

Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
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Submission to the Inquiry into approaches to a nationally consistent framework for local adoption in Australia

Submitted by

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I am an academic lawyer with an interest in child protection law: I teach and research in this area. In the past decade, I have carried out research relevant to this inquiry into:

- * Adoption from care in New South Wales (comparative research considering policies and the law in the United States and England and Wales in relation to local adoption) with Professor Judy Cashmore
Nicola Ross and Judy Cashmore, 'Adoption reforms New South Wales style: A comparative look', Australian Journal of Family Law, 30 51-75 (2016)
- * Parents' participation in child protection proceedings, with Jessica Cocks, Lou Johnston, Lynne Stoker and parent consultants. Several articles are currently in press.
'No voice, no opinion, nothing': Parent experiences when children are removed and placed in care: February 2017
<http://www.lwb.org.au/assets/Parent-perspectives-OOHC-Final-Report-Feb-2017.pdf>
- * Lawyers' representation of children in child protection proceedings.
Nicola Ross, 'Different Views? Children's Lawyers and Children's Participation in Protective Proceedings in New South Wales, Australia', International Journal of Law, Policy and the Family, 27 332-358 (2013)

I acknowledge that there may be a need in exceptional cases for local adoption, but advocate that we continue to take a very cautious approach to introducing such policies at the federal level in the Australian context. I do not oppose local adoption that occurs with the consent of parents, or with the consent of older children, but note that any policy that advocates enhancing the role of local adoption without parents' consent needs to be evidence based. It needs to consider and advocate the provision of the necessary support services to meet the needs and rights of all those affected by adoption - including children, parents and extended family members, and adoptive parents and families.

The need for caution if introducing or enhancing policies about local adoption in Australia

Historical factors

A cautious approach is justified by a number of historical and contemporary factors. Historical factors include the need for the then Prime Minister, Julia Gillard, to make a National Apology for Forced Adoptions in 2013 for past policies that led to children being improperly and often illegally removed from their parents. The reports into the stolen generation underline the importance of learning from history. Aboriginal children and the children of young, unmarried women were the targets of past adoption practice, which caused enormous harm to parents, children and the community. This harm has been carefully researched and documented in the 'Bringing them home: the stolen generation report' (HREOC: 1997) but some groups in the community such as the grandmothers against removal in NSW argue that we are in danger of repeating these mistakes.

Contemporary factors

It is widely agreed both in Australia and internationally that children's parents are usually the best persons to raise them. Where they have limited capacity to raise their children, it is the role of governments to support parents financially and if necessary, to assist them with their parenting

skills. We know that limited financial capacity and being separated as children from their own parents makes it harder for some parents to care for children, as well as they would wish to. Poverty and social disadvantage play a major role in parenting difficulties for some parents, and increase the likelihood that they will have contact with the child protection system and have their children removed into care. Family support, health, housing, community services and early intervention services in Australia cannot meet the needs of families who have multifaceted social problems including mental health, domestic violence and substance use issues. There are often waiting lists for services such as drug rehabilitation, housing, family support and counselling and very limited support may be available, when parents wish to make changes. This is particularly the case for parents in isolated, rural and regional areas. This means that if parents request support to improve their care for their children, even when it is likely that authorities will remove their children, they may not receive this support. In some cases, parents who have not been able to manage the care of their children without support, are able to manage the care of future children with additional support. While children's safety and wellbeing is paramount and requires that they be removed from parents in certain situations, removing children from disadvantaged parents without providing them with a reasonable level of support not only harms parents, children and the community but violates the social contract that is the foundation of government in a liberal democratic state.

Child protection law in NSW (see the Children and Young Persons (Care and Protection) Act 1998 (NSW)) provides that courts cannot conclude that the basic needs of a child are likely not to be met only because of poverty or the disability of a primary caregiver: s 71 (2). This law promotes actions that constitute the least intrusive intervention into the lives of children and their families consistent with the paramount concern to protect children: 9 (2)(c). However, child protection law and practice gives courts limited capacity to prevent children's removal where poverty and a lack of services have contributed to these removals. I do not intend this comment as a criticism of courts or child protection services - most people working in these offices and services do so with good intentions and limited resources.

Currently, children permanently removed from their parents end up predominantly in kinship care or in out of home (foster) care and there is evidence that there is inadequate support for both of these groups of carers to provide adequate support to the children in their care. Currently, local adoption severs the legal and personal relationship between parents and children, and alters children's identity forever. There is limited evidence to date that newer forms of 'open adoption' will be successful in supporting ongoing relationships, although quality research into these new models would be of value. It is not yet clear how these new forms of adoption will operate, and how government, adoptive parents and parents and extended family will come together to ensure that children remain connected with their origins, so as to support their wellbeing, identity and the optimal involvement of the families from whom they have been removed. Those who develop new legal forms of adoption need to do so taking account of available research into children's views about such arrangements, including the views of adults who were adopted as children.

Local adoption is attractive to governments who often perceive it as a panacea to many economic and social problems. It effectively privatizes the issue and solves the pressing need to find homes for children removed from their parents, but has hidden costs that children, parents and adoptive parents have to bear. The overseas research indicates that the children who are most likely to benefit from adoption are babies and very young children. These children may do better when adopted than older children who have developed attachments to their parents or who have been in a series of foster homes. The research also shows that many children, including babies, do very well in kinship care and in long-term stable foster care, but all forms of care are subject to disruption. Stability and the development of a sense of belonging seem to be key ingredients in supporting children's identity formation and wellbeing despite different legal forms of permanence offered (parental care, guardianship, long term out of home care, adoption).

Those wishing to adopt often prefer to adopt babies. These babies, unlike those adopted from unmarried women in Australia in the past, may have sustained early harms that brought them into care in the first place. Currently, the parents of babies removed by child welfare authorities receive little or no support after removal. They often experience profound grief and trauma when this

occurs, and one response, if they are of childbearing age, is to fall pregnant again. Authorities may then remove subsequent babies, as having a child removed can signal to authorities that future children are at risk from the parents. Child protection law often allows the use of evidence from earlier incidents of child removal in court proceedings to remove children's siblings: s 106A.

Any attempt to introduce a common framework for greater recognition and support for local adoption (without parental consent) at the federal level needs to consider:

1. *Provision of adequate support services to disadvantaged parents* to assist them to rear their own children. We need to ensure that parents can access appropriate support before and after court intervention. This needs to occur when courts determine that children cannot return to the care of their parents. Further support may well reduce the numbers of children going into care and mean that child welfare authorities are less likely to make consecutive removals from the same parents.
2. *Financial, emotional and educative support for carers who provide support to children and young people who are in care or who have spent time in care.* It is important to note that parents, kinship carers, foster carers and adoptive carers often need similar kinds of support to care effectively for children who have experienced harm and disruption in their family lives.
3. *The need to view adoption as a last resort* that needs to include provisions that safeguard optimal contact with parents and extended family.
4. *The need to respond to the special needs of children adopted from care.* Babies and young children adopted from care may have disabilities that are not apparent at the time of adoption. This may include, for instance, disabilities associated with fetal alcohol syndrome disorder (FASD). Where children have disabilities, they (and their carers) may require significant support. Currently there are few support services available to parents who adopt and it is important that these services are available if we are to encourage local adoption in larger numbers in the future.