



**Australian Government**

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**Senate  
Legal and Constitutional Affairs Legislation Committee**

**Inquiry into the Australian Citizenship Amendment  
(Intercountry Adoption) Bill 2014**

**Submission from  
Australian Institute of Family Studies**

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**Authorised by  
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## **Inquiry into the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014**

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The Institute has not undertaken any primary research directly on the topic of Intercountry Adoption. However, there are two programs of work where there are implications that relate to current adoption practice, including intercountry adoption.

### **1. Learning lessons from past adoption practices**

During the mid to late twentieth century (1940s to 1980s), it was common practice for babies of unwed mothers to be adopted by married couples. Many of the infants were taken from their mothers at childbirth as a result of extreme pressure and coercion that they experienced from family, social workers and hospital staff. The practices sometimes extended to 'undeserving' married women. The adoptions that occurred in this way have been termed 'forced adoptions'. Not all of the forced removals or separations between parents and children resulted in adoption: some children grew up in institutions. It has now been recognised that the separation of a child from its mother in this manner was neither moral nor legal – a practice for which the nation has offered its apology (Mushin, 2014). Many of the practices have similarities with those to which Indigenous children of the Stolen Generations were subjected. The past practices of forced adoption have resulted in life-long consequences for the majority of those directly involved, particularly for mothers and adopted persons, but also for other family members (Higgins, 2010).

The Institute undertook a National Research Study on the Service Response to Past Adoption Experiences (Kenny et al., 2012), which examined the effects of forced adoptions, including the psychological, emotional and social impacts. Subsequently, the Institute undertook the Forced Adoption Support Services Scoping Study (Higgins et al., 2014), which focused on the ways in which service providers can most appropriately respond to the current needs of people affected by forced adoption practices including the need for information, counselling and reunion services.

One of the strongest messages communicated in this study was that these experiences had left many feeling they were the victims of a systematic approach to the removal of babies from the 'undeserving' (usually unmarried young women) to the care of the 'deserving' (married infertile couples). Many participants expressed sentiments to the effect that those who experience past adoption practices are now the living result of a failed social experiment. It is clear that the impacts of past adoption policies and practices are a very current issue for many thousands of Australians. While there were divergent views within specific respondent groups as to how their current needs would be best met, there were a number of issues that participants in the research and scoping studies identified that have implications for intercountry adoption.

## **Implications for current policy and service delivery relating to intercountry adoption**

One of the clearest implications from the AIFS research was that participants wanted lessons from past practice to translate into current policy and practice areas. Participants identified that in current areas of practice—including intercountry adoption—we need to avoid the risk of continuing the mistakes from the past. Some of these ‘mistakes’ identified by participants included:

- cutting ties between biological parents and their children;
- failing to provide young people with information about their heritage, culture and family;
- prioritising the desires of prospective parents to have a family over the needs of existing (and often vulnerable) parents and children;
- failing to recognise that family ties are for life; and
- the trauma of interrupting the bond between parents and children, which can have lasting effects for all.

Research participants identified areas of current practice where these practices may continue to occur, such as: child protection and out-of-home care (including permanency practices); current adoption practices (including overseas adoption; local adoption; moves to increase adoption from out-of-home care); surrogacy; and donor insemination. AIFS has recently published a collection of essays that address each of these topics and confirm the views of the research participants: that there are plenty of opportunities to apply the lessons from past mistakes to our current social policies and everyday professional practices (Hayes & Higgins, 2014). Lessons from the past need to be brought to bear on current child welfare practice issues, to ensure adoption-specific services are created or enhanced to respond to the consequences of past practices, and to raise community awareness of and education about past adoption practices and their subsequent effects.

Improvements to processes for managing contact with biological family members was one opportunity identified by a participant from Higgins et al. (2014): to create and value shared training and supports for professionals working with people affected by past adoption alongside workers managing out-of-home care placements and current adoptions (including overseas adoptions) – so that they value all family connections and are sensitised to the ways in which practices can cause long-term harm (Higgins et al., 2014). The available evidence supports the importance of biological connections, and how these need to be supported and sustained.

## **2. Publication of a compendium of essays that touch on policies and laws where implications of past practice could be addressed.**

Recently, the Institute published a 29-chapter multi-author volume focused on issues relating to laws and policies that affect families:

Hayes, A., & Higgins, D. (Eds.) (2014). *Families, policy and the law: Selected essays on contemporary issues for Australia*. Melbourne: Australian Institute of Family Studies. Available at:  
[www.aifs.gov.au/institute/pubs/fpl/index.html](http://www.aifs.gov.au/institute/pubs/fpl/index.html)

A number of these chapters have insights that relate directly or indirectly to the issue of intercountry adoption. For example, authors made some of the following points:

***Examining new trends in family formation.*** People affected by past adoption practice see it as a key aspect of 'reparation' or 'restorative justice' that lessons from past mistakes need to be applied to emerging family formation mechanisms, such as donor insemination, surrogacy and overseas adoption (Kenny & Higgins, 2014). Cuthbert and Fronek (2014) concluded that "commercial offshore surrogacy represents the latest source of children in a shifting market driven by the needs of adults seeking children for family formation. This market is enabled by new technologies, underwritten by old inequalities and repeats patterns..." (p. 63).

***Ensuring 'open adoption' is truly open.*** Castle (2014) reflected that court-ordered open adoption does not necessarily secure contact between parents and children who have been voluntarily adopted. She questioned the limits of the law to be able to achieve what she sees as necessary for true openness: namely, a commitment to shared parental responsibility between parents and adoptive parents. In reflecting on the future of adoption, Mushin (2014) concluded that "the vast majority of people affected by forced adoption would like to see the total abolition of adoption... It cannot be in a child's best interests to have all aspects of his or her past obliterated from the record" (p. 45). While these comments were made explicitly in relation to local adoptions, the same implications could be extended to intercountry adoption.

Some of the other points made directly by authors of various chapters about intercountry adoption are identified, as well as where there are implicit links that would be of interest to the Committee. These include:

- the deep significance of biological ties to identity formation (ch 3);
- the ways in which practices relating to the period of closed adoption in Australia leave a legacy of challenges for identity, connection, and access to personal information (ch 4);
- that a true apology for past practice involves an assurance that the wrong done will not recur, and that current developments in adoption law are cognizant of these (ch 5);
- the importance not just of legal contact arrangements for current option adoption, but the importance of practices that can support or undermine this – though the chapter was written with local adoption in mind, and it is not clear how such contact could be managed in an intercountry context (ch 6);
- the shift from focusing on the needs of vulnerable children to grow up in safe and supportive families – to meeting the needs of would-be parents through commercial arrangements, such as off-shore surrogacy and intercountry adoption (ch 7);
- the shift from local to overseas arrangements made by prospective parents (ch 8);
- the potential harm that can come from secrecy, and a young person's right to know their conception and family history (e.g., sperm donation) (ch 9); and
- how rights for minority groups (e.g., for gay/lesbian people to be treated equally before the law in matters of family formation) intersect with the challenges of the ethical debates raised in previous chapters (ch 10).

## References

- Cuthbert, D. & Fronek, P. (2014). Perfecting adoption? Reflections on the rise of commercial offshore surrogacy and family formation in Australia. In A. Hayes, & D. Higgins (Eds.), *Families, policy and the law: Selected essays on contemporary issues for Australia*, pp. 55-66. Melbourne: Australian Institute of Family Studies. Available at: [www.aifs.gov.au/institute/pubs/fpl/fpl7.html](http://www.aifs.gov.au/institute/pubs/fpl/fpl7.html)
- Higgins, D. J. (2010). Impact of past adoption practices: Summary of key issues from Australian research. *Australian Journal of Adoption*, 2(2). Available at: [www.nla.gov.au/openpublish/index.php/aja/issue/view/142/showToc](http://www.nla.gov.au/openpublish/index.php/aja/issue/view/142/showToc)
- Higgins, D., Kenny, P., Sweid, R., & Ockenden, L. (2014). *Forced Adoption Support Services Scoping Study: Report for the Department of Social Services by the Australian Institute of Family Studies*. Melbourne: Australian Institute of Family Studies. Available at: [<dss.gov.au/our-responsibilities/families-and-children/publications-articles/forced-adoption-support-services-scoping-study>](http://<dss.gov.au/our-responsibilities/families-and-children/publications-articles/forced-adoption-support-services-scoping-study>).
- Kenny, P., & Higgins, D. (2014). Past adoption practices: Key messages for service delivery responses and current policies. In A. Hayes, & D. Higgins (Eds.), *Families, policy and the law: Selected essays on contemporary issues for Australia*, pp. 29-38. Melbourne: Australian Institute of Family Studies. Available at: [www.aifs.gov.au/institute/pubs/fpl/fpl4.html](http://www.aifs.gov.au/institute/pubs/fpl/fpl4.html)
- Kenny, P., Higgins, D., Soloff, C., & Sweid, R. (2012). *Past adoption experiences: National Research Study on the Service Response to Past Adoption Practices* (Research Report No. 21). Melbourne: Australian Institute of Family Studies. Available at: [www.aifs.gov.au/institute/pubs/resreport21](http://www.aifs.gov.au/institute/pubs/resreport21)
- Mushin, N. (2014). The forced adoption apology: Righting wrongs of a dark past. In A. Hayes, & D. Higgins (Eds.), *Families, policy and the law: Selected essays on contemporary issues for Australia*, pp. 39-46. Melbourne: Australian Institute of Family Studies. Available at: [www.aifs.gov.au/institute/pubs/fpl/fpl5.html](http://www.aifs.gov.au/institute/pubs/fpl/fpl5.html)