Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into local adoption

Prepared by Emeritus Professor Shurlee Swain, Australian Catholic University

This submission draws on the findings of the ARC-funded History of Adoption project undertaken in collaboration with Professor Marian Quartly (Monash University) and Professor Denise Cuthbert (RMIT University). The findings of this research are reported in the jointly authored monograph, *The Market in Babies: Stories of Australian Adoption* (Monash University Publishing, 2013) and in a series of associated publications in academic outlets. The submission aims to provide insights from the long history of adoption in Australia in relation to the two issues identified as central to the interest of this inquiry.

Local adoption as a viable option for providing stability and permanency for children in out-of-home care.

The notion that adoption could provide a permanent and economical solution to the problem of children in out-of-home care has a long history in Australia. The colonial state children's departments that, from the 1870s, introduced boarding-out as their preferred method of care used the term adoption to describe placements where families were prepared to accept children without payment, an option that the deparments enthusiastically embraced. Charitable organisations providing care for children followed their lead. Representatives of both state and charitable organisations were central to the moves for the introduction of legal adoption, joined by adoptive parents who sought a legal guarantee that the children they had taken into their homes could be securely their own. The success of their campaign saw the

introduction of adoption across Australia, administered in most jurisdictions by the courts, with the privacy provisions progressively increased over time.

While the introduction of adoption may have reduced the number of children who would go on to become the responsibility of the state, its supposed potential to reduce the out-of-home care population proved to be illusory. In the early years of legal adoption the number of children available for adoption was far in excess of the demand from prospective adoptive parents. When demand grew in the post-war years, it was met by an expansion of the pool of potential adoptees which saw the assumption, shared by professionals and welfare authorities alike, that single mothers, almost by definition, would be unable to provide an adequate home for their child (Swain, 2017).

The Senate investigation of the Commonwealth involvement in former forced adoptions, and the subsequent apology from Prime Minister Julia Gillard, made clear the power imbalances and consequent distortion of adoption practices that marked this dark period of Australia's history. However, the return in many jurisdictions to the promotion of adoption in relation to children in out-of-home care is not without a similar problems. As the most recent Senate Committee to look at the issue concluded there is little evidence that 'legally permanent forms of care are effective in reducing the number of children and young people in out-of-home care' (Senate, 2015). Rather, having re-opened the prospect of local adoption, the demand from potential adoptive parents rises, pressuring social workers to increase the supply. Like their predecessors in the 1950s and 60s, they find the most accessible source of the most desirable 'product' are poor and marginalized mothers who would need ongoing support to provide for their child. If these policies are applied in an environment of austerity, as they have been in the UK where they have been most enthusiastically embraced, the pressures are intensified (Featherstone, Gupta & Mills, 2018).

The reasons for the repeated failure of adoption to impact on the numbers of children in out-of-home care lie in the essence of adoption itself. The notion of adoption as a benevolent act is

inherently deceptive. Rather we need to recognize that both parties to an adoption have needs they are seeking to meet through the process. While there are some prospective adopters who seek out older or special needs children, their motivation for doing so, if left uninterrogated, can have dire consequences for the child, as can the failure of a child to meet such unacknowledged needs. When such placements break down the failure is largely ascribed to the inadequacy of the child (see for example the expanding literature on reactive attachment disorder). These dangers are particularly apparent in the comparatively loosely regulated US market, where adoption is far more prevalent than in Australia, evident in the growing practice of 'rehoming' both through the informal market of the internet, but more recently through organisations devoted to facilitating the process (Hasan).

The bulk of the demand for adoption comes from infertile couples whose desire continues to be to acquire a child as close of possible to the one that would have been born to them. If, on realizing the scarcity of such children, applicants agree to accept an older or differently-abled child there is always the risk that the child will be seen as 'second-best', a risk reflected in the research findings that show that success rates for adoption decrease with the age at which the adoption takes place (Ward & Smeeton). Early or even pre-emptive removal both increases the chances of success for the child and meets the desires of adoptive parents, however, it does so at the expense of the mothers from whom the child is removed, whose opportunities to prove their mothering abilities are given little time to be tested. Many of these women, left unsupported after the removal of their child, go on to have successive children removed at birth (Broadhurst & Mason).

Adoption's greatest advantages are also the source of its identified risks. Early advocates of legal adoption argued that they needed to have secure possession of the child, and to be free from ongoing intrusion into their family life. The promise of a clean break encourages the 'happy ever after' narrative that has proved so persuasive when contrasted with images of children 'languishing' in institutions. However, as the many stories heard during the Senate inquiry into former forced adoptions showed, this very certainty provides no protection for

children whose adoption did not match this optimistic narrative. Nor did it provide ready avenues for adoptive parents struggling to cope with the behavioural and identity problems which adopted children disproportionately experienced. Although contemporary open adoption practices, and the development of a limited number of post-adoption support services have ameliorated some of these risks, both depend on the willingness of adoptive parents to engage with such practices. For all of these reasons, even in jurisdictions which have moved aggressively to advocate adoption for children in out-of-home care, doubts continue to be raised about the ethics of the practice (Featherstone et al; Ward & Smeeton).

Appropriate guiding principles for a national framework or code for local adoptions within Australia

As child welfare is a state rather than a federal responsibility, attempts to develop a national framework have failed in Australia to date. The initial adoption acts, passed in WA in 1896, and during the 1920s in the remaining states, reflected local conditions and, although later amendments eased some of the difficulties that arose in applying legislation across state boundaries, distinctive characteristics in both policy and practice remained. The Commonwealth's first intervention into the field came in the 1960s when the Attorney-General attempted to introduce model adoption laws. In the process letters were received from both potential adoptive parents and welfare workers urging a relaxation of the need for parental consent in order to free more children for adoption. The model legislation drafted by the Commonwealth responded by clarifying situations in which a court could override parental objections, establishing firm revocation periods and strengthening secrecy provisions. While most states incorporated these recommendations in revising their adoption acts over the next decade, distinctive state-based policies and practices survived. When the Commonwealth made its second intervention into adoption policy, following the expansion of overseas adoption in the 1970s, it followed a similar path, maintaining its control of issues related to immigration and citizenship but ceding responsibility for arranging and supervising placements to existing state departments. Although discontent amongst prospective adoptive parents about what

they saw as an anti-adoption culture in the state departments led to the Commonwealth later taking a more active role, a growing resistance from sender countries and a continuing concern about the ethical basis of the practice has meant that the campaigns from prospective adopters to facilitate the process have been largely unsuccessful.

A national framework of code for local adoptions within Australia should be framed within the existing charters and conventions that structure the practice internationally. Central to all such charters is the somewhat malleable concept of the best interests of the child, a concept invoked by all stakeholders in the adoption debate. In the light of the troubled history of adoption in Australia, it is important to ensure that the child whose best interests are under consideration needs to be seen as a rights-bearing citizen and not as a product to be bought and sold in order to minimize government expenditure. The rights accorded to a child include the right to be secure within his or her own family wherever this is possible, and to retain a meaningful relationship with his kin and culture where separation is necessary for his or her safety. Birth parents have a right to be supported to maintain their family wherever possible. Prospective adopters have no right to a child, whatever the quality of the care and resources they have to offer the child.

Hence statements on the rights of the at risk child, from the White House Conference in 1906 on, have adopted a similar hierarchy of services which endorses adoption only when all attempts at family support have failed and long term secure foster care or other guardianship orders are not available. While paying lip service to such principles, policies designed to promote rapid decision-making as part of permanency planning focus resources on the third of these options, opening a space for the return of the power imbalances that have corrupted adoption in the past. A child-centered permanency planning process would:

- Concentrate resources on family support, including on programs that incorporate concurrent planning, testing the potential of the parents to resume their caring responsibilities while providing a stable placement for the child.

- Strengthen existing foster care and guardianship programs to increase the support and security for the children and their carers while not completely breaking bonds with family. While some of these placements may end in adoption, that step should only be taken when the child is old enough to request this change in status.
- Adoption should exist only as an exceptional and last resort, driven by the interest of the child and not the pressure from prospective adoptive parents, or politicians or bureaucrats interested in reducing the claims on the budget.

Sources and Further Reading:

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