

## Adoption as a viable option for children in out-of-home care

- 3.1 This chapter provides an overview of the permanency planning hierarchy for children in out-of-home care including:
- reunification (also referred to as restoration);
  - permanent care orders (also known as third-party parental responsibility orders);
  - long-term finalised guardianship or custody orders; and
  - adoption.<sup>1</sup>
- 3.2 The Committee heard that adoption is a lifelong solution<sup>2</sup> and can be an appropriate option for securing stability and permanency for children in long-term out-of-home care.<sup>3</sup>

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1 Australian Institute of Health and Welfare (AIHW), 'Child protection Australia 2016-17', 2017, p. 78, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 6 September 2018.

2 See for example: Dr Karleen Gribble, *Submission 28*, p. [3]; Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24.

3 See for example: Dr Philip Mendes, *Submission 4*, p. 1; Name withheld, *Submission 10*, p. [1]; The Centre for Independent Studies, *Submission 15*, p. 2; Dr Karleen Gribble, *Submission 28*, p. [2]; ACT Government, *Submission 35*, p. 1; Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. [1]; EY (Ernst & Young), *Submission 51*, p. 1; Barnardos Australia, *Submission 52*, p. 1; Rainbow Families NSW, *Submission 95*, p. 3.

## Terminology

3.3 The following table illustrates how terminology used to describe permanency planning options for children in out-of-home care (OOHC) varies between the states and territories.

**Table 3.1 Permanency-related planning and action in legislation and policy (2016)**

Jurisdiction	Planning	Actions	
		<i>Reunification</i>	<i>Alternative care</i>
NSW	Permanency planning	Family preservation Restoration	Permanent placement: Guardianship Adoption Parental responsibility to the Minister
Vic	Permanency planning (case planning with state permanency objective)	Family preservation Family reunification	Alternative care arrangements: Permanent care (including care by Secretary) Long-term OOHC Adoption
Qld	Permanency planning	Reunification	Long-term alternative care: Long-term guardianship order to the Chief Executive Long-term guardianship order to a suitable member of the child's family (other than the parent of a child) or to a suitable person Adoption
WA	Permanency planning Parallel process: primary (reunification wherever possible) and secondary (OOHC) permanency plans	Reunification (primary permanency plan)	Long-term OOHC (secondary permanency plan): Protection order (until 18) Protection order (special guardianship) Parenting order (Family Court of WA) Carer adoption
SA	Placement planning Permanency planning	Reunification	OOHC long-term placement options (alternative care): Other person guardianship Guardianship of the Minister to 18 years
Tas	Case planning processes Stability planning	Reunification	Permanent care arrangements: Guardianship of the secretary to 18 years Guardianship of permanent carer Adoption
ACT	Care plans—stability proposals	Restorations Stability proposals	Long-term placement: Long-term parental responsibility provision Enduring parental responsibility provision Family law parenting order Adoption

Jurisdiction	Planning	Actions	
		Reunification	Alternative care
NT	Care planning Permanency/stability planning	Family preservation Reunification	Placement arrangement: Permanent care order Protection order—long-term parental responsibility direction Adoption

Source Australian Institute of Health and Welfare, 'Permanency planning in child protection: A review of current concepts and available data 2016', *Child Welfare Series No. 64*, 2016, pp. 9-10, <<https://www.aihw.gov.au/getmedia/792f5576-eeca-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true>> viewed 8 October 2018.

3.4 The terminology used in this chapter is based on the national definitions used by the Australian Institute of Health and Welfare (AIHW) and the Commonwealth Department of Social Services.

## Out-of-home care

### Definition

3.5 The AIHW defines out-of-home care as:

Overnight care for children aged 0–17 years, where the state makes a financial payment or where a financial payment has been offered but has been declined by the carer.<sup>4</sup>

3.6 Out-of-home care can include residential care, family group homes, foster care, relative or kinship care, independent living and other placement types such as boarding schools or hospitals.<sup>5</sup>

3.7 As noted in Chapter 1, as at 30 June 2017 there were 47 915 children in out-of-home care in Australia.<sup>6</sup>

### Impacts of out-of-home care

3.8 The Committee heard that a stable and permanent home helps a child to develop secure attachments, a strong sense of identity and belonging and to repair from trauma.<sup>7</sup>

4 AIHW, 'Child Protection Glossary' <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/child-protection/glossary>> viewed 10 October 2018.

5 AIHW, 'Child Protection Glossary' <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/child-protection/glossary>> viewed 10 October 2018.

6 Department of Social Services, *Submission 40*, p. 2.

- 3.9 Hope For Our Children submitted that once children are in the out-of-home care system, particularly foster care, they are likely to experience multiple placements.<sup>8</sup> Similarly, Adopt Change Limited provided evidence that, according to a 2011 study of children who had been in state out-of-home care in Victoria and Western Australia:
- 40 per cent had experienced between two and five placements;
  - 14 per cent had experienced between six and 10 placements; and
  - 32 per cent had experienced over 11 placements.<sup>9</sup>
- 3.10 Barnardos Australia expressed the view that the ‘biggest risk’ for children in out-of-home care is the lack of permanency and stability.<sup>10</sup> Indeed, a number of submitters advised that children in out-of-home care who experience multiple placements, or are in care for extended periods of time, are at higher risk of poor physical, social and emotional outcomes.<sup>11</sup>
- 3.11 Ms Kathryn Mandla, Branch Manager, Children’s Policy Branch, Department of Social Services, explained some of the impacts of instability in long-term out-of-home care:
- ... the research is pretty consistent on this – that when children have extended periods in out-of-home care, when they drift in care, it's been linked with negative outcomes for mental health and wellbeing, and educational attainment. They often have trouble finding suitable accommodation and often have poor employment outcomes, life satisfaction and relational stability. In relation to some of the more severe impacts, we know there's a link between drifting in care and homelessness, disproportionately high rates of substance abuse, and vulnerability to further abuse and violence.<sup>12</sup>
- 3.12 A number of submitters noted the importance of permanency and stability in forming secure parent/caregiver attachments.<sup>13</sup> Instability in

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7 See for example: Mr William Hammersley, *Submission 34*, p. [3]; Dr Nicola Ross, *Submission 49*, p. [2]; Name withheld, *Submission 60*, p. 2; Relationships Australia South Australia, *Submission 69*, p. 7; Institute of Open Adoption Studies, *Submission 76*, p. 8.

8 Hope For Our Children, *Submission 45*, p. 11.

9 Adopt Change Limited, *Submission 77*, p. 3.

10 Barnardos Australia, *Submission 52*, p. 6.

11 Department of Social Services, *Submission 40*, p. 2; EY, *Submission 51*, p. 1; Jakob’s Voice, *Submission 63*, pp. 5-6; Anglicare Sydney, *Submission 67*, p. 7; Adopt Change, *Submission 77*, p. 3, 14; NSW Committee on Adoption and Permanent Care Inc., *Submission 89*, p. 4.

12 Ms Kathryn Mandla, Branch Manager, Children’s Policy Branch, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 8; see also Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 8.

13 Name withheld, *Submission 23*, p. [6]; Hope For Our Children, *Submission 45*, p. 11; Relationships Australia SA, *Submission 69*, pp. 7-8; Adopt Change, *Submission 77*, p. 15; Australian Human Rights Commission, *Submission 103*, p. 14.

placements for children in out-of-home care, especially for younger children, may risk children failing to develop strong and secure attachments. According to attachment theory, disruption in the child-caregiver relationship in the early years can have significant impacts on social, emotional and cognitive development.<sup>14</sup> For example, children that fail to form secure attachments may have:

- difficulty developing healthy relationships later in life;
- lower self-esteem;
- higher anxiety;
- more behavioural difficulties;
- poorer educational outcomes; and
- a higher risk of homelessness, addiction and entry into the juvenile justice system.<sup>15</sup>

3.13 Adopt Change noted that many children in out-of-home care have experienced trauma prior to entering the system, which can compromise their emotional and neurological development.<sup>16</sup> Such children may be more vulnerable to placement breakdown, and therefore multiple placements, which can in turn re-traumatise them.<sup>17</sup> Adopt Change, the Institute of Open Adoption Studies and Relationships Australia South Australia all submitted that secure attachments and meaningful, sustained and positive relationships can mediate the impacts of trauma and help children to heal.<sup>18</sup>

3.14 Children who have experienced trauma and may have complex needs, including psychological difficulties, may be more likely to continue to experience instability in out-of-home care placements. A report by the Australian Institute of Family Studies on outcomes for children and young people in care found that:

- children who had six or more placement changes were 3.38 times more likely to experience further placement disruption;
- placement disruption is greater for boys and for children in the country; and

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14 Australian Institute of Family Studies (AIFS), 'Children's attachment needs in the context of out-of-home care', <<https://aifs.gov.au/cfca/publications/childrens-attachment-needs-context-out-home-care>> viewed 6 September 2018.

15 Hope For Our Children, *Submission 45*, p. 11; Anglicare Sydney, *Submission 67* p. 7; Relationships Australia SA, *Submission 69*, p. 7.

16 Adopt Change, *Submission 77*, pp. 12-13.

17 Adopt Change, *Submission 77*, p. 13.

18 Relationships Australia SA, *Submission 69*, p. 8; The Institute of Open Adoption Studies, *Submission 76*, p. 8; Adopt Change, *Submission 77*, p. 13.

- young people with mental health and behavioural problems were least likely to achieve placement stability.<sup>19</sup>
- 3.15 Adopt Change submitted that findings such as these demonstrate that children with complex needs that can potentially be mediated by permanent, stable relationships are instead more likely to remain within the out-of-home care system.<sup>20</sup>
- 3.16 A number of submitters suggested that the significant consequences of instability in out-of-home care demonstrate the critical importance of providing stability and permanency of care to children and young people who are unable to live with their birth families.<sup>21</sup>
- 3.17 The Committee heard that permanency can provide children with a sense of security and belonging, prevent children drifting in care, and encourage the development of healthy relationships and identity.<sup>22</sup> This sense of stability and permanency is best for positive development, and is a strong predictor of improved outcomes for young people after they leave care.<sup>23</sup>

## Permanency planning

- 3.18 Permanency planning refers to the approach undertaken by state and territory departments responsible for child protection to achieve stable long-term care arrangements.<sup>24</sup>
- 3.19 Permanency planning aims to reduce the amount of time a child is in out-of-home care, and includes prevention and reunification approaches as well as alternative long-term care considerations.<sup>25</sup>
- 3.20 There are a number of pathways for permanency planning, with slight differences between each state and territory. Figure 3.1 provides a

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19 AIFS, 'Outcomes for children and young people in care', October 2007, <<https://aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care>> viewed 8 October 2018.

20 Adopt Change, *Submission 77*, p. 14; see also Institute of Open Adoption Studies, *Submission 76*, p. 8.

21 Hope For Our Children, *Submission 45*, p. 4; Anglicare Sydney, *Submission 67*, p. 7; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 4; Connecting Foster and Kinship Carers SA Inc., *Submission 91*, p. 1.

22 EY, *Submission 51*, p. 4; Anglicare Sydney, *Submission 67*, p. 7.

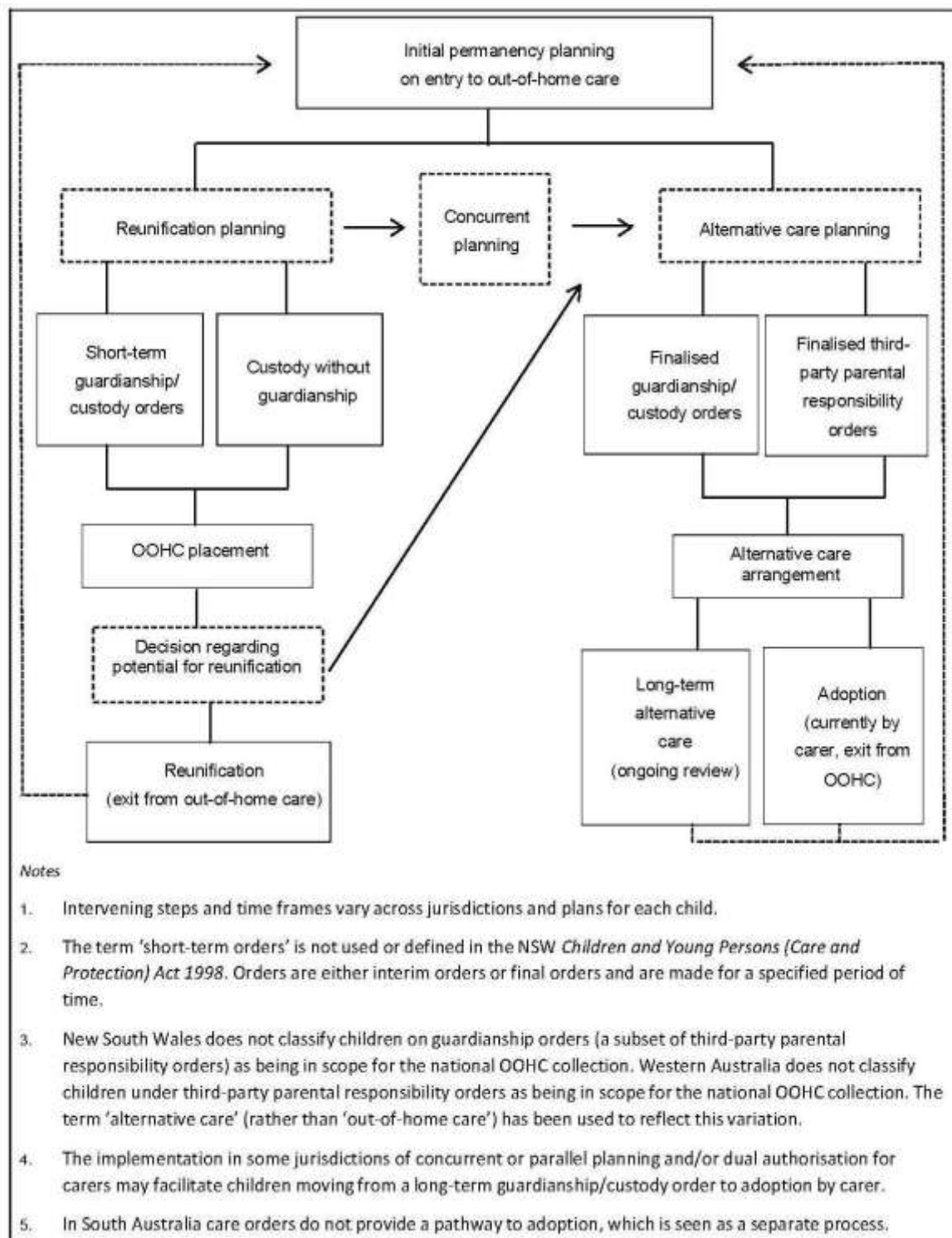
23 Department of Social Services, *Submission 40*, p. 2; Australian Human Rights Commission, *Submission 103*, p. 13.

24 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

25 Penny Mackieson, *Submission 61*, p. 10; Australian Institute of Health and Welfare, 'Permanency planning in child protection', p. 8, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 10 October 2018.

summary of the common steps involved in the permanency planning process.

Figure 3.1 Permanency Planning Process as at June 2016



Source Australian Institute of Health and Welfare, 'Permanency planning in child protection: A review of current concepts and available data 2016', p 8, <<https://www.aihw.gov.au/getmedia/792f5576-eecc-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true>> viewed 8 October 2018.

- 3.21 All states and territories undertake some form of permanency planning. While there are variations in terminology all states and territories consider the following permanency options:
- reunification or restoration;
  - third-party parental responsibility orders;
  - long-term finalised guardianship, custody or care (often until 18 years of age); and
  - adoption (excluding South Australia, which views adoption as a separate process).<sup>26</sup>
- 3.22 The jurisdictions vary somewhat in their permanency hierarchies, with some placing adoption as a preference to long-term foster care. For example, New South Wales' permanent placement principles are (in order of preference):
1. returning a child to parents/kin, where appropriate and safe;
  2. arranging a permanent legal guardian, for Aboriginal children, or
  3. supporting and facilitating adoption.
- For a smaller number of children, when preservation, restoration, guardianship or open adoption is not possible:
4. providing long-term foster care or residential care under parental responsibility of the Minister.<sup>27</sup>
- 3.23 A number of submitters noted the importance of planning for a permanent care option starting as early as possible after a child enters out-of-home care.<sup>28</sup> Early permanency planning may: reduce the number of placement changes a child experiences; prevent 'drifting in care'; and limit or mitigate the impact out-of-home care on the child's development and wellbeing.<sup>29</sup>
- 3.24 While all jurisdictions undertake permanency planning, the Committee heard from some submitters that permanency planning is not always

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26 AIHW, 'Permanency planning in child protection', 2016, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 6 September 2018.

27 NSW Government, *Submission 22*, pp. 7-8.

28 See for example: Victorian Adoption Network for Information and Self Help (VANISH Inc.), *Submission 56*, p. 10; Association of Children's Welfare Agencies, *Submission 101*, p. 5; Australian Human Rights Commission, *Submission 103*, p. 4.

29 Institute of Open Adoption Studies, *Submission 76*, p. 8; Australian Human Rights Commission, *Submission 103*, p. 16.



carried out effectively, or in a child-centric manner.<sup>30</sup> For example, the Association for Children's Welfare Agencies submitted that there is a need for capacity building amongst case workers in the assessment of the most suitable permanency pathway.<sup>31</sup> Additionally, the Committee heard that child-centric permanency planning for Aboriginal and Torres Strait Islander children is limited by a lack of proper mapping and identification of kin as a permanency option.<sup>32</sup>

3.25 The Committee heard evidence that permanency planning should have regard for different types of permanency – legal, physical and relational.<sup>33</sup> Ms Penny Mackieson noted that of these, relational permanency was recently found to be the most important aspect of permanency for children and young people, whilst legal permanency was important for adult carers.<sup>34</sup> Similarly, Family Inclusion Strategies in the Hunter (FISH) and The Benevolent Society stated that relational permanence and continuity in relationships are critical for children, and should not be considered less important than physical or legal permanence.<sup>35</sup>

3.26 However, the Committee also heard that legal permanence, such as is provided by adoption, is important in providing a sense of stability to children in out-of-home care. For example, Ms Renee Carter, Chief Executive Officer, Adopt Change, commented that permanency options, such as adoption, should be a 'service for children' and provide legal security and a sense of belonging to children.<sup>36</sup> Adopt Change submitted that adoption, as a permanency planning option, 'brings legal security and stability' that other permanency options cannot provide.<sup>37</sup>

3.27 Barnardos Australia also commented on the legal permanence of adoption and submitted that:

Adoption carries a legitimacy and a true sense of legal belonging without which many foster children do not feel true safety...only

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30 Name withheld, *Submission 60*, p. 3; Association of Children's Welfare Agencies, *Submission 101*, p. 5.

31 Association of Children's Welfare Agencies, *Submission 101*, p. 5.

32 Ms Natalie Lewis, Director, Secretariat of National Aboriginal and Islander Child Care (SNAICC), *Committee Hansard*, Canberra, 14 August 2018, p. 8.

33 Ms Penny Mackieson, *Submission 61*, p. 11; The Benevolent Society, *Submission 86*, p. 10.

34 Ms Penny Mackieson, *Submission 61*, p. 11; see also VANISH, *Submission 56*, pp. 11-12.

35 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, pp. [4-5]; The Benevolent Society, *Submission 86*, p. 10.

36 Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 6.

37 Adopt Change, *Submission 77*, p. 20.

adoption can provide true stability without the risk of ongoing legal challenge.<sup>38</sup>

3.28 Ms Deirdre Cheers, Chief Executive Officer, Barnardos Australia, told the Committee that the legal security provided by adoption was important:

... it's the only way, and our children tell us this, that children feel safe that a social worker is not going to come and knock on the door and say, 'You might be going somewhere else'.<sup>39</sup>

3.29 Berry Street and The Benevolent Society submitted that permanency planning must be undertaken with the best interests of the child in mind. Decisions regarding permanency should be individualised, timely and child-centric.<sup>40</sup>

3.30 The Committee received evidence in support of the New South Wales Government's approach to permanency planning. For example, Adopt Change submitted that New South Wales has been 'leading the way' in permanency planning.<sup>41</sup> Similarly, Anglicare Sydney, Hope For Our Children and Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, submitted that the New South Wales Government's permanent placement principles should be the basis for a national approach to adoption.<sup>42</sup>

## Timeframes

3.31 A number of submitters told the Committee that timing is a key consideration in permanency planning. Planning must begin as soon as a child enters the out-of-home care system, with the final permanency decision being made within a timeframe guided by the child's age, developmental needs, and time in care.<sup>43</sup>

3.32 Mrs Cath Halbert, Group Manager, Department of Social Services informed the Committee that all states and territories understand the importance of timing in permanency planning. Mrs Halbert stated:

I think it's fair to say that all jurisdictions have moved to an approach where they're planning for permanency even while

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38 Barnardos Australia, *Submission 52*, p. 5.

39 Ms Deidre Cheers, Chief Executive Officer, Barnardos Australia, *Committee Hansard*, Canberra, 22 June 2018, p. 23.

40 Berry Street, *Submission 70*, p. [5]; The Benevolent Society, *Submission 86*, p. 6.

41 Adopt Change, *Submission 77*, p. 11.

42 Hope For Our Children, *Submission 45*, p. 4; Anglicare Sydney, *Submission 67*, p. 12; Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 2.

43 Hope For Our Children, *Submission 45*, p. 13; EY, *Submission 51*, p. 4; Berry Street, *Submission 70*, p. [5]; Adopt Change, *Submission 77*, p. 18-19; The Benevolent Society, *Submission 86*, p. 6.

they're trying to reconcile the child with their family. They're trying for the ultimate outcome for the child, but if that's not to be achieved, then they're well down the path of planning by the time that decision is made.<sup>44</sup>

3.33 As noted in Chapter 2, New South Wales, Tasmania and Victoria provide timeframes for permanency planning, including reunification attempts, of up to two years.<sup>45</sup>

3.34 Under the Permanency Support Program in New South Wales each child has a case plan with the aim of achieving permanency within two years. Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, NSW, explained permanency planning time frames, introduced in 2014, to the Committee:

The legislation requires Family and Community Services to decide whether there's a realistic possibility of restoration within six months of making an interim order for children under the age of two years and within 12 months of making an interim order for older children.<sup>46</sup>

3.35 Ms Czech clarified that the time frames relate to the period of time Family and Community Services are actively working with the child's family to determine whether restoration is possible. Ms Czech provided the following example:

If a child less than two years [old] was before the court today, and Family and Community Services officers decided restoration was a realistic possibility, there may, for example, be a two-year plan to work with parents and return that child home. So it [restoration] doesn't necessarily happen in the time frame. The time frame is more about the decision-making process.<sup>47</sup>

3.36 A number of submitters expressed support for the New South Wales approach to timeframes for permanency decisions.<sup>48</sup>

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44 Mrs Cath Halbert, Group Manager, Department of Social Services, *Committee Hansard*, Canberra, 21 August 2018, p. 12.

45 SNAICC, *Submission 72*, p. [12].

46 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 6.

47 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 6.

48 The Centre for Independent Studies, *Submission 15*, p. 6; Hope For Our Children, *Submission 45*, p. 4; EY, *Submission 51*, p. 14; Institute of Open Adoption Studies, *Submission 76*, p. 21; Adopt Change, *Submission 77*, p. 19.

- 3.37 The Victorian Adoption Network for Information and Self Help (VANISH) suggested that sustained change may take more than two years and that there should not be arbitrary time frames on reunification. Rather, it should be decided on a case-by-case basis.<sup>49</sup>

## Permanency options

### Preservation

- 3.38 All jurisdictions have policies to support family preservation so that, when it is in the best interests of the child, they can remain with their birth parents.<sup>50</sup>
- 3.39 The primary aim of family preservation is to prevent children from entering the out-of-home care system in the first place.<sup>51</sup> Anglicare Sydney explained that the role of family preservation services is to help vulnerable families ‘overcome barriers which are preventing healthy family relationships and functioning’.<sup>52</sup>
- 3.40 However, the Committee also heard evidence suggesting that the current focus on pursuing family preservation at all costs can risk subjecting children to harm, further trauma, and disadvantage.<sup>53</sup>
- 3.41 For example, Hope For Our Children submitted that the family preservation model has:
- ... trivialised the importance of children’s experience of recurrent assault, torture, deprivation of liberty, humiliation, fear, neglect and chaos, all of which guarantee tragic life outcomes, as mere “family dysfunction”. Such treatment in any other setting would be considered a crime and a violation of HR [human rights].<sup>54</sup>
- 3.42 Similarly, Dr Jeremy Sammut told the Committee that children who are being reported to child protection departments remain at risk because:
- ... nothing is happening because the doctors, nurses, teachers and other social workers are reporting to the department, and the

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49 VANISH, *Submission 56*, p. 9.

50 Berry Street, *Submission 70*, p. [8].

51 AIHW, *Submission 41*, p. 10; Ms Penny Mackieson, *Submission 61*, p. 10; Anglicare Sydney, *Submission 67*, p. 4

52 Anglicare Sydney, *Submission 67*, p. 4.

53 Hope For Our Children, *Submission 45*, pp. 16-17, 21; Name withheld, *Submission 99*, p. [2]; Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, pp. 8, 10.

54 Hope For Our Children, *Submission 45*, p. 17.

department is not doing anything because they are practising family preservation.<sup>55</sup>

3.43 Dr Sammut further stated that:

... there is a culture of resistance, particularly within departments, around adoption, and the belief that family preservation should be pursued at all costs.<sup>56</sup>

## Reunification

3.44 Reunification, or restoration, is the priority for children in out-of-home care across all jurisdictions.<sup>57</sup> It refers to a planned process to safely return a child home after time in care to be with their birth parent(s), family, or former guardian.

3.45 Reunification occurs when it is in the child's best interests, and where it will safeguard their long-term stability and permanency.<sup>58</sup> The main aim is to restore and preserve the family unit, following the overarching principle that the most ideal home for a child is with their birth family.<sup>59</sup>

3.46 The Committee heard from multiple submitters that where it is safe, reunification should be considered the best option for children in out-of-home care.<sup>60</sup>

3.47 For reunification to occur, appropriate support services must be provided. Such services work with the family to address issues that may be preventing the family from functioning effectively. These may include housing, financial management, parent training, drug and alcohol rehabilitation, mental health services and domestic violence programs.<sup>61</sup>

55 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 8.

56 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 10.

57 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

58 AIHW, 'Child protection Australia 2016-17', 2017, p. 51, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

59 Anglicare Sydney, *Submission 67*, p. 4.

60 Family Inclusion Network Queensland (Townsville) Inc., *Submission 17*, p. 7; EY, *Submission 51*, p. 1; Anglicare Victoria, *Submission 68*, p. [2]; Adopt Change, *Submission 77*, p. 21; Victorian Aboriginal Child Care Agency (VACCA), *Submission 78*, p. 3.

61 Australian Association of Social Workers, *Submission 24*, p. 2; VANISH, *Submission 56*, p. 9; SNAICC, *Submission 72*, p. [16]; Feminist Legal Clinic Inc., *Submission 73*, p. 2; The Benevolent Society, *Submission 86*, p. 9.

- 3.48 The Association of Children's Welfare Agencies submitted that appropriate family reunification must involve ensuring that support services are timely, accessible and provided to the birth family.<sup>62</sup> It stated that a clear decision cannot be made about the child's future permanency if reunification efforts have not been properly attempted.
- 3.49 In general, there was agreement amongst submitters that where reunification cannot happen safely, and in a timely manner, other options for permanency should be considered for children in out-of-home care.<sup>63</sup>

### **Permanent care (third-party parental responsibility) orders**

- 3.50 As at 30 June 2017, 87 per cent of children who had been in out-of-home care for two or more years were on long-term care orders, 24 per cent of which were third party parental responsibility orders.<sup>64</sup>
- 3.51 The AIHW defines third-party parental responsibility orders as:  
An order that transfers all duties, powers, responsibilities, and authority to which parents are entitled by law to a nominated person(s) whom the court considers appropriate. The nominated person may be an individual, such as a relative, or an officer of the state or territory department responsible for child protection. Third-party parental responsibility may be ordered in the event that a parent is unable to care for a child, with parental responsibility then transferred to a relative, or other nominated person.<sup>65</sup>
- 3.52 The most common form of third party responsibility orders are permanent care orders, which the AIHW defines as:  
Orders granting permanent guardianship and custody of a child to a third party. 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 be made to revoke or amend a permanent care order.<sup>66</sup>

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62 Association of Children's Welfare Agencies, *Submission 101*, p. 6.

63 EY, *Submission 51*, p. 1; Adopt Change, *Submission 77*, p. 21; Jigsaw Queensland Inc., *Submission 79*, p. 3.

64 AIHW, 'Child protection Australia 2016-17', 2017, p. 52, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 8 October 2018.

65 AIHW, 'Child protection Australia 2016-17', 2017, p. 74, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 10 October 2018.

66 AIHW, 'Adoptions Australia 2016-17', 2017, p. 53, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 October 2018.

- 3.53 Terminology differs between the states and territories. Examples of terminology used for such orders include:
- orders allocating parental responsibility – New South Wales;
  - permanent care orders – Northern Territory and Victoria;
  - long-term guardianship orders – Queensland and South Australia;
  - special guardianship orders – Western Australia
  - transfer of guardianship orders – Tasmania; and
  - enduring parental responsibility orders – Australian Capital Territory.<sup>67</sup>
- 3.54 A 2016 review of permanency planning in child protection found that at 30 June 2015, most children on a permanent care order were placed with a relative, kin, foster carer or were in other home-based care.<sup>68</sup>
- 3.55 The Committee heard that some states and territories promote permanent care orders over adoption.<sup>69</sup> The AIHW reported that for children being cared for by relatives, permanent care orders are preferred because adoption will risk distortion of biological relationships between family members.<sup>70</sup>
- 3.56 A number of other submitters expressed preference for permanent care orders over adoption or long-term foster care.<sup>71</sup> For example, Ms Evelyn Robinson, OAM, believed that a permanent open and honest care arrangement, rather than adoption, can provide children with the safety and stability needed for long-term healthy adjustment.<sup>72</sup> Berry Street and Ms Penny Mackieson submitted that permanent care orders provide a suitable alternative option to adoption because the child continues to have contact with their birth family, and there is no mandatory change to the child's identity and birth certificate.<sup>73</sup> Similarly, Relationships Australia

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67 Department of Social Services, *Submission 40*, pp. 3-4.

68 AIHW, 'Permanency planning in child protection A review of current concepts and available data', 2016, p. 15, <<https://www.aihw.gov.au/reports/child-protection/permanency-planning-in-child-protection-a-review-of-current-concepts-and-available-data-2016/contents/table-of-contents>> viewed 10 October 2018.

69 Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 3; Mr Mick Naughton, Director, Children and Families Policy, Children, Families, Disability and Operations Division, Department of Health and Human Services, Victoria, *Committee Hansard*, Canberra, 22 June 2018, p. 2.

70 AIHW, 'Adoptions Australia 2016-17', 2017, pp. 9-10, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 October 2018.

71 Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Name withheld, *Submission 12*, p. [1]; Name withheld, *Submission 20*, p. 2; Name withheld, *Submission 36*, p. [6]; Berry Street, *Submission 70*, p. [7].

72 Ms Evelyn Robinson, OAM, *Submission 9*, p. [1].

73 Ms Penny Mackieson, *Submission 61*, p. 7, 20; Berry Street, *Submission 70*, p. [5].

SA submitted that such orders are ‘more likely to support the child or young person’s development’ in cases where the child cannot live with their birth family.<sup>74</sup>

3.57 The Committee heard that while permanent care orders may provide more permanency and stability than care options such as foster care, there are some key aspects that set it apart from adoption.

3.58 A number of submitters noted that permanent care orders are not truly ‘permanent’ in the sense that they do not provide a lifelong legal relationship. That is:

- they can be revoked;<sup>75</sup>
- there can be legal difficulties with:
  - ⇒ travelling or moving interstate<sup>76</sup>
  - ⇒ applying for a passport<sup>77</sup>
  - ⇒ claiming child support (if a couple separates) or paid parental leave;<sup>78</sup>
- they cease as soon as the child reaches 18 years of age;<sup>79</sup> and
- they do not give adequate protections in the event of the death of a carer or the death of the child.<sup>80</sup>

3.59 Dr Karleen Gribble, Adjunct Associate Professor, School of Nursing and Midwifery, Western Sydney University and Adopt Change submitted that legal barriers such as these can add unnecessary bureaucracy and legal costs, and contribute to a child’s sense of insecurity, reminding them that they do not ‘belong’ to the carer’s family.<sup>81</sup> In turn this may undermine the stability and permanency sought by the permanent care order.

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74 Relationships Australia SA, *Submission 69*, p. 13.

75 Barnardos Australia, *Submission 52*, p. 5; Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 6.

76 Name withheld; *Submission 30*, p. 2; Adopt Change, *Submission 77*, p. 9.

77 Name withheld, *Submission 3*, p. [2]; Name withheld, *Submission 59*, p. [2]; Institute of Open Adoption Studies, *Submission 76*, p. 12.

78 Institute of Open Adoption Studies, *Submission 76*, p. 12.

79 Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Barnardos Australia, *Submission 52*, p. 5; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 5.

80 Barnardos Australia, *Submission 52*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 13.

81 Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Adopt Change, *Submission 77*, p. 12.



## Long-term finalised guardianship or custody orders

- 3.60 Noting the differences in terminology between states and territories, the AIHW defines long-term finalised guardianship or custody orders (also known as guardianship under the Minister) as involving:
- the transfer of legal guardianship to the relevant state or territory department or non-government agency. These orders involve considerable intervention in the child's life and that of their family, and are sought only as a last resort.<sup>82</sup>
- 3.61 The AIHW notes that a guardianship order transfers responsibility for the welfare of the child to the guardian, but does not necessarily grant the right to make decisions about the day-to-day care of the child. This is given under custody orders.<sup>83</sup>
- 3.62 The AIHW defines custody orders as:
- [orders that] place children in the custody of the state or territory department responsible for child protection, or a non-government agency. These orders usually involve the child protection department being responsible for the daily care and requirements of the child, while the parent retains legal guardianship.<sup>84</sup>
- 3.63 As at 30 June 2017, 87 per cent of the children who had been in out-of-home care for two or more years were on long-term care and protection orders, 62 per cent of which were on long-term finalised guardianship or custody orders. Of these, 89 per cent were in home-based relative or kinship care or long-term foster care and eight per cent were in residential or family group homes.<sup>85</sup>

## Relative or kinship care

- 3.64 As at 30 June 2017, 47 per cent of children in home-based care were in relative or kinship care.<sup>86</sup> A number of submitters expressed support for relative or kinship care as the best option for children who must be removed from their families when restoration is not possible.<sup>87</sup>

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82 AIHW, *Submission 41*, p. 7.

83 AIHW, 'Child protection Australia 2016-17', 2017, p. 73, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>> viewed 18 September 2018.

84 AIHW, *Submission 41*, p. 7.

85 AIHW, *Submission 41*, p. 6.

86 Department of Social Services, *Submission 40*, p. 2.

87 Barnardos Australia, *Submission 52*, p. 8; Ms Dorothy Kowalski, *Submission 55*, p. [2]; Name withheld, *Submission 57*, p. 3; Mrs Jo Fraser, *Submission 75*, p. [1].

- 3.65 Some states and territories consider guardianship under kin or relatives to be akin to a third-party parental responsibility order and preference it as a permanency option. For example in New South Wales and Victoria guardianship in relative/kinship care is prioritised before adoption and parental guardianship under the Minister in the hierarchy of permanency options.<sup>88</sup> According to the New South Wales Government's *Pathways of Care Longitudinal Study*, relative/kinship care was determined to be the fastest growing form of out-of-home care in New South Wales.<sup>89</sup>

### Long-term foster care

- 3.66 Approximately 38 per cent of children in home-based out-of-home care in June 2016-17 were in foster care.<sup>90</sup> As noted earlier in this chapter, the Committee heard evidence that long-term foster care is not always a suitable option for children in out-of-home care.<sup>91</sup>
- 3.67 Associate Professor Karleen Gribble stated that:
- ... where family reunification isn't possible, long-term foster care is failing children. In fact, a system that is designed to support them can result in another form of abuse or system of abuse upon children. ... we can look at outcomes for children in long-term foster care and recognise that it actually serves children quite poorly...<sup>92</sup>
- 3.68 The Institute of Open Adoption Studies also submitted that there is a lower rate of adoption breakdown compared to other placement types, including long-term foster care.<sup>93</sup> The Institute expressed support for adoption as a permanency option before long-term foster care.<sup>94</sup> Similarly, Anglicare Sydney and Adopt Change stated that when other permanency options have been exhausted, adoption is preferable to long-term foster

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88 Anglicare Sydney, *Submission 67*, p. 3; Anglicare Victoria, *Submission 68*, p. [2]; Permanent Care and Adoptive Families, *Submission 87*, p. 1.

89 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 5; NSW Government, 'Pathways of Care Longitudinal Study', <<https://www.facs.nsw.gov.au/resources/research/pathways-of-care>> viewed 12 October 2018.

90 AIHW, *Submission 41*, p. 6.

91 See for example: Department of Social Services, *Submission 40*, p. 2; Hope For Our Children, *Submission 45*, p. 11; EY, *Submission 51*, p. 1; Jakob's Voice, *Submission 63*, pp. 5-6; Anglicare Sydney, *Submission 67*, p. 7; Adopt Change, *Submission 77*, p. 3, 14; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 4.

92 Associate Professor Karleen Gribble, *Committee Hansard*, Canberra, 22 June 2018, p. 32.

93 Institute of Open Adoption Studies, *Supplementary Submission 76.1*, Answer to Question on Notice, p. 4.

94 Institute of Open Adoption Studies, *Submission 76*, p. 16.

care and the risk of ‘bouncing’ around in the system.<sup>95</sup> Further, Barnardos Australia commented that it had moved to a policy of open adoption because it realised, through its long-term foster care programs, that children needed more security than was provided by long-term foster care.<sup>96</sup>

- 3.69 The Committee received some evidence regarding the assessment of potential foster carers. The Association for Adoptees Inc. submitted that ‘the screening, training and follow up’ of foster carers is insufficient.<sup>97</sup> The Aboriginal Child, Family and Community State Secretariat (AbSec) advised that, during the recent Royal Commission into Institutional Responses to Child Sexual Abuse, the Royal Commissioner had noted that the screening processes for foster carers are not ‘foolproof’, and can miss key risks posed by prospective carers.<sup>98</sup>
- 3.70 Ms Penelope Mackieson, Chair of VANISH, also commented that there can be flaws in the quality of the assessment of foster carers, allowing foster carers ‘doing it only for the money’ to become approved.<sup>99</sup> The Association of Children’s Welfare Agencies advised that in response to concerns about the quality of assessment of foster carers, it had reviewed its ‘Step-by-Step’ assessment and training process, but noted that the expectations embedded in the ‘Step-by-Step’ tool were not uniformly assumed across Australia. The Association further submitted that caseworkers must be properly trained and equipped to undertake a thorough assessment process.<sup>100</sup>

### Residential or family group homes

- 3.71 According to the AIHW, residential care and family group homes can be defined as:

Residential care: Placement in a residential building whose purpose is to provide placements for children and where there are paid staff.

Family group homes: Homes for children provided by a department or community-sector agency that have live-in,

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95 Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 6.

96 Barnardos Australia, *Submission 52*, p. 1.

97 Association for Adoptees Inc., *Submission 19*, p. 4.

98 Aboriginal Child, Family and Community State Secretariat (AbSec), *Submission 46*, p. 11.

99 Ms Penelope Mackieson, Chair, VANISH, *Committee Hansard*, Canberra, 19 June 2018, p. 9.

100 Association of Children’s Welfare Agencies, *Submission 101*, p. 5.

non-salaried carers, who are reimbursed and/or subsidised for providing care.<sup>101</sup>

- 3.72 As at 30 June 2017, eight per cent of children on a long-term guardianship order were living in residential care or family group homes.<sup>102</sup>
- 3.73 The Committee heard that older children in out-of-home care, who may have ‘bounced around’ the system, were more likely to be in residential care.<sup>103</sup> The AIHW submitted that young people aged 15-17 were more likely to be in residential care than other children.<sup>104</sup>
- 3.74 Additionally, the Committee received evidence that children with complex needs are more likely to live in residential care, having suffered abuse and neglect, with long histories of departmental involvement.<sup>105</sup> Ms Barbara Bennett, Deputy Secretary, Department of Social Services, commented that residential living arrangements are ‘not really a satisfactory outcome’ for children.<sup>106</sup> Indeed, the AIHW reported that children in other forms of home-based out-of-home care have better developmental outcomes than those residing in residential care.<sup>107</sup>

## Adoption

- 3.75 As explained in Chapter 1, for the purposes of this report adoption encompasses all forms of legal adoption in Australia.
- 3.76 The Department of Social Services submitted that adoption is the most secure and ongoing option of permanent care, in cases where a child cannot be reunified with their birth family.<sup>108</sup>

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101 AIHW, ‘Child protection Australia: 2016-17’, p. 43, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

102 AIHW, ‘Child protection Australia: 2016-17’, 2017, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

103 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 10.

104 AIHW, *Submission 41*, p. 6.

105 Hope For Our Children, *Submission 45*, p. 14; AIHW, ‘Child protection Australia: 2016-17’, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 18 September 2018.

106 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, Canberra, 22 May 2018, p. 7.

107 AIHW, ‘Child protection Australia: 2016-17’, 2017, p. 53, <<https://www.aihw.gov.au/getmedia/66c7c364-592a-458c-9ab0-f90022e25368/aihw-cws-63.pdf.aspx?inline=true>> viewed 10 October 2018.

108 Department of Social Services, *Submission 40*, p. 3.

- 3.77 The Committee heard that adoption is life-long<sup>109</sup> and as part of sound permanency planning, adoption is one way to provide safety and stability for some children in out-of-home care.<sup>110</sup>
- 3.78 Associate Professor Karleen Gribble submitted that adoption can provide a number of benefits to children, including that:
- adoption provides stability for children in out-of-home care, with adoption disruptions being rare;
  - adoption provides life-long belonging for children in out-of-home care, and equal status with other children born into the family; and
  - in contrast to permanent care orders, the legal recognition of the child's status in the family continues beyond 18 years of age.<sup>111</sup>
- 3.79 Some submitters expressed support for adoption above other permanency options, including permanent care orders. For example, Barnardos Australia submitted that adoption is the only permanency option that can provide 'true stability' by removing the risk of legal challenges.<sup>112</sup>
- 3.80 Dr Jeremy Sammut, Senior Research Fellow at the Centre for Independent Studies, also expressed strong support for adoption over long-term foster care and permanent care orders. He stated:
- ... adoption is a better option because it goes closest to recreating the biological bonds between parent and child that are intrinsic to families. For children as well, by recreating that relationship as best we can, it's a relationship for life. It's not just until they're 18. With adoption, you've bought it: you're a family, and you deal with all the vicissitudes and problems that happen, but it's permanent, and it provides increased stability.<sup>113</sup>
- 3.81 These views were supported by Adopt Change, who submitted:
- Outcomes for children who have grown up in foster care, compared with children who have been adopted, strongly indicate

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109 See for example: Associate Professor Karleen Gribble, *Submission 28*, p. [3]; Ms Sue Madden, Manager and Principal Officer, Foster Care and Adoptions, Anglicare Sydney, *Committee Hansard*, Canberra, 22 June 2018, p. 24.

110 Miss Shannon Jade Burns, *Submission 2*, p. 2; Dr Philip Mendes, *Submission 4*, p. 1; Name withheld, *Submission 10*, p. [2]; The Centre for Independent Studies, *Submission 15*, p. 2; Associate Professor Karleen Gribble, *Submission 28*, p. [2]; ACT Government, *Submission 35*, p. 1; Royal Australian and New Zealand College of Psychiatrists, *Submission 37*, p. [1]; Barnardos Australia, *Submission 52*, p. 1; Name withheld, *Submission 60*, p. 2; Institute of Open Adoption Studies, *Submission 76*, p. 4; Rainbow Families NSW, *Submission 95*, p. 3.

111 Associate Professor Karleen Gribble, *Submission 28*, pp. [2-3].

112 Barnardos Australia, *Submission 52*, p. 5.

113 Dr Jeremy Sammut, Senior Research Fellow, The Centre for Independent Studies, *Committee Hansard*, Canberra, 29 May 2018, p. 6.

that adoption provides greater benefits to those children both in terms of general well-being, as well as specific areas such as cognitive competence and education outcomes.

The main defining difference found between these two forms of substitute parenting appears to be the higher levels of emotional security, sense of belonging and general well-being expressed by those growing up as adopted compared with those fostered long term.<sup>114</sup>

### **Open adoption**

- 3.82 The Committee was advised that most adoptions that have proceeded in recent years have been considered ‘open adoptions’.
- 3.83 Open adoption is a form of adoption in which:
- information sharing or contact between the birth parents and adoptive parents is facilitated;<sup>115</sup>
  - the origins of children are acknowledged;<sup>116</sup>
  - connections with birth parents and extended families are encouraged;<sup>117</sup> and
  - links with the child’s culture and identity are developed as part of the obligations of adoptive parents.<sup>118</sup>
- 3.84 EY (Ernst & Young) submitted that open adoption practices, which do not disconnect children from their biological heritage, are more beneficial for a child than long-term foster care. EY suggested that with appropriate planning, including contact with birth families, open adoption could be of benefit to more children in out-of-home care than it currently is.<sup>119</sup>
- 3.85 A number of submitters advised the Committee that there is a significant body of research that demonstrates the benefits of open adoption in bringing stability and permanency to the lives of children in out-of-home care. The ACT Government and Anglicare Sydney submitted that such research has demonstrated the long term social and emotional benefits for children who have been adopted from out-of-home care.<sup>120</sup> Similarly the Institute for Open Adoption Studies submitted that there is robust evidence that open adoption, particularly early in a child’s life, can

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114 Adopt Change, *Submission 77*, pp. 7-8.

115 Berry Street, *Submission 70*, p.[ 3].

116 EY, *Submission 51*, p. 3.

117 EY, *Submission 51*, p. 3.

118 EY, *Submission 51*, p. 3.

119 EY, *Submission 51*, p. 4.

120 ACT Government, *Submission 35*, p. 2; Anglicare Sydney, *Submission 67*, pp. 6-7.

- improve children's developmental outcomes and provide a stronger sense of security and belonging.<sup>121</sup>
- 3.86 Barnardos Australia also submitted that, as part of moving toward a policy of open adoption, the organisation monitored international research studies in adoption.<sup>122</sup> Barnardos noted that the literature demonstrates that children who are adopted may have:
- higher stability rates and lower placement breakdowns;
  - improved cognitive and educational outcomes; and
  - improved mental and physical health.<sup>123</sup>
- 3.87 Other submitters suggested that there is a need for a cautious approach. Family Inclusion Strategies in the Hunter (FISH) expressed concern that there is limited research regarding the experience of open adoption from out-of-home care in Australia, particularly the practice of 'openness' after the adoption is complete.<sup>124</sup> Similarly, Dr Nicola Ross and The Benevolent Society expressed a need for a cautious approach to open adoption because of limited research into the outcomes of open adoption in Australia.<sup>125</sup>
- 3.88 EY agreed that the evidence for outcomes of open adoption in Australia is sparse and noted that this is due to of the limited number of open adoptions that have occurred to date.<sup>126</sup> However Mr Mark Galvin, Partner at EY, noted that the evidence that does exist, from studies conducted by Barnardos Australia and the Institute of Open Adoption Studies, indicates that outcomes for children in open adoptions are more positive than those children remaining in out-of-home care.<sup>127</sup> Mr Galvin further noted that other permanency options, such as permanent care orders, also have limited evidence regarding post-order safety, welfare and contact.<sup>128</sup>
- 3.89 The need for further research about adoption in Australia, including open adoption, is discussed further in Chapter 5.
- 3.90 While a number of submitters expressed support for adoption, particularly open adoption, there was a general consensus that adoption

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121 Institute of Open Adoption Studies, *Submission 76*, pp. 4, 16.

122 Barnardos Australia, *Submission 52*, p. 1.

123 Barnardos Australia, *Submission 52*, p. 1.

124 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, pp. [6-7].

125 Dr Nicola Ross, *Submission 49*, pp. 1-2; The Benevolent Society, *Submission 86*, p. 14.

126 Ruth Owen, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 3.

127 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 4.

128 Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 6.

should not be seen as the panacea for children in care.<sup>129</sup> The Committee also heard that open adoption may not be appropriate for all children in long-term out-of-home care.<sup>130</sup> For example, older children may experience more breakdowns of adoptions than young children.<sup>131</sup>

- 3.91 The Committee heard several key concerns regarding the use of adoption to provide permanency and stability to children in out-of-home care. These concerns were raised both as arguments against adoption, as well as points of consideration for any potential national framework for adoption. The concerns included that:
- adoption severs legal ties between a child and their biological family;<sup>132</sup>
  - adoption can remove a child's identity, including by replacing their birth certificate;<sup>133</sup> and
  - adoption may impact identity development and mental health.<sup>134</sup>
- 3.92 Such concerns appear to primarily arise from the legacy of past forced adoption policies in Australia. These policies caused significant harm to both the adopted children and to the parents from whom the children were removed.
- 3.93 The legacy of past forced adoptions, including issues of identity and birth certificates, are discussed further in Chapter 4.

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129 VANISH, *Submission 56*, p. 12; Feminist Legal Clinic, *Submission 73*, p. 4; Australian Human Rights Commission, *Submission 103*, p. 20; Ms Nikki Hartmann, Manager, Post Adoption and Forced Adoption Support Services, Relationships Australia SA, *Committee Hansard*, Canberra, 19 June 2018, p. 7; Ms Cathy Taylor, Chief Executive, Department for Child Protection, South Australian Government, *Committee Hansard*, Canberra, 22 June 2018, p. 5; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 1; Mr Mark Galvin, Partner, EY, *Committee Hansard*, Canberra, 21 August 2018, p. 2.

130 Dr Patricia Fronek and Professor Denis Cuthbert, *Submission 6*, p. 10; Barnardos Australia, *Submission 52*, p. 6; The Institute of Open Adoption Studies, *Submission 76*, p. 4; Ms Renee Carter, Chief Executive Officer, Adopt Change, *Committee Hansard*, Canberra, 26 June 2018, p. 1.

131 The Institute of Open Adoption Studies, *Submission 76*, p. 6.

132 See for example: Family Inclusion Network (Townsville), *Submission 17*, p. 2; Name withheld, *Submission 21*, p. [1]; VANISH, *Submission 56*, p. 18; Ms Penny Mackieson, *Submission 61*, pp. 5-6; Origins Supporting People Separated by Adoption Inc., *Submission 66*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 10; NSW Committee on Adoption and Permanent Care, *Submission 89*, p. 3; Adoptee Advocacy and Information Service SA, *Submission 94*, p. 3.

133 See for example: Ms Evelyn Robinson, OAM, *Submission 9*, p. [1]; Family Inclusion Network Queensland (Townsville), *Submission 17*, p. 5; Name withheld, *Submission 21*, p. [1]; Associate Professor Karleen Gribble, *Submission 28*, p. [4]; VANISH, *Submission 56*, p. 17.

134 See for example: VANISH, *Submission 56*, p. 9; Jakob's Voice, *Submission 63*, p. 6.



## Permanency planning for Indigenous children

- 3.94 As discussed in Chapter 2, The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) provides a hierarchy, in order of preference, for the placement of Indigenous children to ensure that they remain connected to their family, community, culture and country.<sup>135</sup>
- 3.95 While the Principle is reflected in legislation and policy in all Australian jurisdictions,<sup>136</sup> and was supported by many submitters,<sup>137</sup> concerns were raised about the effectiveness of its implementation.
- 3.96 AbSec and others submitted that compliance with the Principle remains poor.<sup>138</sup>
- 3.97 The Secretariat of National Aboriginal and Islander Child Care (SNAICC) stated that the Principle was misunderstood and that implementation was inconsistent and ineffective. Concerns included:
- failure to identify Aboriginal and Torres Strait Islander children;
  - inadequate efforts to consistently look for placement options in consultation with family and community at each stage of the management of a child's care arrangements; and
  - lack of culturally appropriate kinship carer identification and assessment processes.<sup>139</sup>
- 3.98 The Aboriginal Legal Service advised that the absence of cultural competence among casework staff, and a reticence to consult with extended family networks and the Aboriginal community, means that opportunities for placements consistent with the Principle are missed.<sup>140</sup> SNAICC and AbSec commented that the statutory child protection system

135 AIHW, 'Child protection Australia 2016-17', 2018, p. 49, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/contents/table-of-contents-print-report>> viewed 10 October 2018.

136 EY, *Submission 51*, p. 12; Institute of Open Adoption Studies, *Submission 76*, p. 23; AIHW, 'Adoptions Australia 2016-17', 2017, p. 47, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 October 2018.

137 AbSec, *Submission 46*, p. 16; EY, *Submission 51*, p. 12; SNAICC, *Submission 72*, p. 5; Institute of Open Adoption Studies, *Submission 76*, p. 26; The Benevolent Society, *Submission 86*, p. 3, 11-12, 16; Aboriginal Legal Service (NSW/Act) Limited, *Submission 100*, p. 6; Association of Children's Welfare Agencies, *Submission 101*, p. 4; Australian Human Rights Commission, *Submission 103*, pp. 19, 24; Central Australian Aboriginal Congress Aboriginal Corporation, *Submission 105*, p. 2.

138 AbSec, *Submission 46*, p. 16; see also Aboriginal Medical Services Alliance NT, *Submission 92*, p. [3].

139 SNAICC, *Submission 72*, pp. 5-6.

140 Aboriginal Legal Service (NSW/ACT), *Submission 100*, p. 6.

is not currently best placed to undertake the required mapping and identification of kin needed to identify suitable placements for Aboriginal children.<sup>141</sup> Ms Natalie Lewis, Director of SNAICC, stated that ‘sometimes cultural competency is knowing when you’re not best placed to do something’ and suggested that delegating the responsibility for mapping of kin to an appropriate agency would help to increase the proportion of Aboriginal children placed with kin.<sup>142</sup>

- 3.99 In 2012, the United Nations Committee on the Rights of the Child found that poor implementation of the Principle was of serious concern in relation to the rights of Aboriginal and Torres Strait Islander children being placed in care.<sup>143</sup>

### **Adoption under the Aboriginal and Torres Strait Islander Placement Principle**

- 3.100 Over the past 25 years, 125 Indigenous children have been adopted. Half were adopted by Indigenous Australians and the other half adopted by other Australians.<sup>144</sup> In 2016-17, four Indigenous children were adopted. Of these children, one was adopted by Indigenous Australians and three were adopted by other Australians.<sup>145</sup>
- 3.101 The Committee received mixed views on whether adoption of Aboriginal and Torres Strait Islander children is possible under the Principle.
- 3.102 The Australian Human Rights Commission advised that the Western concept of adoption is foreign to traditional Aboriginal and Torres Strait Islander child rearing practices that rely extensively on extended family networks.<sup>146</sup>
- 3.103 The Australian Law Reform Commission’s 1986 report *Recognition of Aboriginal Customary Laws* stated:

It is common for a member of a child’s extended family, often a grandmother, to look after a child or children for periods of time where the parents are unable to do so for one reason or another. Sometimes these arrangements may extend for longer periods of

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141 Mr Tim Ireland, Chief Executive Officer, Aboriginal Child, Family and Community Care State Secretariat (AbSec); *Committee Hansard*, Canberra, 14 August 2018, p. 12; Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p.12.

142 Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p 12.

143 Institute of Open Adoption Studies, *Submission 76*, p. 24.

144 AIHW, ‘Adoptions Australia 2016-17’, 2017, p. 47, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 10 July 2018.

145 AIHW, *Submission 41*, p. 8.

146 Australian Human Rights Commission, *Submission 103*, p. 17.

time, to the point where the child might be identified as permanently in the custody of the person(s) looking after him or her and thus regarded as having been adopted. But it would not usually be correct to describe such placements as 'adoptions', since there is no severing of the parent-child relationship but rather a long term arrangement for substitute care. If an equivalent must be found in the State child welfare systems it would be fostering rather than adoption.<sup>147</sup>

- 3.104 The Committee was also advised that Torres Strait Islander peoples have a customary approach to adoption which involves the permanent placement of children with members of the extended family who are regarded by the community as the child's parents.<sup>148</sup>
- 3.105 AbSec advised that it does not consider adoption as it is currently conceptualised and administered to be in the best interests of Aboriginal children and families.<sup>149</sup> Similarly, SNAICC submitted that adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.<sup>150</sup>
- 3.106 The Institute of Open Adoption Studies similarly advised that adoption is not considered culturally appropriate for Aboriginal and Torres Strait Islander children, for whom placement with kin is preferred.<sup>151</sup>
- 3.107 The Committee heard that The Benevolent Society does not support adoption as an appropriate option for Aboriginal and Torres Strait Islander children<sup>152</sup> and Barnardos Australia does not take referrals for Aboriginal children for open adoption.<sup>153</sup>
- 3.108 In relation to whether the Principle allows for the adoption of Aboriginal and Torres Strait Islander children, Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women, Queensland Government, advised the Committee that adoption legislation in Queensland:

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147 Australian Human Rights Commission, *Submission 103*, p. 17; Australian Law Reform Commission, 'Recognition of Aboriginal Customary Laws', Report 31, 1986, <<https://www.alrc.gov.au/publications/report-31>> viewed 12 October 2018.

148 Australian Human Rights Commission, *Submission 103*, p. 17.

149 AbSec, *Submission 46*, p. 17.

150 SNAICC, *Submission 72*, p. 14.

151 Institute of Open Adoption Studies, *Submission 76*, p. 4.

152 The Benevolent Society, *Submission 86*, p. 11.

153 Barnardos Australia, *Submission 52*, p. 7.

... certainly doesn't preclude adoption of those children but it ensures that the Aboriginal and Torres Strait Islander child placement principle is complied with in relation to making adoption decisions for Aboriginal and Torres Strait Islander children.<sup>154</sup>

- 3.109 EY noted that legislation does not prevent the open adoption of Aboriginal children, but in practice this pathway is available almost exclusively to non-Aboriginal children.<sup>155</sup>
- 3.110 The New South Wales Government advised that when returning an Aboriginal child to their family is not possible, and they are unable to live with relatives or kin, a placement with a non-related person in the Aboriginal community or a suitable person may be considered.<sup>156</sup>
- 3.111 The Central Australian Aboriginal Congress urged the Committee to:  
... disregard the negative and frequently ignorant public commentary around the issue of the adoption of Aboriginal children by non-Indigenous families as this is not impeded by the Aboriginal Child Placement Principle.<sup>157</sup>
- 3.112 The AIHW reports that since 1992-93, of 125 Indigenous children adopted, 50 per cent were adopted by Indigenous Australians and 50 per cent by other Australians.<sup>158</sup>
- 3.113 Importantly, the Committee was advised that the safety of Aboriginal and Torres Strait Islander children is paramount over cultural considerations.<sup>159</sup> Ms Natalie Lewis, Director, SNAICC stated:  
Every jurisdiction holds that child safety and wellbeing is a paramount principle. Our children have the same right and expectation of safety as all Australian children. In this there is no ambiguity and there is no double standard.<sup>160</sup>

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154 Ms Megan Giles, Executive Director, Policy and Legislation, Department of Child Safety, Youth and Women, Queensland, *Committee Hansard*, Canberra, 22 June 2018, p. 9.

155 EY, *Submission 51*, p. 12.

156 NSW Government, *Submission 22*, p. 8.

157 Central Australian Aboriginal Congress Aboriginal Corporation, *Submission 105*, p. 1.

158 AIHW, 'Adoptions Australia 2016-17', 2017, p. 47,  
<<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 3 October 2018.

159 AbSec, *Submission 46*, p. 19; Professor Judith Cashmore, Socio-Legal Research and Policy, Sydney Law School, University of Sydney, *Committee Hansard*, Canberra, 26 June 2018, pp. 11-12.

160 Ms Natalie Lewis, Director, SNAICC, *Committee Hansard*, Canberra, 14 August 2018, p. 1.

## **Committee comment**

- 3.114 The Committee notes the differences in legislation and terminology used by states and territories to describe the out-of-home care system.
- 3.115 The Committee encourages the states and territories to seek consistency in the terminology used for care and adoption. The Committee notes that a uniform national adoption law would assist toward that end.

## **Out-of-home care**

- 3.116 The Committee notes the large number of children in out-of-home care as at June 2017. The Committee is concerned to hear that some children in out-of-home care may experience more than 11 placements during their time in care.
- 3.117 The Committee considers the instability of out-of-home care placements to be of extreme concern, due to the clear negative impacts this may have on children's future mental health, relationships, social behaviours and educational functioning.
- 3.118 The Committee understands that permanency can provide children with a strong sense of security and belonging and that this may help to ameliorate the negative consequences of time in out-of-home care.

## **Permanency planning**

- 3.119 The Committee believes that it is essential for planning for permanency to begin as early as possible in a child's contact with the child protection system. The Committee is pleased that all states and territories initiate permanency planning processes at this time.
- 3.120 The Committee notes that the states and territories differ in their approaches to permanency planning, with many states or territories considering adoption to be the last step in the permanency planning process. However the Committee is concerned that prioritising long-term foster care, care under the parental responsibility of the Minister or residential care before adoption may not be in the best interests of the child.

## **Preservation and reunification**

- 3.121 The Committee considers that it is in the best interests of the child to remain with family, but only if it is safe for them to do so.

### **Permanent care orders**

- 3.122 The Committee considers permanent care orders to be an important permanency option for children in out-of-home care. Permanent care orders may provide more permanency and stability to children in out-of-home care than other options, such as foster care.
- 3.123 The Committee understands that permanent care orders are the preferred permanency pathway for children being cared for by relatives, to prevent distortion of biological relationships.
- 3.124 However, the Committee is concerned that permanent care orders are not truly 'permanent' and lifelong. The Committee is particularly troubled that permanent care orders can be revoked, do not give adequate protections to either the carer or the child in the event of a death, and may present legal difficulties for families wishing to travel or claim social welfare support. The Committee understand that such legal barriers could undermine the permanency and stability that a permanent care order is intended to provide.
- 3.125 The Committee is of the view that permanent care orders have a place in permanency planning, particularly for children who may move from out-of-home care into the care of relatives. However, the Committee believes that the appropriateness of a permanent care order must be considered on an individual, child-focussed, basis. It is vital that the safety and wellbeing of the child is prioritised, and permanent care orders do not always provide the stability and permanency needed.

### **Long-term finalised guardianship orders**

- 3.126 The Committee considers that long-term finalised guardianship orders, excluding kinship care, are generally not a suitable option for children in out-of-home care. The Committee is concerned by evidence detailing the instability and insecurity of foster care placements, the risks that may be posed by insufficient assessment of foster carers, and the link to poor developmental outcomes for children in residential care.

### **Adoption**

- 3.127 The safety and wellbeing of children is paramount. The Committee considers that the impact of being in long-term out-of-home care and experiencing multiple placements is too high a risk to a child's safety and wellbeing. The Committee is of the view that childhood is fleeting and that a safe, secure, permanent and stable option must be provided to children entering the out-of-home care system, within a child-centred timeframe.

- 3.128 The Committee is of the opinion that, when undertaken with the best interests of the child at the forefront of consideration, adoption can provide permanency and stability for many children in out-of-home care.

### **Open adoption**

- 3.129 The Committee believes that 'open adoption' is the only form of adoption that should be considered, unless exceptional circumstances exist that render open adoption inappropriate. The Committee notes that instead of removing a child's identity or severing their connection to their biological heritage, open adoption encourages ongoing connection with biological family.
- 3.130 The Committee is encouraged by research indicating that when planned appropriately, open adoption can improve a child's developmental outcomes, wellbeing and sense of security and stability.
- 3.131 While the Committee acknowledges that adoption is not the panacea for children in out-of-home care in Australia, the Committee believes that it may be an appropriate option for many children within the system.
- 3.132 The Committee particularly supports the approach of New South Wales, in which the facilitation of adoption is prioritised above long-term foster care or residential care under the responsibility of the minister. The Committee feels that it is clear that long-term care under the parental responsibility of the minister may be detrimental for children's long-term health and wellbeing.
- 3.133 The Committee is strongly of the view that, as with all children, the safety of Aboriginal and Torres Strait Islander children is the paramount consideration.
- 3.134 Cultural considerations, while important, should not preclude Aboriginal and Torres Strait Islander children from the opportunity to have a safe and permanent home through adoption.
- 3.135 The Committee considers that adoption should be made more available for Aboriginal and Torres Strait Islander children in out-of-home care, and that this is consistent with the Aboriginal and Torres Strait Islander Child Placement Principle.
- 3.136 If any child's safety and wellbeing is at risk, open adoption should be considered as an option to provide safety, permanency and stability.

**Recommendation 3**

**The Committee recommends that, when it is determined that it is not safe for a child in out-of-home care to be reunified with their parent(s) or placed in the care of kin, open adoption should be considered and progressed as a viable option in the best interests of the child.**