

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

9th April 2018

To the Committee Secretary,

RE: Inquiry into local adoption

I would like to contribute this submission in regards to the inquiries' terms of reference in a number of capacities as:

- A domestically adopted person
- An employee in the field of post-adoption
- A post graduate student with particular research interests in post adoption issues.

I make the following observations in regards to the terms raised:

Adoption in Australia – What hasn't worked?

The caution displayed by states in processing adoptions is not a "barrier" but a considered approach considering the substantial history of past harmful adoption practices in Australia's history and subsequent national and state apologies for forced adoption practices.

In a recent speech by previous Prime Minister Julia Gillard (Gillard 2018), she noted a number of things Australia learned from the national apology for forced adoptions. They are:

- 1) The nature of informed consent
- 2) The depth of the bonds between a mother and child/father and child
- 3) Lack of truth about origins can cause hurt and dislocation
- 4) The power of identity
- 5) The nature of communal suffering for individual wrong doing

Decisions made by state departments, in the midst of complex issues of childhood neglect and trauma must acknowledge the failures of past adoption practices as clearly identified by the Forced Adoption Senate Inquiry (Australian Senate 2012, AIFS 2012). Froneck & Cuthbert (2013) note that far too often the nature of formal apologies in Australia's history has been to regard all practices in an apology as "past" to the extent that the same current or future practices are overlooked. In the light of Ms Gillard's reflections, we must recognise that:

Adoption has previously caused harm when:

- 1) Informed consent has not been provided
- 2) The deep bonds between a mother & child/father & child have not been recognised
- 3) Falsehoods about origins of an individual cause hurt and dislocation.

- 4) One's cultural, racial, familial, physical, social, psychological and generational identity is not validated.
- 5) Decisions are made about adoptions which affect entire families and community, including intergenerational effects.

Perceived "barriers" to adoption (often labelled as Australia's "anti-adoption" culture) are not in fact barriers, but look at adoption through the lens of past lessons learned. The Australian Government has a repeated history of sanctioning the separation of children from their families (Child Migrants, Stolen Generation, Forced Adoption and Forgotten Australians). Adoption levels are currently low because there comes a time when we must say "enough is enough". We cannot allow this dark history to continue.

I highlight Section 9 of the Convention of Rights of the Child, of which Australia is a signatory:

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned. (CRC 1989)

The convention supports our learnings from past adoption practices - that a child should not be separated from their mother and father unless extreme circumstances exist. The convention also supports the notion of a child maintaining a relationship with their parents even if separation occurs. Total and legal separation of a child from their parents through adoption is an extreme measure that should only occur in extreme circumstances.

Adoption and the Importance of Identity

I recently attended a speech by Prof Nahum Mushin, delivered on the 5th Anniversary of the National Apology in Brisbane. Prof Mushin, Former Judge of the Family Court, Adjunct Professor of Monash University and Chair of the Working Group for the National Apology for Forced Adoptions raised the following questions upon reflection of his work both before and after the national apology:

"Do we need adoption at all? Is not the law relating to the best interests of children capable of considering what is now adoption? Is it appropriate that children placed in out-of-home

care should be the subject of an adoption order rather than a parenting order, albeit with one or more adults who start off as strangers to the child?" (Mushin 2018)

Adoption legally changes a child's status "as if" they had been born to an adoptive couple instead of their mother and father. It legally changes their family name and in some cases their entire name essentially changing the child's original identity. Birth certificates are re-issued in adoptive parent's names, erasing a child's biological origins. Whilst adoption may be a viable option according to the terms of reference in the current inquiry, one must question whether this legal change of identity is necessary to create permanency and stability for a child. Is adoption in children's best interest or would permanent guardianship and other forms of long term (or even short term) care sufficiently create stability for a child whilst retaining the child's identity closely tied to original family, culture, race and genealogical roots?

As an adopted person, there can be no doubt I was placed within a family that has given me permanency and stability. However there is a myriad of nuances and complexities that I was deprived of as a child (that has continued to adulthood) who was physically and legally separated from my birth family. Adoption assumes that "nurture" trumps "nature" and that legally placing a child in a family will completely provide for all the essentials necessary for an upbringing. As an adopted child, I was deprived of a family that looked like me, had my mannerisms, my interests, my personality traits, my job interests and my talents. As a thin and sensitive child who resented the way I looked, I did not have access to biological family members that looked like me and could provide a frame of reference for my individual development. Later as a teenager, when I suggested to my adoptive parents that I wanted to become a counsellor this was actively discouraged. Had I been given access to my biological family, I would have learned of my long history of fore fathers who had been involved in caring professions. And as my children were born, instead of having question marks over what physical characteristics they inherited they too would have grown up in their early formative years with access to those who looked like them, acted like them and had comparisons to other family members. Proponents of "Open Adoption" may argue that children can still have access to biological family members whilst remaining with an adoptive family, however this still does not address all of the complexities that exist for adopted people. Local adoption's viability must have a long term view and take into the account the experiences of adopted people who are now adults that can now reflect on how such has impacted them and their children. Family names, identity, genealogy, DNA, personality, ethnicity, interests and physical characteristics are concepts closely wrapped up into each other and complicated by any form of formal and legal adoption. Permanent guardianship and other forms of care within families can provide stability for children whilst attempting to maintain a person's identity and reduce the complexity adoption creates by trying to remove essential aspects of identity from an individual.

Adoption rates may be low but in the context of Australian history and the experiences of adopted people, Professor Mushin's question needs to be asked: Do we need adoption at all? And for whom do we need it? Does it exist for the best interest of a child or the best interest of adoptive parents who desire to form a family?

I again highlight the Convention of Rights of the Child, of which Australia is a signatory:

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. (CRC 1989)

Considerable research in the area of adoption supports the convention. The identity of a child must be preserved. Adoption causes major issues of identity for not only adopted children, but when adopted children become adults, start a family and subsequently start having children themselves.

The Myth of Permanency and Stability

Whilst the evidence suggests that children thrive best with consistent parenting, it is a myth that any family can provide “permanency”. All families experience unexpected events. While adoptive parents undergo a considerable screening process, they are not immune to family breakdown, mental illness onset, disease, grief and death. Ultimately adoptive families are no different from any other family in the community in terms of experiencing hardship and breakdown. The experience of adopted people concerning their upbringing is variable, from growing up in families with long term stability to experiencing abuse, divorce, suicide and domestic violence. As a post-adoption support worker, the two most traumatised demographics I work with are mothers who lose their children to adoption and adoptees who have suffered abuse at the hands of their adoptive parents. Adoptees who suffer abuse from their adoptive parents have considerable long term mental health issues, relationship problems, housing issues, financial and physical health problems. Arranging support for these individuals is extremely difficult due the prevalence of pro-adoption attitudes in some mental health and medical professionals, and a lack of education of adoption related mental health issues in the professional community.

Furthermore, adoptive parents overwhelming desire to adopt healthy infants. Children in out of home care who are older, have experienced abuse or have disabilities are not typically desired by adoptive parents. Adoptive parents desire infants to make their family “complete” and typical of traditional family structures by bringing up a child from birth and having as little contact with the child’s birth parents as possible. On a global level, the number of adoptable children is decreasing while the demand from adoptive parents is increasing creating a considerable disparity between the two. This disparity creates the misconception that adoption is not accessible enough as referred to in the media release surrounding this present inquiry. The number of adoptions is perceived to be “low” because they are occurring at increasingly lower rates consistent with global trends.

While the number of children in foster care is often quoted as being in the vicinity of 40000 children, this number is by no means an indication of how many children are adoptable in Australia as these children vary widely in ages and family circumstances. To suggest that local adoption is the ultimate answer to permanency and stability for children in out of home care overlooks the complexities of adoptive families, the types of children who are adoptable, the kinds of children that adoptive parent’s desire and the global declining trends in adoption.

Adoption and a National Framework

Establishing a National Framework for local adoption is complicated by the fact that each state and territory in Australia independently assesses and authorises adoptions based on their own independent pieces of adoption legislation. However all states and territories, as well as the federal government have an obligation to comply with the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* and *Convention of the Rights of the Child 1989* and the general principles for which they were established and Australia agreed as

signatories. Whilst the *Hague Adoption Convention* is not strictly about Local Adoption practices, it does refer to them in relation to Intercountry Adoption and therefore a process that Australia has nationally agreed to in principle. These basic principles can be used as guide for local adoptions and can uniformly create consistency between local and intercountry adoptions.

I have already referred to the relevant sections of the Convention of the Rights of the Child. In regards to the Hague Convention, I highlight the following framework:

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

a) have established that the child is adoptable;

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

c) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -

a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

- c) *ensure that consents have been obtained in accordance with Article 4; and*
- d) *determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.*
- (2) *It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.*

Article 21

- (1) *Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -*
- a) *to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;*
- b) *in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;*
- c) *as a last resort, to arrange the return of the child, if his or her interests so require.*
- (2) *Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article. (Hague Convention 1993)*

If Australia has agreed to these terms in the realm of intercountry adoption, it is also reasonable that it adheres to the same principles in regards to local adoption. The Hague convention is the benchmark for how adoptions should take place between nations, but also covers domestic safeguards to prevent the unnecessary and unlawful separation of children from their parents.

Specifically I highlight the following processes as referred to in the Hague articles:

- A process to determine if a child is “adoptable”. As I have previously noted, these are in extremely exceptional circumstances.
- Best interests of the child are paramount
- Informed consent has been obtained after extensive counselling
- Consent is only obtained AFTER the birth of a child
- Regard is given to the age and maturity of the child
- No payment or compensation is offered for the adoption – including indirect medical expenses or other forms of financial benefit
- Give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background
- Where the adoption is no longer in the best interest of the child, the child is removed from the prospective adoptive parents and alternative measures are pursued.

Another consideration, previously referred to by Prof Mushin (Mushin 2018), is whether a National Framework can occur in accordance with the Federal Family Law act. This may dispense with the need for Adoption Orders altogether, and instead replace them with Parenting Orders in accordance with the best interests of the child in the context of the child's family and direct community. Issues of child protection are common in many Family Law proceedings however child protection issues are dealt with by local state government authorities and legislation, whilst the Family Law act is a piece of Federal legislation and covers all states and territories. If permanency and stability is in the best interest of the child and the Family Law Act also has as its basis the best interest of child, Parenting Orders by default must also create permanency and stability for the child. Under this consideration, family members would need the family law system to be accessible and affordable however this is no different to the current system in regards to Child Protection Orders and Adoption orders.

Conclusion

In my opinion, the current low domestic adoption levels are not cause for alarm but are indicative of practices that have been highly refined and informed in the light of Australia's dark history of past adoption practices, research into the experiences of the adoption triad, the limited adoptability of children in the foster care system, the types of children desired by adoptive parents and the relevant international conventions related to children and adoption. In the committee's consideration of a National Framework for children living in out of home care, it must recognise that legal adoption is not necessary to create permanency for a child. Stability for children can be created in a variety of alternative ways with the best interest of the child to be the paramount consideration.

Kind regards,

References

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