

Submission to

The House of Representatives Standing Committee on Social Policy and Legal Affairs

Inquiry into a nationally consistent framework for local adoption in Australia, with specific reference to:

- **stability and permanency for children in out-of-home care with local adoption as a viable option; and**
- **appropriate guiding principles for a national framework or code for local adoptions within Australia**

By

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Background

Jigsaw support groups were established in Australia and New Zealand in 1976 and Jigsaw Queensland was incorporated in Queensland in 1988. We have assisted thousands of Queenslanders affected by adoption. Jigsaw Queensland services include:

- Emotional support by phone or email
- Monthly support group meetings for mothers, adoptees and an open group for all those affected by adoption.
- Providing Information to assist with individuals with their own search or conducting searches and outreach to family members on their behalf.
- Referral to professionals and other agencies
- Forced Adoption Support Services

Jigsaw Queensland is a non-profit organisation relying on trained volunteer helpers and paid professionals to provide a range of services to all those affected by adoption. We rely on

membership and donations from individuals, business and government to achieve our objectives and to help us provide ongoing services to our members and the community at large.

Over the years Jigsaw Queensland has worked closely with people affected by adoption and have been consistent advocates of change in adoption policy and practices. We have worked closely with Adoption Services Queensland, other non-government services providers and other peer support and advocacy groups to monitor and review current legislation policies and practices as they impact people affected by adoption. We have participated extensively in community consultations with respect to the reform of adoption laws in Queensland and have been party to discussions at the federal level about post-adoption support and access to information, and we were also involved in the consultation processes attending the Senate Inquiry into past forced adoption practices and the consequent state and federal apologies for those past practices. We are funded to provide support to people affected by past forced adoption practices.

Jigsaw, along with other stakeholders affected by past adoption practices, has actively engaged with the Queensland government to keep informed about current practices, in particular permanent guardianship and adoption and the needs of children in out-of-home care..

It is fair to say that Jigsaw Qld has had extensive experience with local adoption and its lifelong impacts on all involved.

The Standing Committee on Social Policy and Legal Affairs has invited submissions on approaches to a nationally consistent framework for local adoption in Australia, with specific reference to:

51. stability and permanency for children in out-of-home care with local adoption as a viable option; and

52. appropriate guiding principles for a national framework or code for local adoptions within Australia.

Jigsaw Queensland believes adoption policy should be based on sound evidence and reasoning and that due attention and respect be given to the experiences of all those directly affected by past and current policies—in this case, original parents, adopted persons and adoptive parents, foster carers and foster children.

We are aware that there are divergent voices contributing to the policy discussion. While everyone affected by adoption experiences some vulnerability from time to time, we are mindful that original parents and adopted persons often feel that their voices are not heard in policy debate. Family separation is a traumatic experience for all involved and the children involved are often the least empowered to present their point of view. While we encourage the committee to give due recognition to all submissions, we respectfully ask that the committee actively seek out the views of adult adoptees and those formerly in out-of-home care.

To this end, we would also encourage the Committee to supplement this inquiry by sponsoring a national gathering of stakeholders to ensure that as many voices and perspectives can be heard and that there can be genuine dialogue between policy makers and stakeholders to ensure the emerging policies are informed by the lived experiences of those affected by adoption and other forms of permanency.

Submission

- *stability and permanency for children in out-of-home care with local adoption as a viable option*

Jigsaw's members and clients have varying views, both positive and negative, on the future of adoption in Australia. Some are in favour of adoption continuing, while others are adamantly opposed to adoption in any form, seeing it as discredited by past practices and negative personal experiences. However, despite these differences of opinion, all agree that adoption or any alternative to adoption should be substantially different in practice from adoption as it has been practiced in the past.

We are aware that many children currently in out-of-home care would benefit from stability and permanency and that a range of initiatives are in place or being put in place to meet this need. Some children need to be removed from their families for a time and with adequate intervention and supports these children can be reunited with their family of origin. We are also aware that for some children reunification will not be possible and stability and permanency become important considerations. The overall concern of all post-adoption stakeholders is that in providing stability and permanency to children in out-of-home care we do not repeat the mistakes of the past and compound that trauma of family separation. The lessons of the past need to be learnt and not repeated. In fact, it could be argued that not recognising the legacy of past adoption practices could have significant negative impact on the public's perception of the viability of adoption as an option for children from out-of-home care.

For adoption to be a viable option for children in out-of-home care, the current trajectory of adoption reform away from past practices needs to continue, rather than any retrograde steps. For some time now, adoption law reforms have proceeded at a steady pace in all jurisdictions, with closer attention being given to issues of genuinely informed consent, access to adoption information, and provision of information and emotional support to all parties to adequately address the grief, loss and trauma of family separation. A central component of that reform trajectory has been to adjust current practice and alternative initiatives in the light of past experience. Thus, we see moves towards open records and open adoption practices. It is now widely recognised that in almost all situations termination of parental rights does not need, and for the emotional health of children, ought not, to involve termination of a child's legal identity and relationships with their original family.

To be a viable option for providing stability and permanence for children from out-of-home care, adoption policy and practice must:

- learn from the past,
- be substantially different from the past, and
- not be the only permanency option available.

Promotion of adoption, to the exclusion of other alternative forms of stability and permanence, could well have the paradoxical effect of making it a less attractive option. There are other alternatives such as permanent guardianship until a child is 18 years of age. Each alternative has its pluses and minuses, not only for prospective parents, but for children as well; these are well known to practitioners in the field. Experience has shown that even within the one family committed to providing a stable long-term family commitment, one child will choose to be adopted and another will choose to remain fostered. In both cases, there is a feeling of genuine commitment to the family and the family is equally committed to supporting the lifelong interest of those children into adulthood. A 'one size fits all' policy, or prioritising one form over the other, seems unnecessary and unproductive. Family stability and a sense of permanence beyond age eighteen will always depend on the quality of communication, relationships and trust built up in the family. It cannot be legislated for.

Focusing on adoption to the exclusion of other alternatives forms of permanency can also distort data on adoption in Australia. The Australian Institute of Family and Welfare (AIHW), provides annual data on adoptions in Australia. In recent years, the AIHW has commented that it would be of benefit in future to report on adoptions and alternative forms of permanency together as, in some circumstances, apparently low numbers of adoptions can be recorded in a state due to uptakes in alternative forms of permanency. This has been particularly evident in

recent years in the fluctuations in NSW's reporting of adoption numbers. In considering the viability of local adoption it is important to see it as an option, rather than 'the' option, or even the best option for permanency for every child.

The viability of local adoption for providing stability and permanence for children from out-of-home care also depends on an open and honest recognition of the additional challenges to providing stability and permanency for children affected by adverse childhood experiences. In a sense, all children adopted from out-of-home care could be said to have special needs and, therefore, prospective parents will require adequate, accessible and timely information and support available to them, to avoid the risk of adoption disruption. Viability will depend on commitment to adequately fund pre- and post-adoption support services, which will also reduce the risks of adoption delay and adoption disruption.

Adoption and permanent guardianship are both viable options for children in out-of-home care. From the perspective of the child's needs the continuing existence of both may increase their chance of achieving some sense of stability and permanency.

Adequately responding to the needs of children in out-of-home care requires a bipartisan approach that gives paramount consideration to the child's best interests. The viability of local adoption as an option for children from out-of-home care can only be negatively impacted if it is seen as an ideologically-driven, partisan solution to a very real need. For example, Jigsaw Queensland views with concern, if not alarm, the fact that in some quarters local adoption is framed as a means of 'rescuing Australia's underclass children'. Such moralising or posturing poorly disguised as policy analysis, is a tragic reminder of a discredited past and is often peppered with ideas taken wholesale from foreign playbooks. To achieve its overall goal of reducing government responsibilities for child welfare, such adoption advocacy denigrates single parents, in particular mothers, demonises the foster care system and seeks to transfer both responsibility and financial burden for child welfare from the state to private families. It echoes outdated approaches well beyond their use by fate first touted in the USA from the late 1990s, where adoption practices have been resistant to reform, the discredited closed adoption system is still in place in most states, and an largely unregulated adoption industry is rampant.

Local adoption in Australia would be more viable as an option from children from out-of-home care if the traumatic effects of terminating parental rights were not compounded by also forever terminating the legal relationships between the child and their family of origin. Such termination of legal relationships has been a key feature of feature of adoption practice to date. We believe that this needs to change and that not changing this feature of adoption will produce further drag to achieving permanency for children in out-of-home care. The purpose

behind terminating all previous legal relationships was to ensure some legal rights, primarily inheritance rights, for children in adoptive families. It was a legal outcome that also dovetailed neatly with the now discredited 'clean break' theories that influenced adoption policies in the past. It is sometimes claimed that continuation of an exclusive legal relationship in the adoptive family beyond age eighteen can provide a sense of security for children as they come into their teenage years. However, It is not clear why such a sense of emotional security needs to be accomplished at the expense of terminating the legal relationship between a child and his parents, siblings, grandparents and other relatives. In the case of older children from out-of-home care, who may have been having continuing contact with their family of origin over the many years it seems superfluous and irrational. In fact, other than the rights of succession in the case of intestacy, there are few legal obligations applicable to familial relationships once a person reaches eighteen years of age. Certainly, this legal move does not ensure a 'forever family'. Adoptive families are no more 'forever families' than are non-adoptive families; just like other families they are subject to breakdown and estrangement.

Given the above, we suggest that a contemporary approach to adoption, and particularly for adoption as an option for children from out-of-home care, must take the form of simple adoption; that is, if the parental rights of original parents must be terminated a child can become a member of an adoptive family without forever terminating their legal relationship to their family of origin. The child thus gains an additional family, parental rights are clearly defined until the child reaches 18 years of age, and the child maintains their right to be legally acknowledged as the relative of all parties, both the adoptive family and their family of origin. The implications for everyone beyond the child turning 18 years of age will depend on the autonomous choices of the adults involved, rather than legislative fiat.

For local adoption and other arrangements to be a viable option for children from out-of-home care we also need to forego sentimentalism and more honestly and openly acknowledge the normative challenges that go with being a part of an adoptive family. After suitable supportive interventions, the majority of children in out-home-care are successfully reunited with their families of origin. Paradoxically, the children most likely to have a positive adoption experiences are those who are also likely to be successfully reunited with their family of origin. On the other hand, those children whose adverse childhood experiences make a successful reunion unlikely are also those mostly likely to present challenges to prospective adoptive families permanent carers. Preparatory education and continuing support for families will be vital for such families to realistically meet these challenges. An even smaller cohort of children in care, who have very complex needs, and who often suffer multiple placements in the out-of-home care system, will be more difficult to place in adoption or permanent care. Any sentimental approach to permanency and local adoption will only let them down further. The honest fact is that the very

children most in need of permanency are the ones often left behind and that many prospective adopters still want to adopt infants rather than children.

Adoption has not been shown to be unambiguously superior to permanent guardianships; there are emotional pluses and minuses to both. Therefore, it is hard to see how setting numerical targets for adoption could be in the best interest of children. Realistically examined, increasing the levels of local adoption alone will make very little impact on the overall numbers of those in out-of-home-care. The children with the most complex needs and in greatest need of stability and permanency will remain the most difficult to place. Those children already in a stable, long term foster care arrangements are those most likely to successfully transition from foster care to adoption or permanency.

If prospective adopters or adoption advocates remain wedded to outmoded understandings of adoption, the potential benefits of a lifelong family commitment might be denied to the very children who are most in need of it. Families today are very different from what they were in the past. Taking one small example, today it is common and unsurprising to find members of the one family having different surnames.

The way forward lies in promoting the need for stability and permanency through either permanent guardianship or simple adoption and adequately supporting those families to meet the challenges ahead.

- *appropriate guiding principles for a national framework or code for local adoptions within Australia.*

Furthering the stability and long-term safety and security for children in out-of-home care will require commitment to three basic principles:

- Openness and honesty at all levels of policy, practice and relationships.
- Focus on the life-long interests of the child
- Adequate pre- and post-placement services.

Most jurisdictions in Australia have moved to openness and open adoption practices, in recognition that continued connection to families of origins can be of long term benefit to children who are adopted, particularly those who are adopted from out-of-home care. Consistency would seem to demand that such open adoptions be in the form of simple adoptions, where the parenting rights of an original parent are terminated, a family adopts a child until they reach age eighteen, but a child's legal relationship to their original family is not

severed forever; they are legally related to two families. A lifelong family commitment between parties, and a sense of stability and permanence, then, will result from the emotional ties created and sustained through open communication and mutual respect. In future, adoption and permanent guardianship may look very similar in practice.

What is a nationally consistent framework for local adoption? What is national consistency in a federal system of government? There are limits to consistency in a federal systems: as resources and policies and practices have varied across states and across time. National consistency cannot involve centralisation as informed decision-making in child welfare must be taken at local levels and be driven by the realities of what is happening in particularly families.

National consistency over time and in a federal system will require a genuine bipartisan approach, not subject to the vagaries of politics. Any nationally consistent approach should be congruent with the national apologies for past practices of forced adoption, which were delivered on behalf of the Australian community with strong bipartisan support.

The key role for the Commonwealth should be to encourage and facilitate consultation and dialogue and to provide adequate and appropriate assistance through its family support services.

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