

**Submission to the Inquiry into Local Adoption
House of Representatives Standing Committee on Social Policy and Legal
Affairs**

**Submitted by
Dr Patricia Fronek, Griffith University
School of Human Services and Social Work, Law Futures Centre
and
Professor Denise Cuthbert, RMIT University
School of Graduate Research**

Submission summary

- The submission focuses on adoption systems drawing from evidence and experiences in other jurisdictions
- Children have unique, individual needs and their rights and welfare are the priority in complex situations
- An awareness of the impact of Australia's recent past policies is essential to moving forward with new policies
- Strong recommendations are made with regard to some practice trends in Australia

Thank you for the opportunity to contribute to this inquiry. Our submission focuses on adoption systems and presents an overarching perspective that adoption is a service for children not a service for forming families. That is, adoption should be viewed as one option among several to provide stable family-based care for children; and not as a service for adults seeking children for the purposes of family formation. Further, adoption should not be viewed uncritically by governments as a mechanism for relieving the state of the cost of care of children whose families are unable to care for them on a short or longer term basis. We are wary of presumptions about adoption which place it at the pinnacle of options for the out-of-home care of children as we see this as potentially compromising the primacy of considerations of the welfare and rights of the children concerned.

The unique needs of each child should remain at the centre of all policies and practices. We acknowledge there are considerable pressures on government to make adoptions easier, expedite processes and to establish adoption-driven policies rather than policies that are truly child-centred and consider the realities of the many complex factors that affect the well-being of children. We would encourage the committee to take a broader

view of the issues and perspectives that surround adoption. Decisions about adoption should not be led by ideologies or personal viewpoints, it is important to maintain a critical awareness “that the state is not ideologically neutral in balancing its child welfare responsibilities with the rights of those involved” (Mackieson, Shlonsky & Connolly, 2018, p.3). As Mackieson et al. (2018) suggest such mindsets explain an increase in interventionist policy change after extreme cases of abuse are reported in media.

There will always be a need for permanent care that includes out-of-home care and adoption. As good policy must account for the unique, individual needs of each child and his or her family, it should not be driven by one preferred permanency outcome such as adoption. The ideal is for children to be raised by their parents/ parent or extended families where these environments are safe and, where necessary supported to become safe, by the provision of appropriate services, obligations outlined by the Convention on the Rights of Child (1989). Although Australia has not enacted the Convention into law, it has signed and ratified the Convention (Signature: 1990, Ratification/Accession: 1990). Doing so would be a positive step in Australian legislation concerning children as it outlines among other rights, the rights of children to name, identity, culture, to know their family and importantly to have a say in the decisions that affect them.

Some children require alternative care arrangements for short, regular or occasional periods. Other children may require longer term arrangements where relationships with family including siblings, name, identity, history and culture can be maintained and where these contacts are supported even when challenges exist. A much smaller number of children may require adoption as the placement option most suited to the particular child’s unique circumstances. As children and their care are topics on which emotions may run high, there is always a temptation to polarize and label parents at extreme ends of a continuum. Although extreme cases exist, such conceptualisation denies the reality that all parenting, adoptive or otherwise, moves up and down a continuum limited or enhanced by circumstances, opportunities and access to support. Permanent placements of all kinds are vulnerable to disruption or breakdowns (Rolock & White, 2016). Poor parenting including child abuse can occur in first families, out-of-home care and adoptive families. All parties in adoption (children, adopted adults, families, adoptive families) need support and appropriate services across the lifespan. Australian research and evaluations of services that support families demonstrate that with the right interventions and level of support, parents can and do improve their capacity to parent (Bain et. al., 2017; Jackson, 2016; Ross et al., 2017). Unreasonable timeframes, a failure to build positive, supportive relationships and to provide the services

needed are the pressing barriers to the care of children, particularly in light of decreasing investment in welfare and increasing inequality and poverty in Australia (ACOSS, 2015).

It is important to remember that adoptive families do not replicate biological families as issues of adoption, identities and histories must be addressed for the benefit of the child. The losses associated with adoption must also be recognised in decision making processes—loss of identity, for some culture, loss of name, loss of legal rights and lost relationships including those with siblings. We know from a substantial body of research into children and adults that these issues affect adopted persons across their lifetime regardless of whether their adoptive experience is positive or negative. It is not the win-win situation often portrayed. Benefits *and* losses are real.

Harmonization of legislation and practices between states and territories is important. Considerable progress was made towards harmonization with the work of the National InterCountry Adoption Advisory Group (NICCAG), the Attorney-General's Department and state authorities before the group was disbanded in 2013. Processes can always be improved to properly protect the interests of children. As such we draw on Australian and overseas research and identify lessons learned from UK models and Australia's own problematic history of child removal which highlight the pitfalls of systems driven to achieve adoptions as their primary goal.

Lessons from Overseas

Reported problems in adoption-driven systems in other jurisdictions include limited investigations that have excluded or even failed to contact or assess the other parent or extended family; adopting a child during a period of parental illness; inappropriate adoptive families approved due to the speed or inadequacy of approval processes or where there are private arrangements; where parental consent for adoption is eliminated (dispensation of consent with regard to adoption is problematic in all jurisdictions where it is practised particularly where unrealistic timeframes are involved); where accusations of cultural incompetence and racism are made; where systems are designed to decrease government expenditure on welfare and the privatisation of the delivery of children's welfare is preferred; where sibling relationships are discounted and siblings separated; where children are adopted against their wishes; and where conflicts of interest exist in agencies delivering multiple services such as those offering services for families seeking help and facilitating adoptions at the same time.

Adoption of children in care has been practised in parts of the UK, US and Canada since the 1980s (McSherry, Fargas Mallet & Weatherall, 2016). By 2002, current trends and a particular political and ideological preoccupation with child adoption in the UK and the US and from 2005 in Australia were documented, (Fronek, 2009; Garrett, 2002; Mackieson, Shlonsky & Connolly, 2018; Murphy, Quartly & Cuthbert, 2009; Quartly, Swain & Cuthbert, 2013).

The UK

The UK, particularly England, has for some years promoted local adoption from care as the gold star standard of permanency and “adoption as risk free in a happy ever after narrative” (BASW, 2018; Featherstone, Gupta & Mills, 2018). Successive UK governments have focused on increasing and speeding up adoptions from care and its urgency. The Blair government introduced targets to measure performance by numbers and to fund accordingly which has led to faulty decision making, poor outcomes for children and families, and conflicting goals and purpose (Fenton-Glynn, 2016). The Transparency Project has confirmed that some English Councils still set targets for adoption (Thwaite, 2016). A time-scale of 26 weeks for parents of children under one year of age to demonstrate change was introduced in England and Wales. Adoption numbers have significantly increased and such actions have left a trail of traumatised children, families and adoptive families with minimal support and has contributed to adoption disruptions and dissolutions.

England was the first to transfer decisions about children that included investigations, assessments, the initiation of legal proceedings and child removal to the private not-for-profit and for-profit sector to meet such targets (Jones, 2015). The consequences of England’s adoption-driven system is the subject of review and proposed reform after years of policy makers and politicians prioritising adoption (BASW, 2018; Featherstone, Gupta & Mills, 2018). Particular concerns documented in scholarly publications and the media include breaching basic human and child rights, unrealistic time frames, hurried and unjustified adoptions, preferring adoption over other more suitable options, failures to gain consent from both parents, not investigating placement with extended family, separating siblings and adopting against a child’s wishes.

Concerns about non-consensual adoptions in England has been expressed by many organisations including the Council of Europe (2015) who place children’s rights at the forefront and recommended that member states develop policies to prevent particular abuses “(except in exceptional circumstances) severing family ties completely, removing children

from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent”. Only three countries in the European Union allow adoptions from care without consent and in two of those countries closed adoptions are a permanency planning priority indicating adoption-driven systems are placed above the rights of the child in those countries (O’Halloran, 2015).

Estimates of adoption disruptions and breakdowns in the UK range from very low to very high for children adopted from care, however, a high number of families report parenting struggles (Selwyn, Wijedasa & Meakings, 2014). Given the inconsistencies in data collection and definitions of breakdowns, dissolutions and disruptions, most are considered underestimates. Contributing factors include children who lack accurate information about the circumstances of their adoption, a lack of the child’s say about what happens to them, contact with families are not maintained or investment of services into the child’s family does not occur, where challenges related to adoption are not recognised and insufficient post-adoption support is provided. There are reports that children are surreptitiously using alternative means such as Facebook to connect with their families.

Lessons from Australia’s Recent History

The legacies of past policies and practices with respect to the separation of children from first families is an historical fact which has impacted on the lives of children removed, the families which lost them and in some case where this applies, the families which adopted them. These historical facts have contemporary relevance as the lasting damage of these past policies continues to impact of the lives, health and well-being of many Australians. Any consideration of policy to expedite the removal of children from families and to place them via adoption with other families must be fully informed by this recent Australian history. In the years 2008, 2009 and again in 2013, national apologies to groups of children forcibly removed from families and the families which lost them were made due to recognition of the lasting damage these “well intentioned” policies and practices had inflicted on the individuals involved. The inquiries into the Indigenous Stolen Generations, forced imperial child migrants, and past forced adoption practices which gave rise to these apologies provide a large and sobering evidence base on which to reflect on how social policy implemented in one period can have devastating and intergenerational impact on the lives of many people (Cuthbert & Quartly, 2012, 2013).

Forced adoptions

Former Prime Minister, Julia Gillard, delivered a national apology to Australians affected by past forced adoptions in 2013 (Australian Government Forced Adoption Project; Fronck & Cuthbert, 2013).

The Stolen Generation

First peoples' children are over-represented in Australia's child protection system (Fernandez, 2014; Tilbury, 2009). Commentators with no background in child protection or adoption are suggesting culture is unimportant in the race towards early adoption, ignoring the severe impact of policies that have separated children from their families, communities and culture and other racist policies such as those to breed out Aboriginality through marriage.

Trends, the New South Wales example

Good work and innovative practice is being conducted in all states and territories in Australia and critiques of systems do not detract from this work. While saying this, there are concerning policy trends.

In the last five years, there has been a rapid increase of very young children entering state care in Australia, England and the United States (Broadhurst & Masson, 2017). In 2016-17 period, the majority of Australian children coming to the attention of child protection services were under one year of age (AIHW, 2018). In 2016-2017, 64% of local adoptions were under one year of age and the rest under five years (AIHW, 2017). In August 2017, the AIHW reported that Ministers agreed that early intervention meant concurrent permanency planning was to occur as soon as a child comes to the attention of child protection authorities, a statement that is open to a wide range of interpretation. Early intervention that is not explicitly directed towards adoption indicates investment in early childhood, parenting support and complex work with families. It is strongly noted that neuroscientific evidence has been subjected to a type of evangelism, oversimplification and misinterpretation to support particular policy objectives concerning children (Bilson & Martin, 2017; Wastel & White, 2012). In the current political-economic-legal context, support and preventative services are a much lesser priority than investigation and validation which results in a failure to engage families which, in turn, diverts vulnerable families from seeking help adding to existing problems (Fernandez, 2014).

We would like to remind the committee of the major problems identified in the blatantly adoption-driven system in the UK. Similarly, New South Wales has instituted

legislative change that prioritises adoption over permanent care, has instituted unrealistic timeframes for families to address issues, six months for parents of children under two and twelve months for parents of older children in a climate where funding for services for struggling families has significantly diminished (Fernandez, 2014; Ross & Cashmore, 2016). While child protection actions including child removal are reasonable, excessively short time frames for families with limited access to reducing services is unreasonable and unachievable in most cases (Broadhurst & Masson, 2017).

While it is acknowledged that contacting parents is not always possible, recent figures suggest the importance of consent in adoptions is lessening in some Australian jurisdictions. Although state legislation has always allowed for mandated removal, consent for adoption has importantly been required. Consent for adoption was given by the mother only in 55% of adoptions (64% in 2015-16, 60% in 2014-15), both parents consented in 38% of adoptions (36% in 2015-16, 40% in 2014-15), and consent was dispensed with or not required in 7% of cases in the period 2016-17 (none reported in 2015 -16 and 2014-15) (AIHW, 2017). Although Australian data collection and presentation in child protection and adoption, and comparison between states are problematic, adoption data shows a dramatic increase of adoption through foster care in New South Wales (AIHW, 2017; Humphreys, 2012). In the period 2016-17, 152 local adoptions were known child adoptions, that is, from carers such as foster carers. This compares to the next highest number, 28 in Western Australia. It is young children that are being adopted funnelled through the foster care system which is being used as a streamlined pathway to the adoption of particular children. There is now a provision in amended legislation for authorised carers to adopt the child they are caring for and long term guardianship orders have been repealed (Ross & Cashmore, 2016). The amendment of legislation includes provisions for dispensing consent when carers apply to adopt the child in their care with whom they can demonstrate a stable relationship and where it is considered in the child's best to terminate the need for consent (Ross & Cashmore, 2016). Given the lessons from the forced adoption period, the issue of power differentials and the different kinds of coercion that occur where power imbalances exist must be kept at the forefront of reflections on practice and policy.

In a system where prospective adoptive parents whose intentions are to adopt are funnelled into a foster care system to simultaneously act as foster carers while searching for their adopted child poses a plethora of ethical, human rights and practice problems. The focus of interventions immediately cuts out the exploration of the range of options for the child including working with the child's family towards reintegration, confuses the very function

of foster care while allowing prospective parents to choose their child reversing the centrality of the child in child protection and adoption practices to that of prospective adoptive parents. A shift of interest from intercountry adoption to local adoption has occurred due the international decline in intercountry adoption, the shift of attention from adoption lobbyists who exert considerable influence in New South Wales and some politicians.

An argument exists that children seek legal certainty and the security provided by adoption. This argument reflects prospective parents' sense of security that eliminates outside interference in decision making and bestows a sense of their ownership of the child. It is permanency in the right placement that allows for contact between children and their families where there is no harm to children that best meets children's needs. A child's sense of security comes from the environment and the experience of being securely parented regardless of the legal framework. Although understandable, such claims of young children needing adoption to feel secure are a misrepresentation and arise from the concerns of adoptive parents. Studies throw doubt over adoption as the only best solution and highlight the importance of "subjective permanence (child's perception of belonging to the family) is likely to occur when there is objective permanence (child is settled in placement long-term)" (McSherry, Fargas Malet & Weatherall, 2016).

Open adoption can work very well and is part of New South Wales' adoptions. However, open adoption was agreed to in only 88% of local adoptions in 2016-17 (AIHW, 2017). Once adoption is finalised adoptive families are on their own and make their own decisions. Open adoptions begin with good intentions but most adoptive families do not persist with parental contact when challenges or emotional situations arise. Child protection and placement decisions are complex and unique to each child. A child-centred approach ensures this individual complexity is addressed rather than meeting the goals of an adoption-driven system that prioritizes forming new families. Any suggestion that other Australian states should follow the New South Wales example is to repeat many of the mistakes of the recent past and immediate overseas experiences which no doubt provides fertile ground for future national apologies.

Conclusion and Recommendations

Internationally and within Australia there is considerable pressure for adoption to be the preferred, universal solution for children in care and proponents call on research about children's development, research on children in institutions, or legal argument. Although

much of the research is solid, conclusions extrapolated from research and the generalisability of studies often go beyond the research findings and are used to advocate political or ideological positions. For example, investment in early childhood, family support and education, and other family interventions are perhaps more properly indicated by particular research findings or a focus on improving foster care systems rather than suggesting that adoption is the best universal alternative that should be enshrined in policy. Basic logical fallacies often prevail including promoting false dichotomies. In terms of research, there are positive outcomes for stable long-term foster care arrangements and adoption. However, there are failures of the state to meet all needs of children in care (and their families) and to support children's transition into adulthood from care. Examples of funded 'research' with limited credibility have also emerged in the Australian context.

In environments where services for families, rehabilitation and other basic services are depleted, caution is indicated when it comes expediting adoption processes by eliminating important protections. Numbers of adoption and the speed at which adoption processes occur are not appropriate performance indicators. One only needs to look to overseas experiences and their failures.

It is important that Australia does not uncritically import systems from other jurisdictions where considerable efforts are being made to reform problematic systems that have been operating for a number of years. This is particularly the case with adoption-driven systems in the UK where the uncritical position that adoption is the best outcome for even temporary family problems is the driver; where adoption disruptions, dissolutions and breakdowns occur at considerably higher rates than Australia has experienced to date; where success and funding is dependent on the numbers of adoptions achieved and the speed at which they occur; and where scandals related to premature actions and a narrow focus through which a child's situation is viewed are more common.

To conclude, we urge the Committee to:

- heed the evidence of research and resist the win-win-win narratives of adoption as the gold standard and the social policy of choice for the provision of care for children whose families are unable to care for them;

- heed the lessons of Australia’s own history in the implementation of “well intentioned” but damaging policy with respect to forced child removal and forced adoption;
- take special note of the incompatibility between a child-centred approach to the challenges of finding out of home care solutions for children in need and an adoption-driven policy. Adoption is one option on a continuum of options and will not be suitable for all children.

References

- ACOSS. (2015). *Inequality in Australia: A nation divided*. Retrieved from NSW: https://www.acoss.org.au/wp-content/uploads/2015/06/Inequality_in_Australia_FINAL.pdf
- AIHW. (2017). *Adoptions Australia 2016-17. Child Welfare Series. Cat. no. CWS 61*. Canberra: Australian Institute of Health and Welfare.
- AIHW. (2018). *Child protection Australia 2016-17, Child Welfare Series. Cat no. CWS*. Canberra: Australian Institute of Health and Welfare.
- Australian Government. Forced Adoptions History Project. <http://forcedadoptions.naa.gov.au/>
- Bain, T., Cocks, J., Kime, F., Stoker, L., Johnston, L., & Ross, N. (2017, April 6). Kids need their parent in their lives...one way or the other. Webinar. <https://www.youtube.com/watch?v=piIZURu6SfA&feature=youtu.be>
- BASW. (2018). *The Response of the British Association of Social Workers (BASW) to the Report by Professors Brid Featherstone and Anna Gupta*. Retrieved from Birmingham, UK: <https://www.basw.co.uk/adoption-enquiry/docs/BASW%20adoption%20response.pdf>
- Bilson, A., & Martin, K. E. C. (2017). Referrals and child protection in England: One in five children referred to children’s services and one in nineteen investigated before the age of five. *The British Journal of Social Work*, 47(3), 793-811.
- Broadhurst, K., & Mason, C. (2017). Birth Parents and the Collateral Consequences of Court-ordered Child Removal: Towards a Comprehensive Framework. *International Journal of Law, Policy and the Family*, 31(1), 41-59.

- Council of Europe (2015) *Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States*.
<http://assembly.coe.int/nw/xml/XRef/XRef-DocDetails-EN.asp?FileId=21567>
- Cuthbert, D. & Quartly, M. (2012). Forced adoption in the national story of apology and regret. *Australian Journal of Politics and History*, 58(1), 82-96.
- Cuthbert, D. & Quartly, M. (2013). Forced child removal and the politics of national apologies in Australia, *American Indian Quarterly* 37(2), 178-202.
- Featherstone, B., Gupta, A., & Mills, S. (2018). *The role of the social worker in adoption – ethics and human rights: An enquiry*. Birmingham, UK: The British Association of Social Workers, University of Huddersfield, Royal Holloway University of London.
<https://www.basw.co.uk/adoption-enquiry/docs/The%20Role%20of%20the%20Social%20Worker%20in%20Adoption%20Enquiry.pdf>
- Fenton-Glynn, C. (2016). Adoption targets, the good, the bad, and the ugly. *Family Law*.
https://www.familylaw.co.uk/news_and_comment/adoption-targets-the-good-the-bad-and-the-ugly#.WslrL38RXDf
- Fernandez, E. (2014). Child protection and vulnerable families: Trends and issues in the Australian context. *Social Sciences*, 3(4), 785-808.
- Fronek, P. (2009). Intercountry adoption in Australia: A natural evolution or purposeful actions. In C. Sparkes & D. Cuthbert (Eds.), *Other People's Children: Adoption in Australia* (pp. 37-54). Melbourne, Australia: Australian Scholarly Publishing Pty Ltd.
- Fronek, P., & Cuthbert, D. (2013). Apologies for Forced Adoption Practices: Implications for Contemporary Intercountry Adoption. *Australian Social Work*, 66(3), 402-414.
- Garrett, P. M. (2002). Yes Minister: Reviewing the 'Looking after Children' experience and identifying the messages for social work research. *British Journal of Social Work*, 32(7), 831-846.
- Harwin, J., Alrouh, B., Bedston, S., & Broadhurst, K. (2018). *Care demand regional variability in England 2010/11 to 2016/17*. Retrieved from
http://wp.lancs.ac.uk/cfj/files/2018/03/Care-Demand-Regional-Variability-Report_2018.02.21_V1.2.pdf
- Humphreys, C. (2012). 'Permanent' care: Is the story in the data? *Children Australia*, 37(1), 4-9.
- Jackson, A. (2016). Stability – The dilemmas of providing a secure base for children who are on very shaky ground. *Children Australia*, 35(2), 21-28.

- Jones, R. (2015). The end game: The marketisation and privatisation of children's social work and child protection. *Critical Social Policy*, 35(4), 447-469.
- Mackieson, P., Shlonsky, A., & Connolly, M. (2018). Informing permanent care discourses: A thematic analysis of parliamentary debates in Victoria. *The British Journal of Social Work*, bcy012-bcy012. doi:10.1093/bjsw/bcy012
- McSherry, D., Fargas Malet, M., & Weatherall, K. (2016). Comparing long-term placements for young children in care: Does placement type really matter? *Children and Youth Services Review*, 69, 56-66.
- Murphy, K., Quartly, M., & Cuthbert, D. (2009). In the best interests of the child: The re-emergence of pro-adoption discourses in Australia. *Australian Journal of Politics and History*, 55(2), 201-218.
- O'Halloran, K. (2015). *The politics of adoption: International perspectives on law, policy and practice*, Heidelberg/New York/London, Springer Netherlands.
- Quartly, M., Swain, S., & Cuthbert, D. (2013). *The market in babies*. Melbourne, Victoria: Monash University Publishing.
- Rolock, N., & White, K. R. (2016). Post-permanency discontinuity: A longitudinal examination of outcomes for foster youth after adoption or guardianship. *Children and Youth Services Review*, 70, 419-427.
- Ross, N., & Cashmore, J. (2016). Adoption reforms in New South Wales style: A comparative look. *Australian Journal of Family Law*, 30(1), 51 – 75.
- Ross, N., Cocks, J., Johnston, L., & Stoker, L. (2017). 'No voice, no opinion, nothing': Parent experiences when children are removed and placed in care. Retrieved from New South Wales: <https://www.newcastle.edu.au/newsroom/featured-news/new-approach-to-child-protection-needed-report>
- Selwyn, J., Wijedasa, D., & Meakings, S. (2014). *Beyond the Adoption Order: Challenges, interventions and adoption disruption* (DFE- RR336). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301889/Final_Report_-_3rd_April_2014v2.pdf
- Sinclair, I., Baker, C., Wilson, K., & Gibbs, I. (2005). *Foster children: Where they go and how they get on*. London: Jessica Kingsley Publishers.
- Thwaite, A. (2016). English councils confirm they set targets for the number of children to be adopted *The Transparency Project*. <http://www.transparencyproject.org.uk/english-councils-confirm-they-set-targets-for-the-number-of-children-to-be-adopted/>

Tilbury, C. (2009). The over-representation of indigenous children in the Australian child welfare system. *International Journal of Social Welfare*, 18(1), 57-64.

UN. (1989), The Convention on the Rights of the Child.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Wastell, D., & White, S. (2012). Blinded by neuroscience: social policy, the family and the infant brain. *Families, Relationships and Societies*, 1(3), 397-414.