

CHAPTER 4

ADOPTION AND FOSTER CARE

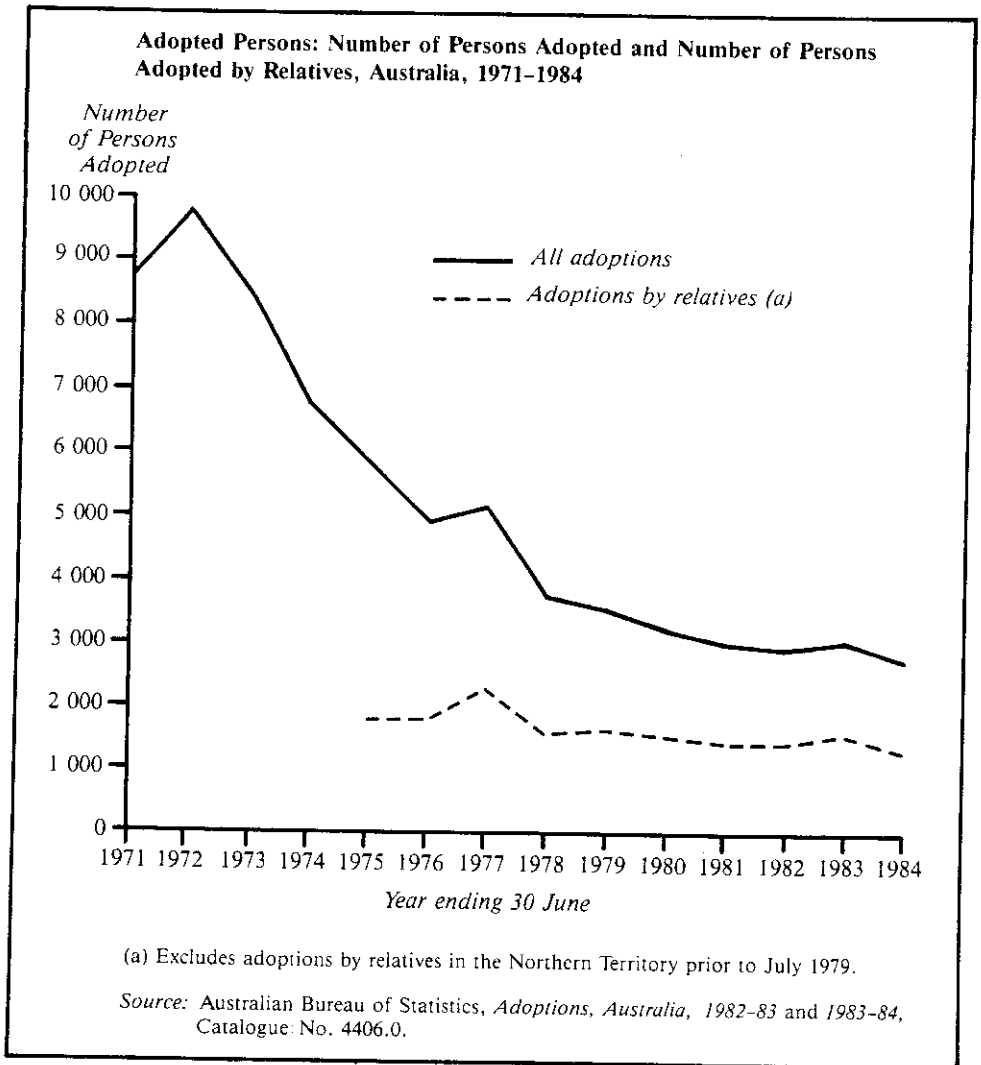
The practice of adoption

4.1 Adoption is the legal process whereby the guardianship of a child is permanently transferred to the care of another person(s) after the natural parent(s) has relinquished the right to care for the child. It is therefore the most permanent form of substitute care. Adoption orders can generally only be made by judicial order, after a court or tribunal has considered the welfare of the child and determined that the parent's consent has been given, or properly waived. The adoptive process is most frequently used when, for a variety of legally defined reasons, the child's natural parents are unable or unwilling to care for the child.

4.2 The legal process of adoption was first introduced in Australia by the Western Australian Parliament when it enacted the *Adoption of Children Act* 1896. The practice gradually became established in law in all States and Territories and from its beginnings has remained a matter of State and Territorial jurisdiction. Despite the passing of legislation during the period 1964-68 which aimed at introducing some uniformity in this area, particularly with regard to matters of jurisdiction and the recognition of interstate and inter-country adoptions, present adoption procedures vary considerably from State to State. For example, in Queensland adoption is an administrative process effected by an order of the Director of the Department of Children's Services and does not require judicial authorisation. In the Australian Capital Territory and the Northern Territory jurisdiction over adoption lies with the Supreme Court. In Victoria it rests with the County Court or Supreme Court, and in Western Australia adoption procedures are the responsibility of the State Family Court. In New South Wales and South Australia adoption is a matter for special adoption courts or tribunals, and in Tasmania adoptions are dealt with by magistrates.¹ The non-legal aspects of adoption arrangements in Australia are left to approved State adoption agencies or societies with the notable exception of the adoption of children by relatives.

4.3 The Australian Bureau of Statistics estimated that in the year ended 30 June 1984, 2770 children were adopted in Australia. This represented a decrease of 302 compared with the previous year.² As can be seen from the following graph, this reduction continues the downward trend in the number of children adopted in Australia which, with only minor exceptions, has been evident in national adoption statistics for more than a decade. A breakdown of the number of children adopted in each State and Territory since 1971 is provided in Table 1, Appendix 4.

4.4 In 1983-84 just over half (52.4 per cent) of all adoptions were by relatives of the adopted children, continuing the pattern of an increase in the proportion of adoptions by relatives since 1974-75 when separate statistics on relative and non-relative adoptions first became available. Only in the last three years have adoptions by relatives outnumbered adoptions by non-relatives, the proportion being 50.3 per cent, 50.4 per cent and 52.4 per cent in 1981-82, 1982-83 and 1983-84 respectively. Of the number of children adopted in 1983-84, 84 per cent were born in Australia, 87 per cent were born ex-nuptially, 49 per cent were born to mothers aged 19 years and under, and, at the time of adoption, 33 per cent were aged less than two months and 67 per cent were aged less than one year.



4.5 Evidence received during the inquiry supported the view that formal adoption practices have proved to be a successful means of providing substitute care for many children. Through adoption, a child is offered the benefits of permanent parental care and the advantages of secure and lasting relationships within a family. Adoption can spare children the problems often encountered in other substitute care arrangements, particularly the difficulty of coping with the uncertainty of his or her present and future position. It also provides support and contact for children beyond adolescence in a way that both voluntary agencies and government departments find difficult to maintain.³

4.6 The Committee has noted certain changes in the community's attitude towards the practice of adoption which were reflected in the first national adoption conference in Australia held in 1976 and the subsequent growth of self-help adoption groups in most States. A major development in this field has been the growing recognition within both the community and official welfare agencies that the adoptive process is suitable not just for

babies and infants but for a much wider range of children than has previously been considered in this country. These children may include those in long-term institutional care without hope of being reunited with their families and those with some handicap or disability. Both practice and research overseas demonstrate the positive role of adoption in planning substitute care placements for children with special needs, particularly older children. It is, however, important to recognise that when adoption is chosen for the placement of these children, all the resources and support of good foster care practice are required.

4.7 The need to improve the circumstances of children with special needs in substitute care by promoting the alternative of adoption has been recognised in the establishment of special government units such as the Special Needs Adoption Unit in the Victorian Department of Community Welfare Services. While these initiatives have been accompanied by some developments in the provision of professional pre-adoption and post-adoption services for both adoptive children and their parents, a number of child care workers indicated to the Committee that they felt they did not have the necessary skills, insight, knowledge or experience to recommend adoption as a form of permanent planning for children requiring substitute care or even suggest it as a placement option. In the past, such doubts have been reinforced by difficulties encountered in finding suitable families willing to adopt children other than healthy babies and infants, and by an absence of information on successful older-age adoptions.

4.8 The Committee's attention was drawn to a number of other issues relating to adoption. These included the adequacy of present inter-country adoption procedures; the implications of adoption for ethnic minorities, particularly Aboriginal children; and the right of access to original birth records and personal documents by adopted persons. Most witnesses who commented on these matters were critical of the variations between the States in adoption laws, regulations and practices especially as they relate to inter-country adoptions and access by those adopted to original birth records.⁴ The Committee agrees that the existence of these differences is unsatisfactory and urges both government and non-government welfare agencies to seek greater uniformity in official adoptive policies and practices throughout Australia.

The practice of foster care

4.9 Foster care is a generic term used to refer to a wide range of family-based substitute care arrangements whereby a child lives temporarily apart from his or her natural or adoptive parents and is cared for by substitute parents in their family home. Different types of fostering have developed in response to requirements for substitute care for children in different family circumstances. These range from formal governmental guardianship arrangements to more informal practices between parents, other family members and friends. Fostering may be a short-term or long-term arrangement. In either event, it does not involve a permanent transfer of legal guardianship to the foster parents and, under formal arrangements, is revocable by the responsible Minister or his delegate unless steps are taken to formalise the status quo through an adoption order.

4.10 Short-term or temporary foster care is provided when substitute family care is needed for a child for a short period only. It includes the provision of emergency foster care for children of families where basic functioning is satisfactory but where temporary substitute care is required as in cases of parental illness or accident. Short-term foster care also covers pre-adoptive fostering used immediately prior to the adoption of babies and infants. Finally, it can include planned short-term foster care where the placement of a child away from his or her family for a period of up to six months is part of a wider plan

involving the child's eventual family reunion or permanent placement elsewhere. Foster care provided for periods over six months is generally referred to as long-term foster care. Fostering arranged on this basis may take one of three forms: 'permanent' foster care, foster care used with a view to proceeding with an adoption order, and indefinite foster care.

4.11 The placement of children in foster care is normally arranged by an approved non-government welfare agency or State welfare department. State welfare departments are primarily responsible for the placement and supervision of foster children under the guardianship of the State while non-government welfare agencies generally assume responsibility for other children in need of foster care. Direct financial assistance is provided to foster parents by the States and the Territories in the form of a foster care allowance. The purpose of the allowance is to assist parents in the maintenance and support of foster children in their care. Separate arrangements may be made for the provision of a clothing allowance although in most States and Territories this payment is not an automatic entitlement but is dependent on the receipt of a claim for reimbursement of expenses by the foster parent. Reimbursement is also available in most States for major medical and pharmaceutical expenses following a claim for such costs.

4.12 The Australian Bureau of Statistics has estimated that, on the basis of the payment of foster care allowances, 9757 children were in foster care placements in Australia at 30 June 1984. A breakdown of this number for each State and Territory is provided in Table 2, Appendix 4. No estimate of the number of foster homes in use in 1984 is available. However, the Bureau has reported that at June 1982 there were 7731 foster homes in use throughout Australia. A breakdown of the number and size of foster homes in each State and Territory for 1982 is provided in Table 8, Appendix 4.

4.13 Trends in the number of children in foster care are unclear. As illustrated in the following graph, the number of children under the guardianship of the State who were placed in foster care during the period 1972 to 1982 fell from 8581 to 5951. The extent to which this decline can be attributed to decreasing foster care placements is, however, uncertain as the number of children under the guardianship of the State also declined during these years. On the basis of data available for the last five years when records of the number of both those under the guardianship of the State and other children placed in foster care are available, the number of foster placements fell less significantly from 10 252 in 1980 to 9757 in 1984. Further details of the decline in the number of children placed in foster care are provided in Tables 9 and 10, Appendix 4.

4.14 In recent years a number of other changes in the characteristics of children in foster care have occurred. For example, between 1980 and 1982 the number of children in foster care who were under the guardianship of a State or Territory welfare department declined by 8 per cent while the number of other children in foster care increased by 33 per cent. Related to this change was a decline of 10 per cent in the number of children placed by welfare departments and an increase of 49 per cent in the number placed by non-government organisations. Despite the declining number of children in foster care, this form of substitute care continues to be regarded as an important and valuable placement option in all States and Territories.⁵ Fostering is also considered suitable because it can be used in various forms enabling a broader range of children, such as physically and intellectually handicapped children, emotionally disturbed children and some juvenile offenders, to be placed in this form of care.

Number of Children Under Guardianship in Foster Care 1972-82 (a)



(a) Information concerning the number of children in foster care is only available from Annual Reports of State Welfare Departments and generally only relates to children under the guardianship of the State. Although the Australian Bureau of Statistics has published information for the period 1980-1984 covering all children in foster care, no significant trend is apparent as yet.

Source: State Welfare Department Annual Reports 1972-78; Australian Bureau of Statistics, *Persons Under Guardianship and Children in Substitute Care*, 1979-1982, Catalogue No. 4405.0.

4.15 In its submission to the Committee, the New South Wales Association of Child Caring Agencies commented that short-term foster care in which parental involvement is sustained through frequent visiting is a particularly valuable form of substitute care whereby the foster parents' role is an unambiguously 'professional' caregiving one which allows children to maintain a close relationship with their families. Under this arrangement, separation traumas for the child, its natural family and foster family are less likely to be permanently damaging. Because placements are of limited duration, foster parents tend to be better able to withstand the demands of their role. Furthermore, agencies are more likely to provide back-up services and advice to assist with various aspects of the child's care. The effectiveness of this form of care does, however, depend on the way in which it is applied. Short-term foster care should not be allowed to continue and become an indefinite arrangement. Agency expectations of the foster family also need to be made explicit and the length of placements stated clearly, preferably in writing.

4.16 Long-term foster care provided on a more or less permanent or quasi-adoptive basis was considered by such fostering organisations as the New South Wales Association of Child Caring Agencies to be a second-best alternative to adoption. It was, however, viewed as a reasonable, if limited, option particularly if safeguarded from disruption through granting the foster parents guardianship of the child. In its submission, the Association noted that this form of care is more often the 'best achievable' rather than the 'most desirable' permanent option.⁶ It also suggested that it is particularly suitable for the child where restoration with his or her natural family is next to impossible or undesirable; where a child has formed relationships in the foster home that should not be broken; where the foster parents are unwilling or unable to adopt; or where the child is opposed to or distressed by the prospect of adoption (e.g. if it involves moving the child from a familiar neighbourhood, friends and school, or changing his or her name).

4.17 Long-term foster care used on a semi-permanent basis is often appropriate when parents refuse to relinquish a child for adoption in spite of their negligible interest in caring and providing for the child. The New South Wales Association of Child Caring Agencies also made the observation that, in certain circumstances, foster parents may choose to continue the long-term foster care arrangement rather than adopt a child because, under existing provisions, the foster parents lose not only the foster care allowance and the support provided by the fostering agency, but become liable for all the child's expenses.⁷

4.18 Evidence presented to the Committee shows that long-term foster care used in circumstances where adoption is the ultimate goal is often appropriate when an alternative form of substitute care is required while a child's adoption order is being processed and finalised. This form of long-term fostering may also be suitable for children, particularly older children, who have mixed feelings about adoption that can only be resolved by allowing them time to accept and adjust to their new situation. While it is usually preferable to help children resolve their feelings before placement, in some cases placement may need to be more rapid. This form of care may also be useful as an intermediate step preceding adoption to demonstrate to the natural parents relinquishing their child that the child is happily settled in a new family. The main criticism of long-term foster care where adoption is the goal, is that it can result in ambivalence and procrastination about the child's permanent placement either with its natural family or through adoption. The New South Wales Association of Child Caring Agencies claims that using foster care with a view to adoption has been commonly seen as a compromise arrangement for children in need of permanent placement but whose natural parents will not agree to adoption and, as a result, is of benefit to no-one but the natural parents.⁸

4.19 Indefinite long-term foster care which is both impermanent and uncertain, is regarded by many foster care organisations as a limited and unsatisfactory form of substitute care appropriate only for children who need family care pending the arrangement of a permanent placement or restoration to the natural family. It was suggested to the Committee that it is through this form of substitute parenting that the ambiguities of fostering emerge, that is, where the foster parents can undertake the role of either substitute parents or neutral caretakers. It was argued for example, that the caretaking role invariably gives rise to a lack of commitment and lack of personal interest in the child which adversely affects the child's emotional development and may lead to further personal problems and breakdown in relationships for the child. This form of care is seen by many as particularly undesirable for all parties concerned if it is allowed to continue unchecked and thus drift on indefinitely.⁹

4.20 In view of the various forms of foster care available, it is understandable that the role of foster parents and the status of foster children can easily be misunderstood. In the past, this has led to confusion and trauma for both children and adults in the fostering relationship. In an attempt to overcome some of these problems, most State and Territory welfare departments have established special units employing professional field officers who are responsible for the recruitment and training of foster parents and the provision of advice and other support services for them. Emphasis is placed on intensive contact with the child's family and foster parents to effect restoration as soon as possible or to establish a long-term alternative placement for the child within the shortest possible time. Evidence shows that where the special departmental units are functioning well, there has been an increase in the availability of suitable foster parents and a decrease in the breakdown rate of foster placements.

4.21 In all the States it visited, the Committee was impressed by the commitment of foster parents to the children for whom they were responsible and the considerable personal sacrifices willingly made by them in fulfilling their role. In every case, their prime concern for both the immediate and future well-being of the children placed in their care, whether on a short-term or long-term basis, was evident. The Committee strongly believes foster care provides an essential form of substitute care for many children and, when compared with the cost of alternative forms of care, such as institutional care, is a highly cost-effective substitute care arrangement. The Committee also considers fostering has wider potential application than conventionally thought. In this respect, it applauds the initiatives taken in South Australia through the development of the Intensive Neighbourhood Care Scheme which selects and trains foster parents to care for young offenders who would otherwise be committed to juvenile corrective institutions.

4.22 Two additional matters of concern were brought to the Committee's attention during the inquiry: first, the variation in the value of foster care allowances between the States (notwithstanding differences in the cost of living between them); and secondly, the overall inadequacy of the level of allowances, particularly for older and more difficult children in care. As shown in the following table, the base rate of the allowance payable for children in foster care falls between the range of \$30.40 and \$55.60 a week depending on the age of the child and the State or Territory in which the child lives. As stated earlier in this chapter, reimbursement is available in most States for major medical and pharmaceutical expenses provided a claim for such costs is presented to the appropriate government authority. Likewise, reimbursement is provided for limited clothing costs incurred following receipt of a claim for such expenses. The maximum value of the annual clothing allowance ranges between \$136 in Victoria and \$380 in South Australia. Differences in the above allowances also exist in some States between children who are under the guardianship of the State and children who are not, and between boys and girls.

4.23 On the basis of research carried out by the Children's Welfare Association of Victoria, the Family Substitute Care Section of the Victorian Department of Community Welfare Services and the Institute of Family Studies, the Committee believes present allowances for foster parents are inadequate even when Family Allowance entitlements are added. For example, the Children's Welfare Association of Victoria found that the cost of maintaining a child was \$41 per week in 1981-82 (approximately \$49 in 1985 prices) for primary school age children and \$66 per week in 1981-82 (approximately \$80 in 1985 prices) for teenage children.¹⁰ These estimates of cost represented a minimum and

Summary of Weekly Foster Care Allowances Paid by State and Territory Governments as at 1 October 1984

<i>State or Territory^(a)</i>	<i>Base Rate (depending on age— \$ per week)</i>	<i>Pocket Money (depending on age— \$ per week)</i>
Tas.	30.40-34.20	1.25-4.80
Vic.	35.00-45.00	included
S.A.	39.10	1.10-4.40
A.C.T.	37.00	50c.-5.00
N.S.W.	39.00	2.80-5.00
W.A.	32.00-37.50	1.00-5.00
Qld ^(b)	48.90-55.60	included

(a) The Committee was unable to obtain figures for the Northern Territory. (b) The Queensland Government pays an initial allowance of \$57.40 to \$64.15 during the first four weeks of a child's placement in a foster home.

are supported by the findings of the recent report of the Institute of Family Studies, *Cost of Children in Australia*.¹¹ While foster parents, representatives of foster care agencies and others agreed that present foster care allowances are not sufficient to compensate parents for the day-to-day maintenance of foster children in their care, they were concerned to emphasise the dangers of commercialising foster care. In particular, it was argued that, if a separate component representing remuneration for professional services were to be included in the foster allowance, as has been suggested by some, it may attract people to this field for the wrong reasons.

4.24 The Committee was also advised that Family Allowances are often not transferred by the Commonwealth Department of Social Security from the natural parent to the foster parent and that social workers are reluctant to pursue the matter through fear of disrupting care arrangements. An impasse is therefore reached in which welfare agencies are unable or unwilling to obtain the Family Allowance for the child's foster parents because they are not prepared to jeopardise the security of the child's substitute care placement should the natural parent demand the return of the child to retain eligibility for the payment of the Family Allowance. In such instances the return of the child to the natural parent may well place the child in an environment where his or her welfare is again at risk. The Committee believes this is an unacceptable position and one that should be redressed as soon as possible.

4.25 In conclusion, the Committee believes there is a need to rationalise the provision of allowances for foster parents — first, to avoid the present variations in the value of foster parent allowances paid by the State and Territory governments and, secondly, to ensure uniformity of practice in the payment of Commonwealth Family Allowances. The evidence received by the Committee indicates that it is not uncommon for foster parents to be out of pocket through meeting foster care expenses. The Committee regards this as an untenable arrangement and considers that the value of foster parent allowances should reflect more accurately the real and increasing costs involved in providing proper care for

a fostered child. The Committee therefore **recommends that the Commonwealth Government introduce a national foster parents' allowance to replace existing allowances for foster parents.** It further **recommends that the national foster parents' allowance —**

- a) **fully compensate foster parents for the cost of maintaining children placed in their care;**
- b) **be automatically indexed on a regular basis in line with variations in the cost of living; and**
- c) **include a separate component representing the Family Allowance that would otherwise be payable to the foster child's natural mother or father.**

The Committee also **recommends that the Minister for Social Security in consultation with State and Territory Ministers responsible for child welfare matters determine appropriate administrative arrangements for the payment of the national foster parents' allowance.**

ENDNOTES

1. H.A. Finlay, *Family Law in Australia*, Butterworths, Sydney, 1979, pp. 319-51.
2. Australian Bureau of Statistics, *Adoptions, Australia 1982-83*, Catalogue No. 4406.0, Canberra, May 1984.
3. N. Bell, *Lost in Care: Planning and Review in Out-of-Home Care*, New South Wales Association of Child Caring Agencies, 1981, Committee Exhibit No. 2.
4. The Victorian Government proposes implementing the *Adoption Act* 1984 this year. As a result, new rights and opportunities will become available for the first time in Australia for adult adoptees in Victoria to obtain information concerning their biological origins.
5. J. Ward and others, *A Review of Children in Residential Institutions Program — Report to the Commonwealth Schools Commission*, Special Education Centre, School of Education, Macquarie University, Sydney, October 1984. See also *Directions for Residential Care: A Report to the Minister for Youth and Community Services*, Department of Youth and Community Services, Sydney, June 1983.
6. Bell, op. cit.
7. ibid.
8. ibid.
9. ibid.
10. G. Withers, Children's Welfare Association of Victoria, 'New Financial Reporting System', *Australian Child and Family Welfare* Parts I and II, 8, 1983. Prices for 1981-82 have been updated to 1985 figures on the basis of Consumer Price Index increases over the period 30 June 1982 – 30 June 1985.
11. K. Lovering, *Cost of Children in Australia*, Working Paper No. 8, Institute of Family Studies, Melbourne, August 1984.