

## **Additional Comments—Coalition Senators**

1.1 Coalition Senators believe that the bias against adoption in Australia needs to end.

1.2 We wish to place on the record that while the committee undertook important and valuable work as part of this inquiry, statistics provided in evidence and submissions make it clear that there is a bias against adoption as a viable option for children in the out-of-home care system long-term and we believe the committee Report (the Report) fails to give proper regard to this reality.

1.3 Coalition Senators acknowledge the complexity of out-of-home care and note the good work of the committee in pursuing this inquiry. Coalition Senators further acknowledge and thank the many organisations and individuals who made submissions and presented evidence in hearings so that a full and wide-ranging inquiry could take place.

1.4 However, Coalition Senators wish to draw attention to the challenges around children who have been in the out-of-home care system long term. It is clear that children need stability and that adoption needs to be available as an option to far more children than is currently the case as one important means of providing stability.

1.5 The Report states that 27 924 children had been in out-of-home care for two years or more at 30 June 2013 while there were only 210 local adoptions in 2012-13, accounting for less than one per cent of children in long term care. It is clear from those numbers, and from evidence given to the committee, that any efforts to reduce the numbers of children in out-of-home care must include addressing the bias against adoption in Australia.

1.6 Barnardos Australia noted in their submission that:

The growing number of children in care is primarily driven by the fact that children are staying in care too long and entering care earlier. There is a failure to consider ensuring 'exit' from long-term care which leaves too many young people in unstable and damaging foster care. A proven way of doing so is through open adoption...Open adoption is valued highly by many children and Barnardos Australia has published extensively on our experience and can provide evidence from young people speaking themselves on the importance of this option. Both the USA and UK have a high number of children adopted from care.<sup>1</sup>

1.7 In evidence given by Louise Voight, CEO of Barnardos Australia, it was clear that a lack of permanency is a significant issue for children in the out-of-home care system:

When research looks at the permanency of children in the out-of-home care system it is a deeply non-permanent experience for very many of them. Six

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1 Barnardos Australia, *Submission 20*, p. 2.

to eight placements is normal. If you can just imagine what it means for a child who has already had a pretty horrible time one way or another at home and then is in something where they just get to know people and they move. They are not woken up, for instance, by the same person that put them to bed.<sup>2</sup>

1.8 The 'Still Damaging and Disturbing: Australian Child Protection Data and the Need for National Adoption Targets' study from the Centre for Independent Studies (CIS) noted that:

In the United States, more than 50 000 children are adopted from care each year. If Australian children in care were adopted at the same rate as in the United States, there would be around 5,000 adoptions each year, nationally. That there were 210 'local' adoptions in Australia in 2012–13 is pitifully low, especially given the rising numbers of children in care. But the situation is actually bleaker than this. There were only 54 adoptions where the child was not previously 'known' to the adoptive parents, and in all these cases the birth mother and/or birth father consented to the adoption.<sup>3</sup>

1.9 Barnardos Australia noted in their submission that in the UK, six per cent of children in out-of-home care for more than two months were adopted. By 2011, this proportion had increased to eight per cent, with 30 per cent of children who enter care before age one adopted before the age of four. This is compared with a care to adoption rate of less than one per cent in Australia for children who have been in out-of-home care for more than 2 years.<sup>4</sup>

1.10 Ms Maree Walk from the NSW Department of Families and Communities told the committee in evidence that, in relation to the need for adoptions:

You probably heard the research from the US and the UK about making decisions for those children early in their lives so that they have a sense of belonging. I have to say, adoption is a very difficult discussion to have in Australia because all of the history around adoption. But some of the most moving applications and discussion points around this were actually from children who grew up in care who said, 'I wish my third from family had adopted me.'(sic) At the forum that we had, young people who grew up in care were very strong and very pro adoption.<sup>5</sup>

1.11 Ms Walk further noted in evidence the problems with finding pathways to permanency:

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2 Ms Louise Voight, CEO and Director of Welfare, Barnardos Australia, *Committee Hansard*, Sydney, 18 February 2015, p. 50.

3 Dr Jeremy Sammut, 'Still Damaging and Disturbing: Australian Child Protection Data and the Need for National Adoption Targets,' Centre for Independent Studies Issues Analysis, no. 145, 16 April 2014, p. 16, <http://www.cis.org.au/publications/issue-analysis/article/5140-still-damaging-and-disturbing-australian-child-protection-data-and-the-need-for-national-adoption-targets> (accessed 18 August 2015).

4 Barnardos Australia, *Submission 20*, p. [28].

5 Ms Maree Walk, Deputy Secretary, Programs and Service Design, NSW Department of Family and Community Services, *Committee Hansard*, Sydney, 18 February 2015, p. 66.

You have children under five, in particular, or under three, very little children, who we get 18-year orders for in New South Wales and are then living in foster care and who have no sense then of permanency. Some of those children are adopted by their foster carers, but that is up to the luck of the gods, really.<sup>6</sup>

1.12 In this context, the CIS study goes on to advocate for a National Adoption Target and notes that the new NSW model is one that could be implemented in all states and territories. Under the NSW regime:

it will be mandatory to decide (within 6 months of entering care for children under two years of age and within 12 months of entering care for children aged two years and older) whether restoration to the parents is feasible. Once it is determined that a child cannot safely go home, application will then be made in the Supreme Court for an order to legally free them for adoption by their new family.<sup>7</sup>

1.13 The NSW model presents a clear hierarchy for achieving greater permanency for children and young people in out-of-home care by:

Incorporating permanency into the objects of the Care Act and including a preferred hierarchy of permanency, being:

1. Family preservation/restoration
2. Long-term guardianship to relative or kin
3. Adoption
4. Parental responsibility to the Minister

Legislating that the Court can only make an order for parental responsibility to the Minister if long-term guardianship and adoption have been considered inappropriate

Requiring permanency plans not involving restoration to include a proposal for pursuing guardianship or adoption (as appropriate) or a reason as to why these will not be pursued

Legislating timeframes for decisions about the feasibility of restoration – within six months for children less than two years old and within twelve months for children older than two year.<sup>8</sup>

1.14 Coalition Senators point to this model as a way forward for adoption reform in Australia.

1.15 While adoption is not always going to be appropriate for children in out-of-home care, it is clear that too few have the opportunity to be adopted. Indeed, it

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6 Ms Maree Walk, Deputy Secretary, Programs and Service Design, NSW Department of Family and Community Services, *Committee Hansard*, Sydney, 18 February 2015, p. 66.

7 Dr Jeremy Sammut, 'Still Damaging and Disturbing', p. 17.

8 NSW Department of Family and Community Services, *Safe Home for Life: Report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012*, p. 7, <http://www.facs.nsw.gov.au/safehomeforlife> (accessed 18 August 2015).

is difficult to see how out-of-home care outcomes can be improved without opening up pathways to adoption so that children can have stability returned to their lives.

1.16 Coalition Senators further note that one of the important first steps to reforming the adoption system is to ensure that the out-of-home care system, at all levels, takes a 'child-first' approach to decision making and policy development.

1.17 Coalition Senators note the important work of the NSW Government whose report *A Safe Home for Life* outlined an important shift in understanding the child protection system and, by extension, the mechanisms for out-of-home-care for at risk children. The NSW Government report stated that:

Many stakeholders...were of the view that the current child protection system is overly legalistic, adversarial and process-driven. Most young people interviewed indicated that it is also too parent-focused [emphasis added]. The need for greater parental accountability and consequences for poor parental behaviour was a strong message coming from young people who provided feedback.<sup>9</sup>

1.18 *A Safe Home for Life* further noted:

At the heart of these reforms is placing children back at the centre [emphasis added] of the child protection system. This will require us, as a community and sector, to really focus on children's rights and parental obligations. Vulnerable children and young people need us to be proactive and timely in making this transition.<sup>10</sup>

1.19 Coalition Senators stress that improving outcomes for at risk children is only possible if the safety and wellbeing of the child is place at the centre of all decision making. Coalition Senators note that the Report devotes significant space to issues such as legal aid for parents whose neglect, and in some cases abuse, has led to a child needing out-of-home care.

1.20 While there is a critical place for frontline services to help disadvantaged people, efforts to combat poverty, disadvantage and the underlying causes of family dysfunction should not be conflated with decisions about the immediate and long-term safety and wellbeing of an at risk child.

1.21 Evidence was too often presented to the committee that too much focus was put on parents needs and demands at the expense of their children's safety.

1.22 Ms Maree Walk from the NSW Department of Families and Communities told the committee that:

In response to the point about it being a child focused rather than an adult focused system here, some of our professional workers tend to be more focused on the adults around the issue of adoption than possibly focused on the children. And that is understandable given our history in Australia around adoption. It will take some time. Particularly for very young

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9 NSW Department of Family and Community Services, *Safe Home for Life*, p. 10.

10 NSW Department of Family and Community Services, *Safe Home for Life*, p. 1.

children—children under five or under three—it is about their long-term needs.<sup>11</sup>

1.23 Coalition Senators were deeply troubled by the case of Chloe Valentine from South Australia who died after Families SA failed to remove her from her parents who were drug addicted and abusive. The Coroner’s report into Chloe’s death stated that:

Families SA took the path of least resistance and the whole history of its dealing with Ashlee (Chloe's mother) is a history of drift, irresolution and aimlessness.<sup>12</sup>

1.24 The Coroner further stated that:

At times it seemed Chloe's interests had been forgotten completely while the focus was on Ashlee and her demands. A child's interests can and do sometimes conflict with the parents.<sup>13</sup>

1.25 With this in mind, Coalition Senators stress the need for state and territory governments and relevant organisations to understand and promote the need for parents to take seriously the responsibility of raising a child and, where they fail that responsibility, to expect to be held accountable.

1.26 The Coroner in the Chloe Valentine case could not have been more clear in his remarks that:

In my opinion adoption should have a place in the alternative placement options in the child protection system. I do not purport to be in a position to offer a settled model of what the role of adoption in the child protection system should look like. However, the evidence of the scarcity of alternative placement options and the notorious under supply of suitable and willing foster parents leads me to the very firm opinion that permanent removal to adoptive parents must have a place in the child protection system and I propose to recommend accordingly [emphasis added].<sup>14</sup>

1.27 Coalition Senators reaffirm the good work of the committee and the important recommendations of the Report in dealing with this complex and highly charged issue. There are many ways in which the out-of-home care system could be improved and the committee has undertaken some important work towards this end.

1.28 However, Coalition Senators also acknowledge that greater focus needs to be put on a 'child first' approach to out-of-home care so that the safety and wellbeing of at-risk children is always front and centre of decisions in this space.

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11 Ms Maree Walk, Deputy Secretary, Programs and Service Design, NSW Department of Family and Community Services, *Committee Hansard*, Sydney, 18 February 2015, p. 66.

12 Mr Mark Johns, State Coroner, South Australia, 'Inquest into the death of Chloe Lee Valentine,' 9 April 2015, p. 146, <http://www.courts.sa.gov.au/CoronersFindings/Pages/Findings-for-2015.aspx> (accessed 18 August 2015).

13 Mr Mark Johns, State Coroner, South Australia, 'Inquest into the death of Chloe Lee Valentine,' 9 April 2015, p. 147.

14 Mr Mark Johns, State Coroner, South Australia, 'Inquest into the death of Chloe Lee Valentine,' 9 April 2015, p. 117.

1.29 Furthermore, Coalition Senators stress the importance of making every effort to remove the bias against adoptions in the out-of-home care sector. While reunification of families is important, a 'child first' approach should always acknowledge that reunification may not be the best option and so a child needs a system that can help provide stability and a way forward, rather than being left in limbo.

**Recommendation 1**

**Coalition Senators recommend that COAG take a national approach to out-of-home care based on the NSW model so that more children under long-term care have the opportunity for adoption and permanency.**

**Recommendation 2**

**That the Commonwealth Government, in line with its stance on intercountry adoptions, use its leadership of COAG to promote policies which will make local adoption a more viable pathway.**

**Senator Zed Seselja**

**Senator Joanna Lindgren**