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## **Submission to**

**Parliament of Australia, House of Representatives  
Standing Committee on Social Policy and Legal Affairs**

## **INQUIRY INTO LOCAL ADOPTION**

### **PREAMBLE**

The Family Inclusion Network Townsville (FIN Townsville) exists to support families and children when the Queensland Child Safety Services becomes involved in their lives. FIN Townsville is making this submission as we are aware that there are some individuals, families and organisations in the Australian community who hold the view that adoption should be an option for children who are taken into state care by Child Protection authorities

FIN Townsville is not in favour of adoption in these circumstances and in **Section 1** of this submission we detail the reasons for this stance and argue strongly against the introduction of adoption for children in state care, except in VERY exceptional circumstances.

Moreover, in **Section 1** we argue against legal adoption *per se*, as it has existed in the 20<sup>th</sup> century, and we support an innovative alternative which is far better suited to the values, norms, and conception of human rights of 21<sup>st</sup> century Australia.

In **Section 2** of this submission, FIN Townsville outlines our own innovative proposal for an alternative view of providing stability for some children in long term care – a Long Term Custody Order with parents' continuing involvement.

In each section we first outline our "Worries" about adoption, then secondly we identify our "Hopes and Dreams", and finally we make Recommendations.

## SECTION 1

### **Adoption of children from statutory care: Support for a model of Child-First/Child-Centric Stewardship to replace legal adoption**

#### **Worries**

Parents in FIN Townsville are deeply worried that adoption is being promoted as a care option for children taken into state care.

**We believe adoption is an outmoded option for today's children who need care.** There is a need to fundamentally rethink how to provide safe homes to all children, and to devise a modern realistic framework for moderating the lasting impact of detachment and grief, while providing a child with an honest, happy and fulfilling life.

Our arguments against legal adoption are:

**First**, in our view adoption has been an inherently damaging form of care in that it has been commonly understood to serve the purpose of severing a child from their flesh and blood **parents, siblings, grandparents, cousins, their heritage and identity.** As *The Australian Stewardship Not Adoption Awareness Support Group* argues, the core issue in adoption is one of **identity** and **fraudulent Birth Certificates** (<https://www.facebook.com/AustralianStewardships/?fref=nf> accessed on 10/04/2018).

Identity is a human rights issue (see Articles 7 and 8 in the UN Convention on the Rights of the Child). **Every human being has the right to a true and correct record of their birth; to know who they are.** This is important in many existential ways, and is vital in situations of medical emergency.

Currently in Australia all adoptees have had this right violated. To become 'adopted' the person's true and correct birth certificate is declared legally null and void. A new one is issued with genetic strangers falsely named as parents. The child's real identity and ancestry are forever wiped by legal decree as if they never existed. The new legal, but fraudulent, birth certificate is irrevocable and the adopted person and all their subsequent generations are bound by it. They have been legally severed from their true ancestry and bound to genetic strangers (William Hammersley, National Child Protection Alliance NCPAA Facebook 10/01/16)

*"It doesn't logically follow that to protect and care for a child their identity must be changed or invented. Basing care of a child on changing the child's identity and denying a previous existence and origins (whether known or not) is not a sound basis for child protection and child development."* (an adult adoptee, 2015).

**Second**, past intentions to remove Aboriginal children from their parents' care for permanent placement elsewhere have been widely condemned. The Aboriginal community remain haunted by past child removals, while ongoing social issues and intergenerational trauma is said to be linked directly to disconnection of children from their family, community and culture (Bringing Them Home Report 1997; Atkinson, J *Trauma Trails* 2002; Healing Foundation, 2018 <http://healingfoundation.org.au/>). Current numbers of Indigenous children in State care reportedly are 7- 10 times the number of non-Indigenous children in care, and rising (AIHW, 2017; SNAICC, 2017). Therefore it would seem to reflect a disregard of past damage to proceed with adoption of Aboriginal children from care. Equally, for adoption policy consistency for all children, adoption from care would seem an inappropriate option.

A **Third** important, issue is that adoption from statutory care should not be used as an avenue of supply for infertile couples and others looking to adopt. In this regard, FIN Townsville has been advised by Emeritus Professor June Thoburn, University of East Anglia, UK (November 2015):

*“Beware of a policy that starts to look for babies for adopters rather than other way round. That is, if you start down the UK route of encouraging baby adopters to come forward, you have to start finding babies for them - and what then happens to your preventive and family support services?”*

Additionally, what then happens to work to reunify children out of care back home with their own families?

Professor Thoburn adds a further concern:

*“... beware of misinformation about the brain and an alleged ‘need’ to move children early if there is a possibility of neglect.”*

She refers to the following article:

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

**Abstract:**

*Current social policy initiatives are promoting early intervention to improve the lives of disadvantaged children. Neuroscientific evidence is prominent in this discourse, creating the lustre of science, but too much has been taken on trust. In particular, the argument that the first three years are critical has created a now-or-never imperative to intervene before irreparable damage is done to the developing infant brain. A critique of current policy in the United Kingdom is provided here, drawing on counter-arguments from the policy discourse in the United States during the 'decade of the brain', updated with more recent research findings. Overall, we show that the infant brain is not readily susceptible to permanent and irreversible damage from psychosocial deprivation. Rather, plasticity and resilience seem to be the general rule.*

*The co-option of neuroscience has medicalised policy discourse, silencing vital moral debate and pushing practice in the direction of standardised, targeted interventions rather than simpler forms of family and community support, which can yield more sustainable results.*

**Fourth**, Professor Thoburn cautions that the outcomes for adoption are not nearly so good as claimed by its protagonists (see: Sammut J. (2015) *The Madness of Child Protection: Why adoption will rescue Australia's underclass children*. USA: Connor Court Publishing Pty Ltd).

By contrast see, for example, Beth Neil's work at the University of East Anglia:

**Neil E., Beek M. and Ward E. (2014). *Contact after adoption. A longitudinal study of adopted young people and their adoptive parents and birth relatives*. London: BAAF.**

*This longitudinal study shows that, even when placed under 2 years of age (and most even younger), less than half of those adopted from care were 'thriving' in adolescence and older. Moreover, the contact that young people had with their birth families (in open adoption) was usually not the reason why young people were doing well or not doing well - other reasons were more important.*

A special note of caution relates to the adoption of children over the age of 4 years. These older children are the children most vulnerable to the unimaginable horror of adoption breakdown. For further evidence, see the work of Julie Selwyn, University of Bristol, who has found some very worrying behaviour in adopted young people in adolescence.

**Selwyn Julie, Wijidasa Dinithi, and Meakings Sarah (2014) *Beyond the adoption Order: Challenges, Interventions and Disruptions*. London: Research Report. Department for Education.**

In the view of FIN Townsville, this UK research evidence base indicates that there is no firm evidence base for adoption to be promoted as the most benign solution for children in need of care.

Moreover, **Fifth**, adoption is not a sound basis for reducing the cost of providing for children in state care, since the importance of **funding the provision of essential post adoption support services** should not be underestimated (See Hopes and Dreams, below)

## Hopes and Dreams

In FIN Townsville parents and grandparents hope, in order of preference, that there will be:

1. No adoption for children in state care
2. Absolutely no closed adoption
3. **No coerced parental consent, and no forced termination of parental rights to give consent** with a view to securing adoption, including open adoption.
4. Only very limited use of open adoption in exceptional circumstances, for example: where it is the birth parents' first preference, when their parental consent is given freely, and when grandparents' support is also forthcoming. As William Hammersley writes

*Open Adoption is only "open" until the 'contract' is broken, it is only an agreement between adopters and the mother or parents of the child and is not legally enforceable in all the states and territories except Victoria where it is legally enforceable...*

*The notion of "open adoption" is a fiction as the adoptive parents hold all legal rights. There are other arrangements which can meet children's needs for care and protection. (NCPA Facebook page posted on 7<sup>th</sup> May 2018)*

5. If/when open adoption is pursued, **ongoing support must be available** for adoptive parents, children and natural parents, as proposed in a practice model developed from the findings of a longitudinal research study of open adoption by Beth Neil and colleagues at the University of East Anglia, UK. See:

**Neil E., Beek M. and Ward E. (2014). *Contact after adoption. A longitudinal study of adopted young people and their adoptive parents and birth relatives.* London: BAAF.**

*The research findings suggest that ... support services should be available to help ensure that contact is a positive experience for children. The researchers developed a practice model to help practitioners make and support contact plans that are positive for children and their families.*

6. **The original birth certificate should NEVER be made legally invalid**, nor replaced with an Adoption certificate. A birth certificate is the identification of the child, their heritage and bloodline and should state the biological mother and father. It is not a parenting certificate. The child's needs and rights to their true identity must come first. Adopters' needs could be easily solved with a Parenting Certificate

Overall, Parents and grandparents in FIN Townville prefer and endorse the concept of Child-First **Stewardship** as a modern alternative to adoption (including Open Adoption) as proposed by *The Australian Stewardship Not Adoption Awareness Support Group* (2015).

*“We believe that the arrangements under a **Stewardship model** are preferable to adoption because of the greater transparency and optimum involvement of the natural family and because psychologically, over a lifetime, the possibility of harm to all involved is greatly reduced. We believe this to be the least harmful alternative to adoption, which respects the child's right to their origins and identity*

*Unlike adoption, this **Child-First Stewardship** model of care and protection treats the rights and care of the child as paramount and should not be used until all other options have been exhausted. Family preservation should always be the first option and, moreover, when there is no other option it should **not** be adoption*

*The **Child-First Stewardship** form of Long term care can currently be initiated when a State Court issues a Guardianship Care Order granting custody to a nominated family. Children covered by this type of Order can come to the attention of the Court via Child Protection Services agents or via voluntary placement by agreement of the parent(s). The **Stewardship** family take the role of UNCLE and AUNTS, NOT MUM and DAD (as in adoption) and the child grows up with the security of knowing that everyone is looking out for them - Not with a substitute family that tries to replace the child's family, but with a family that is supportive, loving, safe and nurturing, that supports and includes the child in their family for a lifetime without the child being legally severed from its heritage bloodline, sisters, brothers, grandparents and extended family, and without creating a new legal but fraudulent birth certificate that names the non biological couple as the natural parents (as if born to), but maintains the child's birth right to their identity.*

***Stewardship** is a model that is monitored under a Guardianship Order by the courts. After it has been determined that there has been no coercion, a guardianship order is legally established. In the case of siblings, a stewardship family is chosen that can keep them together. The guardians are responsible for all day-to-day care of the child and for decisions about matters such as education, employment, health and wellbeing. The Guardianship Order expires when the child reaches age 18 and it is assumed that the close relationship established between the guardians/family and the child would last a lifetime. The child is able to be involved, by choice in both the Guardians' family and their own parents' family.*

*In a natural family the parents no longer have the legal responsibilities for their child when the child reaches age 18 and the child becomes legally responsible for themselves, although the relationship between the child and its family does not finish. This is the same with a **Stewardship** model.*

*The court's involvement with **Stewardship** is also to construct a contact regime for each particular child with immediate family, siblings, grandparents and extended*

*family depending on his or her needs and circumstances, (one size does not fit all) that is legally binding and the Guardians are legally bound to support its implementation and, if this is not appropriate, the court shall set out and monitor what is appropriate.*

*Like adoption (but unlike foster-care) **Stewardship** Guardians have financial responsibility "as if the child were a dependent", although they may be supported and resourced by the responsible department or NGO. The Order would not automatically affect the child's inheritance rights and the adult child would have the same rights as the Guardians' other children in any Probate/Succession matters.*

*Overall we believe that the arrangements under a **Stewardship** model are preferable to adoption because of the greater transparency and optimum involvement of the natural family and because psychologically, over a lifetime, the possibility of harm to all involved is greatly reduced. **We believe this to be the least harmful alternative to adoption, and an alternative which respects the child's right to their origins and identity**".*

*The Australian Stewardship Not Adoption Awareness Support Group (<https://www.facebook.com/AustralianStewardships/?fref=nf> accessed on 10/04/2018).*

## **Recommendations**

FIN Townsville parents and grandparents recommend that, for children in statutory care:

1. Adoption as an option, involving the issue of fraudulent new "birth Certificates", should NOT be promoted.
  
2. The Child-First Stewardship model of care (that is, Guardianship to a nominated family) should be used instead of adoption and should not be used until all other options have been exhausted. Family preservation should always be the first option, however when there is no other option it should NOT be adoption. FIN Townsville recommends that priorities identified by *The Australian Stewardship Not Adoption Awareness Support Group* be embraced. These priorities treat the rights and care of the child as paramount. They are:
  - 1) Family Preservation (or reunification) first.  
  
If not possible, then
  - 2) A Kinship care model: Guardianship to relatives or close family friends should be the preferred out of home care option  
  
If (2) is not possible, then

- 3) Long term foster care, with Child Protection Services under either a long-term Guardianship Order to the chief executive OR a long-term Custody Order (a new type of order proposed by FIN Townsville in Section Two of this Submission).

If, and only when, long term Guardianship is desirable, then

- 4) A Stewardship Child-First model: care and support with a stranger through to a lifetime, safe, secure, stable, support family under a Guardianship Order by the court, and supported by post-Stewardship support services, similar to the post adoption practice model advocated by Beth Neil and colleagues in the UK (see (5) below), to provide support and to ensure ongoing meaningful contact with natural family members continues.

### **FIN Townsville has a default recommendation, in the event that adoption continues to be used by Child Protection Authorities:**

If Adoption is included as an option, it MUST be Open Adoption with ongoing backup support services (as outlined in the practice model developed by Neil E., Beek M. and Ward E. (2014). *Contact after adoption. A longitudinal study of adopted young people and their adoptive parents and birth relatives*. London: BAAF). Support services can ensure openness continues throughout a child's childhood and that a child's knowledge of their genetic, family and cultural heritage is preserved, valued and celebrated.

In the view of parents and grandparents in FIN Townsville, Open Adoption is the least harmful form of adoption. It is more in tune with modern social norms in Australia in its respect for the child's right to know their origins and identity. But, when all is said and done, open adoption falls woefully short of desirable as it continues the issue of fraudulent Birth Certificates. Thus, FIN Townsville prefers the Child-First Stewardship model as in Recommendation (2. 4) above. A requirement would be that parents' names remain on the certificate issued.

In support of this, adult adoptee Grace Collier, writes in *The Weekend Australian* April 21-22, 2018 p22

*A child-centric adoption system would not erase the identities of children. It wouldn't abolish their birth certificates and create new ones with new names, in a grand game of pretence. In a child –centric model the child would never be separated in law from their parents, removed from their family tree, and lose their rights ... (even though) in practice, they might reside elsewhere for the term of their childhood.*



## SECTION 2.

### **The need to add a Long term Custody Order to the range of current Child Protection Orders**

#### **Worries**

When long term Guardianship orders are made, either to the Chief Executive of Child Protection authorities or to a nominated person/s, many (probably most) parents are devastated by the loss of Guardianship, especially when they remain in regular contact with their children and are willing and able to remain actively involved in planning and decision making about their child/ren's lives. Yet, once a long-term Guardianship Order is in place, Child Protection authorities (or named Guardians) often reduce the involvement of parents and grandparents, sometimes to the point of exclusion. This exclusion increases the vulnerability of children, who lose connection with their family, community, culture, and country.

At the same time, parents suffer significant ill health effects as a result of loss of Guardianship [*FIN Inclusion Matters* Issue 4 2015 pp 5-8], and many live with grief/chronic sorrow for the rest of their lives.

In the experience of families involved with FIN Townsville, two-year Custody orders are made with a view to working towards reunification but, in practice, inactive "drift" with very little restorative practice happens to rebuild family strengths and relationships and, after two years, Queensland Child Safety moves simply to take out long term Guardianship orders. This is NOT good enough.

As one supporting member of FIN has commented:

*"This (2 year order) is merely a timeframe which they hold where they believe they can return to court and state that nothing has changed in a situation and therefore a long term order is needed. Workers do not attempt to engage with families/parents in this time – parents are told what to do and left to their own devices. The Department's stance is that the child is their client and parents need to make changes on their own to show their commitment to their children."*

Meanwhile Child Safety Officers quit the role at an alarmingly fast rate and in many cases parents and grandparents remain the main stable, continuing relationship in their children's lives.

## Hopes and Dreams

Throughout their time in care children should maintain connection with their families and communities through ongoing contact with Parents (and significant others) and parents should maintain involvement in decision making about their children's lives.

Parents who have ongoing significant contact with their children in care, and involvement in decision making about their lives, should not have to lose Guardianship even though reunification back into their daily care is not possible by the end of a 2 year Custody Order.

**Partnership in care** between the state (Child Protection) and parent(s) should be regarded as a viable, **stable, permanent** arrangement which recognises that parents will be a **“family for life”**, emotionally and often practically, when the children/young people are able to return to their care, or when they exit care at 18 years and Child Protection is no longer supporting them. Parents (and grandparents) are able to be an extended family, as care alumni establish themselves into independent adult lives. This extended family network should be valued by Child Safety and the Children's Court for its potential as an important buffer against the adverse effects which are common among care alumni, well-documented in research studies – homelessness, unemployment, mental health issues, substance misuse, criminality, risk of early death, etc.

This positive resource should be recognised, and active work undertaken towards enhancing strong connections with family, community and culture, even when children/ young people cannot return home to live before they are 18. Frequently many children in care only experience **feeling truly loved** and a **sense of belonging** with their family of origin. See:

**Michael Trout** (1997) *Multiple Transitions: A Young Child's Point of View about Foster Care and Adoption*. Infant-Parent Institute in Champaign, Ill.

Parents in FIN Townsville do acknowledge that in some situations Long Term Guardianship Orders may be the best option for the well-being of some children/young people – where parents are gravely incapacitated or deceased, for example. However, for the vast majority of families, including where a parent may be incarcerated for some years, FIN Townsville considers that Custody Orders - short or long term – should be the first option. This would be consistent with widespread well-articulated Child Protection Aims to work respectfully with families.

While FIN Townsville advocates for this new Long term Custody Order to be introduced as an option for ALL families, FIN Townsville believes that it would facilitate more culturally appropriate ways of working with Aboriginal and Torres Strait Island families. Indeed FIN Townsville has been informed that, in recent years, with regard to several Aboriginal young people in care, one Child Safety Service Centre in the North Queensland region applied to the Children's Court to reverse Guardianship Orders into Custody Orders. Thus, a precedent has been set.

Parents in FIN Townsville strongly support the creation of **long term Custody Orders**, as follows:

- ✚ *If I lose Guardianship this will be felt by my children as Child Safety denigrating their parent; this will undermine their self-esteem and sense of self-worth and family identity.*
- ✚ *While Child Protection may be able to provide my children with a stable placement for their remaining time in care, their need for emotional security and sense of identity will be best met by me remaining centrally involved in their lives*
- ✚ *It is I who can and does provide my children with a sense of being loved and of belonging to a family which will be there for them through their years after leaving care and into adult life. Indeed, it is I who can and will provide my children with a "family for life".*
- ✚ *I have maintained regular contact with my children while they've been in care so why should I lose Guardianship, even though it's not possible for them to return home to my care?*
- ✚ *I have not abandoned my children and I will never abandon them. I should at least be able to share Guardianship with Child Safety.*
- ✚ *I have participated regularly in Family Group Meetings and Case Planning Meetings, and my knowledge of my children should be valued and respected by allowing me to continue as their Guardian*
- ✚ *I am confident I remain a significant adult person in my children's lives. I provide them with a sense of belonging to a nuclear family of parent and siblings, and extended family with several generations of relatives.*
- ✚ *To lose Guardianship would make a huge difference to me personally and in my relationship with my children. I fear that I would be excluded from involvement in my children's lives, would not be kept informed or involved in planning and decision making, and contact would be reduced even further. I think none of this would be in the best interests of my children.*
- ✚ *By remaining Guardian of my children, I will be well placed to hold people to account in regard to providing appropriate care for my children. Given the importance of ensuring a sense of belonging and wellbeing whilst also ensuring safety, a Custody Order which maintains my role as Guardian working in partnership with Child Protection would be most compatible with promoting their best interests.*

## **Recommendation**

### **The Introduction of the option of a Long-Term Custody Order to the Chief Executive of Child Protection authorities**

This would be longer than the current one or two-year Custody Orders (which should remain options). A long term Custody Order could, for example be: five years; ten years; or until the child/young person is 18 years. It would allow:

- The parent to retain Guardianship in partnership with the Child Protection Authority
- Flexible care to be considered – including shared, part time care.
- Planning for **long term stability** BUT such stability **to include the continuing active involvement of the parent and grandparents** in contact, planning, and decision making.
- Possible reunification – either from time to time (when a parent is well) or indeed permanently - even though this may not happen in the short, or even medium, term. Nonetheless, it could happen as children get older especially since, not infrequently, young people in care self-place back home during adolescence.

## Conclusion to the Submission

FIN Townsville is firmly of the view that:

1. Long term Custody (rather than Guardianship) Orders are a viable option in many cases. These could facilitate child protection authorities working in partnership with children, their original families, and their kin, and also with their foster carers.
2. In the view of parents and grandparents in FIN Townsville, Open Adoption is the least harmful form of adoption. However, it falls woefully short of desirable as it continues the issue of fraudulent Birth Certificates and thereby diminishes the rights of adopted children and young people. Plainly, this is NOT in the best interests of such children as it infringes their Human Rights. Thus, when long-term guardianship is necessary, FIN Townsville is opposed to adoption, including Open Adoption, and prefers the Child-First/Child-Centric Stewardship model of long term Guardianship, as outlined in Section 1 of this submission.

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