of child removal are profound: devastating families; deepening intergenerational trauma; too often severing children’s cultural bonds and triggering poor life outcomes; and eroding culture and community.
- 1.73 The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) was developed in recognition of these devastating effects of government policies that removed children from the care of their families and severed links to kin, culture and country.
- 1.74 The Principle recognises the importance of connections to family, community, culture and country in child and family welfare legislation, policy, and practice, and asserts that self-determining communities are central to supporting and maintaining those connections.

49 UNICEF Australia, *Submission 108*, p. 1.

50 Royal Commission into the Institutional Responses to Child Sexual Abuse, ‘Volume 12, Contemporary out-of-home care’, p. 15, <https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf> viewed 19 November 2018.

- 1.75 The five core elements – prevention, partnership, placement, participation, and connection – work across the continuum of the child protection system to protect and realise the rights of Aboriginal and Torres Strait Islander children, families, and communities.
- 1.76 These five core elements are often overlooked, or not implemented, because they are not included in legislation.
- 1.77 Numerous inquiries and reports have highlighted both the high regard for and importance of the Principle, and for the First Nations individuals and organisations who support its implementation. These reports have also highlighted significant limitations in the implementation and monitoring of the Principle – noting that the Principle has been fully applied in as few as 13 per cent of child protection cases involving Aboriginal children.⁵¹
- 1.78 Labor members of the Committee support a strong Aboriginal and Torres Strait Islander Child Placement Principle, with more rigorous compliance requirements, accompanied by strong supports for families in crisis. This represents the best chance to improve well-being for Aboriginal and Torres Strait Islander children and families who come into contact with the child protection system.
- 1.79 Yet, the Government members' report remains silent on all of these key issues.
- 1.80 SNAICC Chairperson, Sharron Williams, made a salient point when she penned a media article asking:
- What more needs to happen for us to learn as a society that assimilation is not the answer to child protection concerns?⁵²

Community led solutions

- 1.81 Time after time, the failure to work with First Nations communities has been a critical reason for the failure of Indigenous policy.
- 1.82 By now, we should know that the only way to make sustainable, effective policy is in genuine partnership with Aboriginal communities. But regretfully, the Government members' report demonstrates that they still haven't learnt this vital lesson.

51 Fiona Arney, Marie Iannos, Alwin Chong, Steward McDougall, Samantha Parkinson, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle', p. 1, <<https://aifs.gov.au/cfca/sites/default/files/cfca34.pdf>> viewed 13 November 2018.

52 'SNAICC Chairperson responds to Sammut's opinion piece in *The Australian*', 22 January 2015, <<https://www.snaicc.org.au/snaicc-chairperson-responds-sammuts-opinion-piece-australian>> viewed 12 November 2018.

- 1.83 Not only do the recommendations in the report stand in opposition to all advice of First Nations representative organisations to the Committee, but it proposes the sort of regressive interventionist policy that has consistently failed to make a difference.
- 1.84 AbSec points out:
- Statutory child protection systems disproportionately intervene in the lives of Aboriginal children and young people, and yet the voices of Aboriginal communities are routinely marginalised as governments determine what is in the best interest of our children and young people.⁵³
- 1.85 Despite this, the Government members' report makes no mention of any role for the First Nations community to develop the policy or support its implementation.
- 1.86 At the very least, Labor members of the Committee would urge the Government to halt progressing any decisions and genuinely consult with First Nations communities on the best way forward and the guiding principles that should underpin any national adoption framework.

Guiding principles

- 1.87 Labor Committee members recommend that any policy changes comply with the Principles for Stability and Permanency Planning,⁵⁴ which were developed in consultation with Aboriginal and Torres Strait Islander leaders from across the country:
1. Aboriginal and Torres Strait Islander children have rights of identity that can only be enjoyed in connection with their kin, communities and cultures.
 2. Permanent care for Aboriginal and Torres Strait Islander children should only be considered where the family has been provided with culturally appropriate and ongoing intensive and targeted family support services.
 3. Traditional adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.

53 AbSec, *Submission 46*, p. 4.

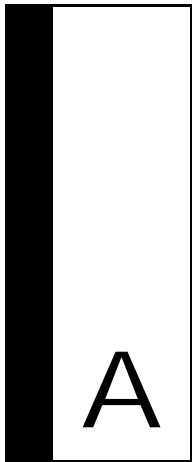
54 SNAICC, *Submission 72*, p. 4.

4. Decisions to place an Aboriginal and/or Torres Strait Islander child in permanent care, including adoption decisions, should only be made with the appropriate and timely review of the child's individual circumstances, and with informed support for the decision from an appropriate Aboriginal and Torres Strait Islander community-controlled agency.
5. Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services, and to make decisions regarding the care and protection of children and young people in their own communities.
6. Permanency and adoption should never be used as a cost saving measure in lieu of providing Aboriginal and Torres Strait Islander families and communities with adequate and appropriate support. The burden of care held by Aboriginal and Torres Strait Islander families and communities should be adequately resourced, whether placements are temporary or permanent.
7. Aboriginal and Torres Strait Islander communities and their organisations must lead the development of legislation and policy for permanent care of their children based on an understanding of their unique kinship systems and culturally-informed theories of attachment and stability.
8. Where Aboriginal and Torres Strait Islander children are permanently removed from their parents, genuine cultural support plans must be developed and maintained (including with regular review) on an ongoing basis.

Ms Sharon Claydon MP
Deputy Chair

Ms Emma Husar MP
Member

Dr Mike Freeland MP
Member



Appendix A: List of Submissions

Submissions

- 1 Name withheld
- 2 Miss Shannon Jade Burns
- 3 Name withheld
- 4 Dr Philip Mendes
- 5 Name withheld
- 6 Dr Patricia Fronck and Professor Denise Cuthbert
- 7 Australian Adoptee Rights Action Group
- 8 Name withheld
- 9 Ms Evelyn Robinson, OAM
- 10 Name withheld
- 11 Name withheld
- 12 Name withheld
- 13 Name withheld
- 14 Professor Shurlee Swain
- 15 The Centre for Independent Studies
- 16 Name withheld
- 17 Family Inclusion Network Queensland (Townsville) Inc.
- 18 Name withheld

19	Association for Adoptees Inc.
20	Name withheld
21	Name withheld
22	NSW Government
22.1	Supplementary to Submission 22
23	Name withheld
24	Australian Association of Social Workers
25	Name withheld
26	Adoption Loss Adult Support Aus Inc.
27	Mrs Debbie Garratt
28	Associate Professor Karleen Gribble
29	Alliance for Family Preservation and Restoration
30	Name withheld
31	Confidential
32	Ms Patricia Guy
33	Commission for Children and Young People
34	Mr William Hammersley
35	ACT Government
36	Name withheld
37	The Royal Australian and New Zealand College of Psychiatrists
38	Name withheld
39	Confidential
40	Department of Social Services
40.1	Supplementary to Submission 40
40.2	Supplementary to Submission 40
40.3	Supplementary to Submission 40
41	Australian Institute of Health and Welfare
41.1	Supplementary to Submission 41

42	Legal Aid NSW
43	Anglicare Australia
44	The Law Society of New South Wales
45	Hope For Our Children
46	AbSec (Aboriginal Child, Family and Community Care State Secretariat)
47	Confidential
48	Grandmothers Against Removals
49	Dr Nicola Ross
50	Professor Daryl Higgins
51	EY (Ernst & Young)
51.1	Supplementary to Submission 51
52	Barnardos Australia
52.1	Supplementary to Submission 52
53	WA Department of Communities
54	Name withheld
55	Ms Dorothy Kowalski
56	VANISH Inc. (Victorian Adoption Network for Information and Self Help)
57	Name withheld
58	Ms Sharyn White
59	Name withheld
60	Name withheld
61	Ms Penny Mackieson
62	Name withheld
63	Jakob's Voice
64	Name withheld
65	Name withheld
66	Origins Supporting People Separated by Adoption Inc.
67	Anglicare Sydney

68	Anglicare Victoria
69	Relationships Australia South Australia
70	Berry Street
71	Name withheld
72	SNAICC - National Voice for our Children (Secretariat of National Aboriginal and Islander Child Care)
73	Feminist Legal Clinic Inc.
74	The Centre for Excellence in Child & Family Welfare
75	Mrs Jo Fraser
76	Institute of Open Adoption Studies
76.1	Supplementary to Submission 76
77	Adopt Change Limited
78	VACCA (Victorian Aboriginal Child Care Agency)
79	Jigsaw Queensland Inc.
80	Ms Judy McHutchison
81	Name withheld
82	Association of Relinquishing Mothers (Vic)
83	A Better Life for Foster Kids Inc.
84	Confidential
85	Family Inclusion Strategies in the Hunter (FISH)
86	The Benevolent Society
87	Permanent Care and Adoptive Families
88	Name withheld
89	NSW Committee on Adoption and Permanent Care Inc.
90	Name withheld
91	Connecting Foster & Kinship Carers SA Inc.
92	Aboriginal Medical Services Alliance of the Northern Territory (AMSANT)
93	Name withheld

93.1	Supplementary to Submission 93
	Adoptee Advocacy and Information Service, South Australian Inc.
94	(AAISSA)
95	Rainbow Families NSW
96	Name withheld
97	Confidential
98	Name withheld
99	Name withheld
100	Aboriginal Legal Service (NSW/ACT) Limited
101	Association of Children's Welfare Agencies
102	Name withheld
103	Australian Human Rights Commission
104	Name withheld
105	Central Australian Aboriginal Congress Aboriginal Corporation
106	Ms Kay Hanning
107	Queensland Department of Child Safety, Youth and Women
108	UNICEF Australia
109	Victorian Aboriginal Children and Young People's Alliance
110	Department of Health and Human Services, Victoria (DHHS)



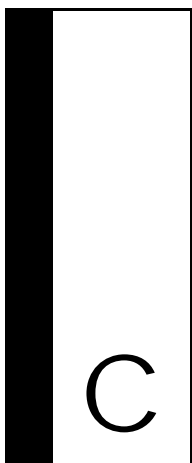
Appendix B: List of Exhibits

Exhibits

1. Dr Philip Mendes, *The Strange return of conservative zealotry to the Child Protection debate*, 24 November 2014
Relates to Submission 4, Dr Philip Mendes
2. Dr Philip Mendes, *'Ending the over-representation of Indigenous children in out-of-home care and returning them to their communities'*, paper presented at UK Social Policy Association Conference, Durham, July 2017
Relates to Submission 4, Dr Philip Mendes
3. Dr Philip Mendes, *"Towards the social inclusion of young people transitioning from out-of-home care: An examination of the Home Stretch campaign to extend state supports till 21 years"*, dated late 2018
Relates to Submission 4, Dr Philip Mendes
4. Andrea del Pozo de Bolger, Debra Dunstan & Melissa Kaltner, *Descriptive Analysis of Foster Care Adoptions in New South Wales, Australia*, published online 9 July 2017
5. Andrea del Pozo de Bolger, Debra Dunstan & Melissa Kaltner, *Open Adoptions of Children from Foster Care in New South Wales Australia: Adoption Process and Post-Adoption Contact*, accepted author version published online 9 March 2018
6. Australian Capital Territory Government, *Final Report: Review of the Domestic Adoption Process in the ACT*, February 2017
Relates to Submission 35, Australian Capital Territory Government
7. Australian Capital Territory Government, *Government Response to the Review of the Domestic Adoption Process in the ACT*, March 2017
Relates to Submission 35, Australian Capital Territory Government

8. Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An outline of National Standards for out-of-home care: A Priority Project under the National Framework for Protecting Australia's Children 2009-2020*, July 2011
Relates to Submission 40, Department of Social Services
9. Ministers for the Department of Social Services, *Community Services Ministers' Meeting Communiqué*, 25 August 2017
Relates to Submission 40, Department of Social Services
10. *Permanency Guiding Principles*, [undated]
Relates to Submission 40, Department of Social Services
11. Barnardos Australia, *Appendices: Collaborative Research by Barnardos*, accepted author version posted online 25 April 2018
Relates to Submission 52, Barnardos Australia
12. Origins Supporting People Separated by Adoption Inc, *Origins Submission to the Senate Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices* [undated]
Relates to Submission 66, Origins Supporting People Separated by Adoption Inc
13. Jessica Cocks, *'If a community values its children, it must cherish their parents': Family inclusion initiatives in child welfare, Churchill Report, 2018*
Relates to Submission 85, Family Inclusion Strategies in the Hunter (FISH)
14. Dr Nicola Ross, Jessica Cocks, Lou Johnston & Lynette Stoker, *'No voice, no opinion, nothing': Parent experiences when children are removed and placed in care*, February 2017
Relates to Submission 85, Family Inclusion Strategies in the Hunter (FISH)
15. Family Inclusion Strategies Hunter, *Building Better Relationships: Outcomes of the Family Inclusion Practice Forum, 18 July 2014*
Relates to Submission 85, Family Inclusion Strategies in the Hunter (FISH)
16. Permanent Care and Adoptive Families, Background Paper: *The Potential of Permanent Care 2015* – prepared for Permanent Care and Adoptive Families by Meredith Carter & Associates
Relates to Submission 87 – Permanent Care and Adoptive Families
17. Permanent Care and Adoptive Families, Financial Year Executive Summary as at 31 March 2018 – *Flexile funding for existing permanent care placements*
Relates to Submission 87 – Permanent Care and Adoptive Families
18. Rainbow Families NSW – collection of newspaper clippings and various media releases
Relates to Submission 95 – Rainbow Families NSW

19. Personal story and photograph
Relates to Submission 102 – Name withheld
20. Adopt Change: *Barriers to adoption in Australia*, National Adoption Research, September 2017
Relates to Submission 77 – Adopt Change
21. United Nations, *Convention on the Rights of the Child 29 May 2013 – Committee on the Rights of the Children – General Comment No 14(2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1)*
Relates to Submission 108 – UNICEF Australia
22. United Nations, Resolution adopted by the General Assembly [*on the report of the Third Committee (a/64/434)*] - Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the ‘64/142 Guidelines for the Alternative Care of Children’*. UK: Centre for Excellence for Looked After Children in Scotland.
Relates to Submission 108 – UNICEF Australia
23. CELCIS (Centre for Excellence for Looked After Children in Scotland) - Nigel Cantwell, Jennifer Davidson, Susan Elsley, Ian Milligan, and Neil Quinn, *Moving Forward: Implementing the ‘Guidelines for the Alternative Care of Children.’*, 31 October 2012
Relates to Submission 108 – UNICEF Australia



Appendix C: Committee statement on the treatment of written evidence

Agreed to by the Committee on 7 June 2018

The House of Representatives Standing Committee on Social Policy and Legal Affairs is inquiring into approaches to a nationally consistent framework for adoptions in Australia, and is welcoming views on its terms of reference.

Please note that personal details, private information, and unnecessary adverse reflections on individuals will not be published.

The Committee acknowledges the profound effects of past forced adoption and removal policies and practices, which were also formally acknowledged by the House of Representatives in its resolution of 3 December 2013. The Committee understands that, for many of those affected, adoption continues to be a deeply distressing issue. In responding to queries from members of the public, and in reviewing submissions received to date, it has become clear that some members of the community wish to share their experiences, including of past adoption practices.

The focus of this present inquiry is not those past practices and policies. The terms of reference require the Committee to consider how stability and permanency can be provided for children who are in out-of-home care, and for whom adoption is a viable option. The Committee is also required to consider the appropriate guiding principles for a national code or framework in Australia, as well the current legislative framework. The present inquiry is therefore intended to be forward-looking and solutions-focussed.

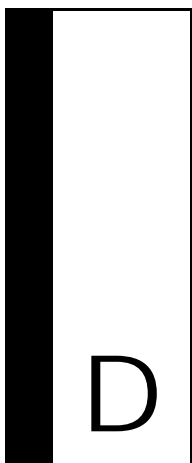
The Committee has been carefully considering each of the written contributions made by members of the community. The Committee takes very seriously its broader responsibilities in carrying out this inquiry. While the Committee welcomes submissions sharing personal experiences, it is very mindful of the potential issues in publishing submitters' details under these circumstances. Where there is potential for any parties to be identified (including people

connected with the author), the Committee may authorise publication with identifying information removed (possibly including the name of the submitter).

Based on its past experience managing inquiries which have received sensitive information and where publication of certain aspects has continued to cause distress, the Committee has decided to take a cautious approach to managing personal information at this time. The Committee will attempt to ensure that this approach is applied with consistency, sensitivity, and respect.

The Committee appreciates the considered written contributions it has received so far, and where it has determined that personal experiences will not be published, these will continue to inform the Committee's deliberations, and will be considered as the Committee prepares its report.

We thank all contributors for assisting the Committee with its inquiry.



Appendix D: List of public hearings

Tuesday, 22 May 2018 – Canberra, ACT

Australian Institute of Health and Welfare

- Mr David Braddock, Head, Child Welfare Unit
- Ms Kristy Raithel, Senior Project Manager
- Ms Louise York, Group Head, Community Services Group

Department of Social Services

- Ms Barbara Bennett, Deputy Secretary
- Ms Kathryn Mandla, Branch Manager, Children's Policy Branch

Tuesday, 29 May 2018 – Canberra, ACT

The Centre for Independent Studies

- Dr Jeremy Sammut, Senior Research Fellow

Tuesday, 19 June 2018 – Canberra, ACT

Jigsaw Queensland Inc

- Dr Trevor Jordan, President

Relationships Australia, South Australia

- Ms Nikki Hartmann, Post Adoption and Forced Adoption Support Services

VANISH Inc (Victorian Adoption Network for Information and Self Help)

- Ms Penelope Mackieson, Chair

Friday, 22 June 2018 – Canberra, ACT

Anglicare Sydney

- Mrs Elizabeth Maree Byrne, Senior Program Manager, Adoption and Guardianship
- Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions

Anglicare Victoria

- Mr Paul McDonald, Chief Executive Officer

Association of Child Welfare Agencies

- Dr Wendy Foote, Deputy Chief Executive Officer

Australian Capital Territory Government

- Ms Sarah Anderson, Senior Manager, Human Services Policy, Community Services Directorate
- Ms Anita Chettur, Senior Manager, Practice and Performance, Child Youth Protection Services, Community Services Directorate

Barnardos Australia

- Ms Deirdre Cheers, Chief Executive Officer

Department of Family and Community Services, New South Wales

- Ms Simone Czech, Executive Director, Child and Family, Commissioning

Department of Health and Human Services, Victoria

- Mr Mick Naughton, Director, Children and Families Policy, Children, Families, Disability and Operations Division

Northern Territory Government

- Mr Chris Simcock, Acting Executive Director, Operational Support, Territory Families
- Mr Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families

South Australian Government

- Ms Cathy Taylor, Chief Executive, Department for Child Protection

Queensland Government

- Mrs Amanda Currie, Acting Deputy Director General and Chief Operating Officer, Department of Child Safety, Youth and Women
- Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women

Western Australian Government

- Ms Felicity Bunt, Senior Legal Officer, Legislation, Department of Communities
- Ms Audrey Lee, General Manager, Policy and Service Design, Department of Communities
- Ms Helen Nys, Assistant Director General, Policy and Service Design, Department of Communities
- Ms Diane Scarle, Service Delivery, Department of Communities
- Ms Jackie Tang, Assistant Director General, Child Protection and Family Support, Department of Communities

Private Capacity

- Professor Denise Cuthbert
- Dr Patricia Fronck
- Associate Professor Karleen Gribble
- Professor Daryl Higgins
- Emeritus Professor Shurlee Swain

Tuesday, 26 June 2018 – Canberra, ACT*Adopt Change*

- Ms Renee Carter, Chief Executive Officer

University of Sydney

- Professor Judith Cashmore, Socio-Legal Research and Policy, Sydney Law School
- Associate Professor Amy Conley Wright, Director, Institute of Open Adoption Studies, Faculty of Arts and Social Sciences

Tuesday, 14 August 2018 – Canberra, ACT*Aboriginal Child, Family and Community Care State Secretariat*

- Mr Tim Ireland, Chief Executive Officer

Central Australian Aboriginal Congress Aboriginal Corporation

- Ms Donna Ah Chee, Chief Executive Officer
- Ms Sheralee Taylor, Board Member

Secretariat of National Aboriginal and Islander Child Care

- Ms Natalie Lewis, Director

Tuesday, 21 August 2018 – Canberra, ACT

Department of Social Services

- Mrs Cath Halbert, Group Manager
- Ms Elizabeth Hefren-Webb, Deputy Secretary
- Mr Tristan Reed, Branch Manager, Families and Children Branch

EY (Ernst & Young)

- Mr Mark Galvin, Partner
- Ruth Owen, Partner

Tuesday, 11 September 2018 – Canberra, ACT

Family Inclusion Strategies in the Hunter

- Ms Jessica Cocks, President and Churchill Fellow, Winston Churchill Memorial Trust

Private capacity

- Dr Nicola Ross