

Chapter 7

Permanent models of care

7.1 The committee also examined alternative long-term placement options available for children and young people in out-of-home care, including:

- permanent care orders;
- other orders that transfer guardianship of the child to the child's carers; and
- adoption.

7.2 As discussed in Chapter 4, long-term stability is a significant factor in determining positive outcomes for children and young people in out-of-home care. The committee heard widespread support for measures to increase stability for children and young people in out-of-home care.

7.3 Particular support was expressed for 'permanency' in out-of-home care placements, particularly for those children unable to return to their families. The committee found multiple definitions of 'permanency', and a range of views on how this could be achieved, including forms of legal permanency.

7.4 This chapter examines the role of permanent care and adoption arrangements within the statutory child protection system. Culturally appropriate permanent care arrangements for Aboriginal and Torres Strait Islander children will be examined in Chapter 8.

Permanent care options

7.5 Although all jurisdictions acknowledged the importance of providing stable out-of-home care placements, the committee heard that approaches to 'permanency' are largely inconsistent. The National Children's Commissioner, Ms Megan Mitchell highlighted that permanency planning models are in the process of development:

I think our care and protection systems have historically been somewhat remiss in looking at the long-term stability and safety of the child. They generally respond to incidents, or they did in the past. I do think the states and territories are trying to amend that and enhance legislation and practice so that there is a focus on a permanent pathway from the beginning. However, that is not as common as it should be.¹

7.6 The concept of 'permanency' in child placements is often conflated with legally permanent arrangements such as guardianship orders or adoption. Recent reforms in NSW, Victoria and the Northern Territory have focussed on improving 'permanency' for children in care through introducing new pathways to legal permanency:

1 Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, pp 2–3.

- NSW – introduced provisions to remove barriers to adoption by carers and the introduction of a new long-term guardianship order;²
- Victoria – introduced timelines to achieve reunification with birth families, after which permanent alternative care options will be sought;³ and
- Northern Territory – introduced a permanent care order that transfers guardianship of children in care to the carer.⁴

7.7 However, a number of witnesses noted that 'permanency' can be achieved through multiple types of care and does not exclusively refer to the removal of children for placement in legally permanent arrangements.⁵ Ms Mitchell explained that:

Generally permanency can be achieved by supporting the birth family to care for the child and provide stability for that child. It can mean a guardianship order. It can mean the supervision of a family in the community for a period of time or it can mean adoption. But basically all the research is very clear that stability and proper attachment to carers in the early years is critically important for a child's positive development.⁶

7.8 Similarly, Ms Noelle Hudson from the CREATE Foundation told the committee that stability and permanency can be achieved in the existing types of out-of-home care:

[S]tability can be achieved by having a minimisation of placements, and it can be achieved by looking at better matching and involving young people in that decision making up-front rather than placing someone very quickly and then discovering afterwards that it is not working out and quickly repeating that cycle over and over again.⁷

2 Ms Maree Walk, Deputy Secretary, Programs and Service Design, NSW Department of Family and Community Services, *Committee Hansard*, Sydney, 18 February 2015, p. 65.

3 Department of Human Services Victoria, 'Changes to child protection law,' <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/changes-to-child-protection-law> (accessed 15 May 2015).

4 Ms Simone Jackson, Executive Director, Out-of-home Care, NT Department of Community and Family, *Committee Hansard*, Darwin, 1 April 2015, p. 9; NT Department of Children and Families, *FAQ Sheet – Permanent Care Order*, <http://www.childrenandfamilies.nt.gov.au/> (accessed 8 April 2015).

5 Ms Judith Wilkinson, Chair of the Children's Youth and Families Agency Association, told the committee: 'permanency can mean permanent return to parent, permanency can mean return to family'. See: Ms Judith Wilkinson, *Committee Hansard*, 16 February 2015, p. 18; Additional Information, Life Without Barriers, received 13 March 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 10 August 2015).

6 Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, p. 2.

7 Ms Noelle Hudson, National Policy and Advocacy Manager, CREATE Foundation, *Committee Hansard*, Brisbane, 17 April 2015, p. 19.

Permanency planning

7.9 According to a 2006 study by Professor Clare Tilbury from Griffith University, permanency planning is 'the process of making long-term care arrangements for children with families that offer lifetime relationships and a sense of belonging' and has been a guiding principle in child protection since the mid-1970s. A permanent placement is 'more than a long-term placement; it is a placement that meets a child's social, emotional and physical needs'.⁸

7.10 Planning for a permanent placement may include family reunion and long-term care arrangements. Data collected by the committee from states and territories indicates all jurisdictions attempt reunification of children with their parents as a permanent option. However, this data indicates there is no national consistency in the models used across jurisdictions for permanency planning.⁹

7.11 For example, there is no nationally consistent legislation requiring permanency planning to be considered as soon as a child enters the out-of-home care system. The National Children's Commissioner, Ms Mitchell, advised that legislative changes in the United States which focussed on permanency had contributed to a 30 per cent decline in the number of children in care between 1998 and 2012. Ms Mitchell suggested the focus on permanency creates a 'paradigm shift' in the perception of out-of-home care services:

I think what is interesting about the US experience is they have put in legislation that foster care is a temporary experience and should not happen for more than, say, two years. That does not mean that there are not kids in foster care but they have significantly changed the paradigm such that foster care be seen as a temporary solution while you take the child and put them in a safe situation for a period of time and you work out what is going to be the long-term solution for that child, whether that be going back to their family—and you put the family [on] strict notice that that is what will be happening but you support them to get through whatever it is they are struggling with—or it might be going to another permanent solution either through a guardianship or a kinship arrangement or an adoption arrangement.¹⁰

7.12 Witnesses identified a lack of research into permanency planning in Australia and the effectiveness of individual models.¹¹ A 2013 review of evidence for out-of-home care by the Parenting Research Centre of the University of Melbourne

8 Professor Clare Tilbury & Dr Jennifer Osmond, 'Permanency planning in foster care: a research review and guidelines for practitioners,' *Australian Social Work*, v 59, n 3, 2006, pp 265-280.

9 See: State and territory governments, answers to questions on notice, 30 April 2015 (received May-June 2015).

10 Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, pp 2–3.

11 See: Additional Information, Life Without Barriers, p. 1, received 13 March 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 10 August 2015).

noted that there is 'little or no substantial research' on permanency planning in Australia.¹² AIHW submitted that early scoping work has been undertaken to investigate the feasibility of reporting on approaches to permanency across jurisdictions, but that further development is required.¹³

7.13 The committee heard from a number of organisations about different models of permanency planning currently implemented across jurisdictions. For example, concurrent planning is a process of planning for alternative permanent care options practiced by Mackillop Family Services and UnitingCare in Victoria and was suggested as a model that could be implemented across jurisdictions (see Box 7.1).

Box 7.1 – Best practice – Concurrent planning

Concurrent permanency planning is a process of working towards a primary permanent plan, such as family reunification, while developing at least one alternative permanency plan at the same time, such as long-term foster care.

Concurrent planning was first developed as a placement option in North America in the 1970s and is now used as a third stream of out-of-home care (with foster care and kinship care) in several countries worldwide, including the UK.

A 2012 review of the UK Coram Concurrent Planning Program (established in 1999) found despite children carrying multiple serious risks into placements, none of the 28 cases studied had broken down.

Connections Uniting Care and MacKillop Family Services have developed a concurrent care program of integrated carer recruitment, training and support called 'Breaking down the silos'. The program is delivered in Victoria and aims to enhance and expand the existing continuum of care for infants and toddlers under three years old residing in out of home care.

The process combines intensive parental support towards a primary goal of reunification, while also planning for the possibility of the foster placement becoming a permanent care outcome, with the carer being dually trained and accredited for both potential outcomes. The program is aimed at children under 3 years of age who are unlikely to remain in the care of their birth parents and have no suitable relative/kinship placement options.

Source: Connections UnitingCare, Submission 10, pp 8 – 16.

7.14 Some witnesses expressed concern that family reunification attempts may be undermined if not adequately resourced in concurrent planning models. The Women's Legal Service of New South Wales suggested that 'serious consideration' be given to:

...identifying strategies to avoid the risk that concurrent planning may undermine attempts at reunification, particularly if services 'are not adequately resourced to provide comprehensive or intensive services to families'.¹⁴

7.15 Similarly, the Aboriginal Child, Family and Community Care State Secretariat NSW (AbSec) expressed concern that:

12 Parenting Research Centre, *Evidence review: Analysis of the evidence for Out-of-Home Care Final Report*, commissioned by the ACT Community Services Directorate, August 2013, p. 11.

13 AIHW, *Submission 22*, p. 2.

14 Women's Legal Service NSW (WLSNSW), *Submission 86*, p. 13.

...restoration measures that apply concurrent planning are properly resourced, to help set up a child's return safely home, as well as ensuring an equitable placement system.¹⁵

7.16 Rather than concurrent planning, Barnardos Australia (Barnardos) recommended that foster care be split into two streams: one for restoration care that undertakes crisis work to reunite children with families through short-term care, and one for long-term care where reunification with families is unlikely. Barnardos delivers two differentiated models of permanency planning aimed at stopping the 'drift of children' through the out-of-home care system. These include:

- Temporary Family Care program, which works intensively with younger children (mainly under 12 years of age) during a crisis to help reunite the child with their parents; and
- Find-a-Family program, which offers permanent family care and adoption to children aged up to 12 years old, and long-term carers for adolescents.¹⁶

Permanent care orders / transfer of guardianship arrangements

7.17 Most jurisdictions have mechanisms to allow long-term carers to assume legal guardianship for children on long-term care and protection orders. These arrangements are generally considered where children are subject to care and protection orders until they are 18 years old, or for those children who have no prospect of reuniting with their families. These arrangements may be called 'permanent care orders' or other guardianship orders. 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 also be made to revoke or amend these orders.¹⁷

7.18 In most cases, children under 'permanent care orders' or other guardianship orders are no longer supervised by the relevant department. In some cases, carers may still have access to financial and practical supports, subject to their individual circumstances. Table 7.1 outlines the key differences between permanent care orders/transfer of guardianship orders across Victoria, New South Wales, Queensland and the Northern Territory.¹⁸

15 AbSec, *Submission 97*, p. 28.

16 Barnardos, *Submission 20*, 'Promoting restoration of children to their families,' p. 5.

17 AIHW, *Adoptions Australia 2013-14*, pp 45–46.

18 See also: Centre for Excellence in Child and Family Welfare, 'Children Youth and Families (Permanent Care and Other Matters),' Fact Sheet, 14 August 2014, <http://www.cfecfw.asn.au/know/publications/fact-sheets> (accessed 12 August 2015); Department of Health and Human Services, Tasmania, 'Transfer of Guardianship', http://www.dhhs.tas.gov.au/children/adoption/permanency_services/transfer_of_guardianship (accessed 12 August 2015); NT Department of Children and Families, 'FAQ Sheet – Permanent Care Order', <http://www.childrenandfamilies.nt.gov.au/> (accessed 12 August 2015); WA Department of Child Protection, 'Special Guardianship Orders', <https://www.dcp.wa.gov.au/> (accessed 12 August 2015); Families SA, 'Other Person Guardianship Fact Sheet', <http://www.decd.sa.gov.au/docs/documents/1/OPCFactsheet1.pdf> (accessed 12 August 2015).

Table 7.1 – Permanent care arrangements across selected jurisdictions

Jurisdiction	Type of order	Legal requirements	Available supports	Statistics
New South Wales	Permanent care order	Report on steps taken to support reunification Consultation with child (where over 12 years) Compliance with Aboriginal Child Placement Principle	Ongoing financial supports available (carer payment)	Orders for 2 000 children granted since introduction in October 2014
Victoria	Permanent care order	Stability and cultural plan prepared Report on steps taken to support reunification Compliance with Aboriginal Child Placement Principle Recommendation from Aboriginal agency	Ongoing financial supports available (where recommended)	2013-14: 302 orders granted Since 1992: 3 686 orders granted
Queensland	Long-term guardianship order	Significant work undertaken to support reunification Meets child's emotional security and stability needs	No ongoing financial supports (carer payments cease)	2013-14: 1 380 children on long-term guardianship order
Tasmania	Long-term guardianship order	Recommendation from department	Ongoing financial supports available (carer payments)	Over 200 guardianship transfers
Northern Territory	Permanent care order	Order considered the best means of safeguarding the wellbeing of the child	One-off \$5000 payment (carer payments cease)	No data available.
Western Australia	Special guardianship order	Carer demonstrated suitability Compliance with Aboriginal Child Placement Principle and Culturally and Linguistically Diverse Placement Guidelines	Ongoing financial supports available (where recommended)	2013-14: 69 orders
South Australia	Other person guardianship	Carer demonstrated suitability Compliance with Aboriginal Child Placement Principle	Ongoing financially supports available (where recommended)	2013-14: 111 orders

Source: State and territory governments, answers to questions on notice, 30 April 2015 (received May–June 2015).

National consistency of permanent care arrangements

7.19 The requirements for legal permanent care arrangements and supports available to carers vary across jurisdictions, particularly with regard to ongoing financial supports.

7.20 A number of submitters expressed concern that reforms aimed at permanency would disproportionately affect Aboriginal and Torres Strait Islander families. Ms Laura Vines from the Aboriginal Family Violence Prevention Legal Service (FVPLS) in Victoria, told the committee recent changes to time limits for family reunification in Victoria:

...will disproportionately impact Aboriginal children and families, who are statistically more likely to experience complex trauma, such as family violence, that cannot be quickly resolved according to an abbreviated time line. In addition, we are concerned that these legislative changes will damage the care, cultural connection and wellbeing of Aboriginal children by significantly reducing departmental accountability towards Aboriginal children in care.¹⁹

7.21 The NSW peak body for Aboriginal and Torres Strait Islander communities, AbSec, expressed concern about the lack of supports and services available for children placed in legally permanent arrangements:

The more services and supports that are withdrawn, such as assistance with maintaining contact, cultural support, recreational activities or other supports that help keep children and young people on track and connected, the more risk of placement breakdown, mainly due to pressures on children, their families and on carers.²⁰

7.22 In particular, the committee heard concerns about the impact of the new permanent care orders in the Northern Territory on Aboriginal and Torres Strait Islander communities. Unlike the NSW and Victorian orders, the NT does not require compliance with the Aboriginal Child Placement Principle or consultation with Aboriginal child care agencies, and carers are not able to access ongoing financial support.²¹

7.23 The North Australian Aboriginal Justice Agency (NAAJA) and Northern Territory Legal Aid Commission (NTLAC) provided the committee with their joint submission to the Northern Territory Government on its permanent care legislation.

19 Ms Laura Vines, Senior Policy Officer, Aboriginal FVPLS, *Committee Hansard*, Brisbane, 17 April 2015, p. 45.

20 AbSec, *Submission 97*, pp 7–8.

21 See: Mr Jared Sharp, Law and Justice Projects Manager, North Australian Aboriginal Justice Agency (NAAJA), *Committee Hansard*, Darwin, 2 April 2015, p. 24; Ms Sandra Nelson, Executive Officer, Katherine Women's Information and Legal Service (KWILS), *Committee Hansard*, Darwin, 2 April 2015, p. 13; Ms Wendy Morton, Executive Director, NTCOSS, *Committee Hansard*, Darwin, 2 April 2015, p. 6; Ms Sally Bolton, Acting Manager, Family Law Section, Northern Territory Legal Aid Commission (NTLAC), *Committee Hansard*, Darwin, 2 April 2015, p. 21.

The submission contained concerns that the legislation did not have sufficient safeguards to ensure that permanent care orders are made only as a last resort and Aboriginal children are able to maintain their connection with family and culture.²² Representatives from NAAJA and NTLAC told the committee these concerns and recommendations were not considered in the final legislation.²³

7.24 It was put to the committee that permanent care orders can be granted without consultation with the child's family or community. Mr Paddy Gibson from the Jumbunna Indigenous House of Learning told the committee that:

there is no obligation on the department to actually serve papers on the family. All they will need to do is send papers to the last known address of the parents that are there. So people's children could be being completely severed from them legally and they do not even know the matter is on in court, let alone have representation.²⁴

7.25 At the committee's Darwin hearing, the NT Department of Children and Families (DCF) confirmed there was no requirement for non-Aboriginal carers to ensure that Aboriginal and Torres Strait Islander children in their care maintain contact with their family:

When a permanent care order is evoked, formalised and completed, the holder of the permanent care order is the parent—I need to say that very clearly—so they will make the determinations about whether there is contact. They are the parent; they get to make those decisions.²⁵

Adoption

7.26 One of the most contentious permanent care options examined by the committee was adoption. The committee heard both support and opposition to encouraging adoption as an option for children in out-of-home care.

7.27 AIHW defines adoption as:

[A] legal process where rights and responsibilities are transferred from a child's parent(s) to their adoptive parent(s). When an adoption order is granted, the legal relationship between the child and their parent(s) is severed. The legal rights of the adopted child become the same as they would be if the child had been born to the adoptive parent(s).²⁶

22 See: NAAJA and NTLAC, *Joint Submission – Care and Protection of Children Amendment Bill 2014*, 2014, pp 13 – 14, <http://www.naaja.org.au/wp-content/uploads/2014/05/Care-of-Children-and-Protection-Act-12-2-15.pdf> (accessed 6 July 2015).

23 See: Mr Jared Sharp, NAAJA and Ms Sally Bolton, NTLAC, *Committee Hansard*, Darwin, 2 April 2015, p. 22.

24 Mr Padraic Gibson, Senior Researcher, Jumbunna Indigenous House of Learning Research Unit, University of Technology Sydney, *Committee Hansard*, Sydney, 18 February 2015, p. 23.

25 Ms Simone Jackson, Executive Director, Out-of-Home Care, DCF, *Committee Hansard*, Darwin, 1 April 2015, p. 9.

26 AIHW, *Adoptions Australia, 2013–14*, p. 1.

7.28 The committee recognises the complex history of adoption in Australia, particularly past practices of forced removal of children for adoption highlighted in the committee's 2012 report on the *Commonwealth Contribution to Former Forced Adoption Policies and Practices*. The committee acknowledges the trauma and pain that past forced adoption policies and practices caused to thousands of Australians.²⁷

7.29 The committee particularly recognises the impact of adoption on the Stolen Generations of Aboriginal and Torres Strait Islander people. The committee acknowledges the conclusions of the 1997 *Bringing Them Home* report that: 'adoption is contrary to Aboriginal custom and inter-racial adoption is known to be contrary to the best interests of Aboriginal children in the great majority of cases'.²⁸

7.30 A number of submitters noted the devastating effect that adoption and forced removals have had on Aboriginal and Torres Strait Islander communities.²⁹ The Secretariat of National Aboriginal and Islander Child Care (SNAICC) noted in its submission:

...for reasons detailed by the *Bringing them home* report, adoption is not an appropriate consideration for our children. In line with the intent and processes set out by the Aboriginal and Torres Strait Islander Child Placement Principle, placements and permanency options must support the maintenance of safe connections to family, community and culture for our children, and should only be considered with careful consultation with appropriate Aboriginal and Torres Strait Islander community representatives.³⁰

7.31 Barnardos, one of the strongest advocates for adoption of children from care, told the committee that it did not support the formal adoption of Aboriginal children:

We have had experience in that area, and we are persuaded by our Aboriginal colleagues about the devastation that many people experienced in [sic] by being alienated from their culture. At the present time that is certainly our opinion. We subscribe to this. This is what our colleagues want.³¹

27 See: Senate Community Affairs References Committee, *Commonwealth Contribution to Former Forced Adoption Policies and Practices*, 29 February 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/commcontribformerforcedadoption/index (accessed 6 August 2015).

28 Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, Chapter 22.

29 See: Dr Virginia Marshall, Committee Member and Acting Chair, Indigenous Issues Committee, Law Society of New South Wales, *Committee Hansard*, Sydney, 18 February 2015, p. 21

30 SNAICC, *Submission 93*, pp 6–7.

31 Mrs Louise Voight, CEO and Director of Welfare, Barnardos Australia, *Committee Hansard*, Sydney, 18 February 2015, p. 60.

7.32 More culturally appropriate forms of permanent care for Aboriginal and Torres Strait Islander children and young people are discussed in Chapter 8.

Definition of adoption

7.33 The key difference between adoption and guardianship is the severing of legal rights between the child and parents. Ms Louise Voight from Barnardos told the committee that adoption is more than just a care arrangement:

[A]doption alters identity for life. It is not a way of caring for children during childhood. One of our judges here said it very well when the argument was whether the carers who were in front of him should actually have a guardianship order rather than an adoption order. He said, 'We are who society thinks we are,' and it is important later when you apply for your driving licence, when you get married. It is not a gesture in childhood, and I think that really needs to be thought about.³²

7.34 Unlike past practices, all jurisdictions now facilitate 'open adoptions' whereby children may maintain contact with parents; however, the degree to which this occurs varies across the jurisdictions.³³ According to AIHW, since 1998 the proportion of local adoptions where birth families and adoptive families have agreed to allow some form of contact or information exchange has generally been above 80 per cent.³⁴

Key statistics

7.35 In 2013–14, out of a total of 317 adoptions (including intercountry adoptions), 89 adoptions were by known carers, such as foster carers. The number of known carer adoptions has fluctuated since 1999 and has steadily increased over the past decade. In 2013–14, the number of known carer adoptions was the highest on record.³⁵ Figure 7.1 outlines the rising number of known carer adoptions in Australia since 1999.

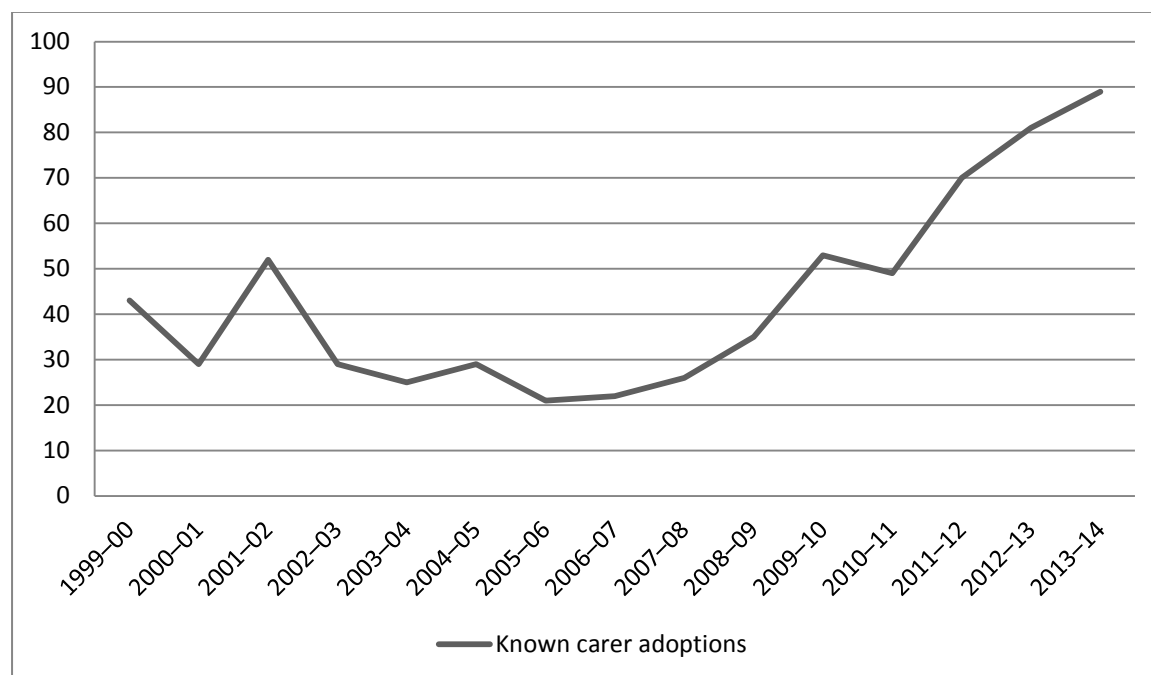
32 Ms Louise Voight, CEO and Director of Welfare, Barnardos Australia, *Committee Hansard*, Sydney, 18 February 2015, p. 54.

33 AIHW, *Adoptions Australia 2013–14*, p. 1.

34 AIHW, *Adoptions Australia 2013–14*, p. 25.

35 AIHW, *Adoptions Australia 2013–14*, Table A22.

Figure 7.1 – Number of known carer adoptions across jurisdictions 1999-2000 to 2013-14



Source: AIHW, *Adoptions Australia 2013/14*, Table A22.

7.36 According to AIHW, children adopted by known carers are generally older than five years, with a large proportion aged more than 10 years. In 2013–14, 47.2 per cent of known carer adoptions were of children aged between five and nine years old, and 41.6 per cent of children older than 10 years.³⁶

7.37 AIHW reports that the number of Aboriginal and Torres Strait Islander children adopted each year is small. There have been 49 adoptions of Aboriginal and Torres Strait Islander children in Australia since 2003–04. In 2013–14, seven Aboriginal or Torres Strait Islander children were adopted. All these adoptions were known child adoptions by adoptive parents who were either non-Indigenous or whose Indigenous status was unknown.³⁷

National consistency

7.38 In 2013-14, almost all known carer adoptions (84 of 89) were finalised in NSW. This follows legislative changes as part of the Safe Home for Life reforms that considers adoption as an option for children in out-of-home care when they enter care.³⁸

³⁶ AIHW, *Adoptions Australia 2013–14*, Table A23.

³⁷ AIHW, *Adoptions Australia 2013–14*, p. 45.

³⁸ See: NSW Government, *A Safe Home for Life: Report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012*, p. 7.

7.39 The NSW Government's *A Safe Home for Life* consultation paper found widespread support for greater stability for children, but that there was significant debate about the place of adoption. The report noted that:

Young people interviewed as part of the consultation process (who had had experience of OOHC [out-of-home care] but not adoption) indicated that they preferred the option of adoption over long-term foster care. However, many private individuals and community members opposed adoption in any form given the destructive consequences of the Stolen Generation and past forced adoption policies and practices.³⁹

7.40 Ms Maree Walk from the NSW Department of Families and Communities told the committee that many of these concerns were based on the views of adults, rather than a consideration of the needs of children:

[S]ome 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 children—children under five or under three—it is about their long-term needs.⁴⁰

7.41 Most jurisdictions emphasise keeping children with families where possible and do not prioritise adoption; however, the committee heard several jurisdictions were considering reviewing their approach to adoption. Mr Tony Harrison, Chief Executive Officer of the South Australian Department of Education told the committee that adoption is 'very topical in our state at the moment'. South Australia has commenced a review of its Adoption Act (expected to report in the second half of 2015) and the current state-based royal commission is also investigating adoption as an option for children in out-of-home care.⁴¹

7.42 The place of adoption in South Australia was also raised by the SA Coroner's April 2015 report into the death of Chloe Valentine, a four-year-old child who died as a result of injuries caused by being forced by her parents to repeatedly ride a motorbike in 2012. The Coroner, Mr Mark Johns, recommended significant changes to the child protection system in South Australia to protect children from abuse and neglect, including removing barriers to adoption for children in care.⁴² The SA Coroner's recommendation drew on a report by Dr Jeremy Sammut from the Centre

39 NSW Government, *A Safe Home for Life*, p. 11.

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

41 Mr Etienne Scheepers, Deputy Chief Executive, Child Safety, Department for Education and Child Development South Australia, *Committee Hansard*, Canberra, 16 April 2015, p. 65.

42 Mr Mark Johns, State Coroner, South Australia, 'Inquest into the death of Chloe Lee Valentine,' 9 April 2015, <http://www.courts.sa.gov.au/CoronersFindings/Pages/default.aspx> (accessed 10 April 2015).

for Independent Studies (CIS) that argues for early statutory intervention and permanent removal by means of adoption by suitable families.⁴³

7.43 In Queensland, Mr Matthew Lupi, Executive Director of the Department of Communities, Child Safety and Disability Services told the committee:

[W]e have the mechanisms to consider adoption and pathways to consider adoption, and we are implementing practice improvements to try to overcome any practice or ideological barriers that might be in place to routinely considering it as a permanency option.⁴⁴

7.44 Mr Tony Kemp, Deputy Secretary for the Department of Health and Human Services in Tasmania, highlighted the need for approaches to adoption to be discussed at the national level:

[T]he issue is about whether adoption becomes a part of the child protection response. We [Department of Health and Human Service] do have an adoption department here and we recently adopted a child from care, but that does not happen very often...We are certainly keen to have a much larger conversation at both the Commonwealth level and the state level about the role of adoption in the child protection system.⁴⁵

Adoption and out-of-home care

7.45 While most submitters agreed that adoption should have a place in the continuum of care, the committee heard a range of views on what emphasis should be placed on adoption and whether it should be prioritised over other forms of care, including early intervention.⁴⁶ The National Children's Commissioner, Ms Mitchell, suggested open adoption practices could encourage a more positive assessment of the role of adoption:

[A]doption has had a chequered history and press in the Australian context. We have in the past closed adoption. I think the advent of open adoptions—where people know who their parents [are] and still have connection if they want to with their family—actually provides another opportunity to think about adoption in a more positive way. It really is case by case.⁴⁷

43 See: Johns, 'Inquest into the death of Chloe Lee Valentine,' p. 114; 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, <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 10 August 2015).

44 Mr Matthew Lupi, Executive Director, Child and Family Services, Department of Communities, Child Safety and Disability Services, *Committee Hansard*, Brisbane, 17 April 2015, p. 64.

45 Mr Tony Kemp, Deputy Secretary, Children and Youth Services, Department of Health and Human Services, Tasmania, *Committee Hansard*, Brisbane, 17 April 2015, p. 69.

46 Mr Paul McDonald, Anglicare Victoria, *Committee Hansard*, Melbourne, 20 March 2015, p. 29

47 Ms Megan Mitchell, National Children's Commissioner, *Committee Hansard*, Sydney, 18 February 2015, p. 3.

7.46 Ms Mitchell suggested in circumstances where the best interests of the child would be served, adoptions should be made 'easier'.⁴⁸

7.47 Barnardos, one of the largest care providers in NSW, recommended that the adoption legislation in NSW should be implemented throughout Australia, with open adoptions considered for all children committed to care until 18 years of age. Barnardos argued 'children's wellbeing is not served well by staying in long-term foster care because of the inherent instability of the system'.⁴⁹

7.48 Barnardos told the committee that it has organised around 250 adoptions in NSW and supports the stability adoption gives to children.⁵⁰ Ms Louise Voight from Barnardos told the committee that although adoption may not be suitable for all children, it should be considered as an option.⁵¹

7.49 However, most submitters and witnesses gave more cautious support to adoption where it was in the child's best interest and considered as part of a suite of options.⁵² Mr Tony Kemp, Deputy Secretary from the Tasmanian Department of Health and Human Services, told the committee:

...adoption has a role to play in the suite of opportunities and options we have. But we need to make sure that we do not fall into the same traps that our predecessors have done, which is that it is all-in or nothing. It has to be seen as part of a continuum and not seen as a standalone facility for a cohort of care givers who have other issues that they need to resolve.⁵³

7.50 The CREATE Foundation submitted that it was important to consider the views of children and young people themselves in any decision about adoption, noting that permanency can be achieved through existing types of care:

[P]ermanency and living in a family environment will contribute to children and young people being happy and maximising their life outcomes. This type of stability is possible within the current kinship and foster care systems and it is not essential for states and territories to prioritise adoption over foster care. The circumstances of all children and young people in care are different and decisions about placement should aim for stability but must be made on a case-by-case basis, taking into account the views of

48 Ms Megan Mitchell, *Committee Hansard*, Sydney, 18 February 2015, p. 3.

49 Barnardos Australia, *Submission 20*, p. 4.

50 Ms Louise Voight, CEO and Director of Welfare, Barnardos Australia, *Committee Hansard*, Sydney, 18 February 2015, p. 54.

51 Ms Louise Voight, *Committee Hansard*, Sydney, 18 February 2015, p. 54.

52 See, for example: Mr Michael Geaney, Alliance for Children at Risk, *Committee Hansard*, Perth, 16 February 2015, p. 18; Ms Meredith McLaine, Shoalcoast Community Legal Centre, *Community Affairs*, Sydney, 18 February 2015, p. 9; Ms Toni Beauchamp, UnitingCare Children, Young People and Families, *Committee Hansard*, Sydney, 18 February 2015, p. 44.

53 Mr Tony Kemp, Deputy Secretary, Children and Youth Services, Department of Health and Human Services, Tasmania, *Committee Hansard*, Brisbane, 17 April 2015, p. 70.

children and young people themselves and having regard to best practice principles to support all of the people involved in the adoption.⁵⁴

7.51 Ms Noelle Hudson from the CREATE Foundation also argued that children and young people should be involved in the decision making process about adoption and other permanent care arrangements:

[W]e need to allow that flexibility to meet the wishes and desires of children and young people in care. So, if someone is very willing and has a family arrangement and a care arrangement that is working out really well, then, yes, that should happen. But it should always involve the young person's decision.⁵⁵

7.52 The committee heard concerns about adoption being singled out as a cost-effective means to reducing the numbers of children in care. Ms Mary McKinnon from Life Without Barriers told the committee that:

[W]e have to keep engaging with the complexity of the situation from the drivers in the community through poverty and all of that and look for a breadth of response across the continuum from community development in impoverished communities, placement prevention, improving the system and better adoption. I think they all have to be on the table. I think the danger is to select one.⁵⁶

7.53 Mr Michael Geaney, from the Alliance for Children at Risk in Western Australia, echoed concerns that adoption may be preferred as the 'cheaper' option for governments:

The big fear...is that, because there are fiscal challenges in the system, the adoption process is an easy way. 'Yep! 12 months and we're out of this'—flick. It is off the books. The risk in that is that it is hidden and then the cost goes somewhere else and so do all of the issues that are not going to be resolved. There is plenty of evidence that adoption is not always a successful strategy. I agree that there needs to be caution around this approach. It is certainly not 'no' but rather to explore it and to make sure that it is there for the right reasons—that is, in the child's best interests.⁵⁷

7.54 A number of witnesses raised concerns about adoption being considered as an alternative to other forms of existing care. Ms Judith Wilkinson, Chair of the Children's Youth and Families Agency Association and State Manager for Key Assets in WA, told the committee that they:

54 CREATE Foundation, *Submission 96*, p. 25.

55 Ms Noelle Hudson, National Policy and Advocacy Manager, CREATE Foundation, *Committee Hansard*, Brisbane, 17 April 2015, p. 19.

56 Ms Mary McKinnon, National Director of Practice and Quality, Life Without Barriers, *Committee Hansard*, Sydney, 18 February 2015, p. 55.

57 Mr Michael Geaney, Chair, Alliance for Children at Risk, *Committee Hansard*, Perth, 16 February 2015, p. 17.

...we agree that there has to be permanency planning and that we have to do it a lot better in this state. There has to be certainty for children. There has to be the stopping of drifting in care. The solution to that is not to jump straight into adoption. The solution starts way back with preventing children coming into care in the first place and then properly assessing their needs when they do come in and putting them in the right place.⁵⁸

7.55 The committee heard particular concerns about the conflation of the concept of permanency with legal adoption. Life Without Barriers advised that there is little evidence to suggest that the legal permanence created by adoption was a significant factor in achieving actual permanence and stability for the vast majority of children in out-of-home care.⁵⁹ Life Without Barriers argued that:

we should focus on the needs of individual children and young people in care and whether or not adoption, from a suite of alternatives, should be considered. We consider that adoption is only likely to be suitable for a small number of children relative to the overall numbers of children in out of home care in Australia.⁶⁰

7.56 Similarly, Ms Jessica Cocks of Family Inclusion Strategies Hunter (FISH) told the committee that permanency depends on non-legal factors such as 'the age of the child at adoption, the number of siblings in the family and the needs of the child' more so than legal arrangements:

[W]e need to be really careful to distinguish between legal permanence and actual permanence...adoptions do not necessarily equate to permanence and that the factors that do lead to permanence are those that are not necessarily legal.⁶¹

7.57 As noted earlier, the committee heard concerns that families who adopt children from care would no longer have access to ongoing financial supports.⁶² Research from the US and UK provided to the committee by the Tasmanian Department of Health and Human Services highlighted that permanence and stability in adoption arrangements depend on the ongoing supports provided to carers. A 2009 UK study of 130 children recommended for adoption found that 38 per cent of children failed to achieve a stable adoption. The study concluded that support services

58 Mr Judith Wilkinson, State Director, Key Assets WA, *Committee Hansard*, Perth, 16 February 2015, p. 18.

59 Additional Information, Life Without Barriers, received 13 March 2015, p. 3, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 18 August 2015).

60 Additional Information, Life Without Barriers, received 13 March 2015, p. 7, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 18 August 2015).

61 Ms Jessica Cocks, Convenor, Family Inclusion Strategies Hunter (FISH), *Committee Hansard*, Sydney, 18 February 2015, p. 10.

62 See: Ms Karen Lizasoain, *Submission 48*, p. 1; Mr Gregory Nicolau, *Committee Hansard*, Canberra, 16 April 2015, p. 28.

for adoptive families to address the 'complex legacy of deprivation and abuse' must be acknowledged and adequately resourced.⁶³ Similarly, a 2015 study into outcomes for children adopted in the US highlighted the need to 'tailor post-adoption services to specific types of adoptive families which are at high risk for re-involvement in the child welfare system' to improve outcomes for adopted children.⁶⁴

Committee view

7.58 As discussed in Chapter 4, the committee recognises the importance of permanency and stability in facilitating good outcomes for children and young people in out-of-home care. The committee notes that there is a lack of national data on permanency planning and permanent care placements for children in out-of-home care.

7.59 The committee acknowledges the importance of a nationally consistent approach to permanency planning across jurisdictions, including consideration of different models that aim to improve stability for children and young people in out-of-home care. However, the committee is concerned that the National Standards do not include a measure to indicate how permanency planning is applied across jurisdictions.

7.60 The committee recognises that 'permanency' can be achieved through a range of different placement options, including stable relative/kinship or foster care. In some cases, the committee acknowledges that legally permanent placement options, including guardianship orders and adoption, may be appropriate placement options for children and young people in long-term out-of-home care placements. However, the committee notes that there is little evidence to suggest legally permanent forms of care are effective in reducing the number of children and young people in out-of-home care, and that the focus for child protection authorities should remain on supporting families.

7.61 The committee is concerned that in some jurisdictions, children and carers in adoption and guardianship order arrangements do not receive the same level of financial and practical support as those in foster care and relative/kinship care placements. If these placement options are to be utilised more often, more resources need to be made available to ensure children and carers continue to be supported.

7.62 The committee is also concerned about the lack of national consistency on how and when permanent care orders may be made, particularly for Aboriginal and

63 C.A. Rees and J. Selwyn, Non-infant adoption from care: lessons for safeguarding children, *Child: care, health and development*, vol. 35, no. 4, 2009, pp 561–567. See: Additional Information, DHHS Tasmania, received 1 May 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 18 August 2015).

64 Rebecca Orsi, 'Predicting re-involvement for children adopted out of a public child welfare system,' *Child Abuse & Neglect*, n 39, 2015, p. 183. See: Additional Information, DHHS Tasmania, received 1 May 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Additional_Documents (accessed 18 August 2015).

Torres Strait Islander children maintaining contact with family. The committee notes there is a wide discrepancy in the factors that must be taken into account when making these orders across jurisdictions.