

## Appendix A - Local adoption and child protection

### Introduction

- 1.1 The committee's terms of reference did not include direct reference to local adoption, fostering or child protection.
- 1.2 However, submissions were received which covered these issues and the committee took evidence at public hearings from groups and individuals, including state and territory governments on these matters. The evidence gathered indicated that attitudes to adoption have not only coloured official attitudes to intercountry adoption, but also to child protection and other forms of out-of-home care generally. The evidence was too significant to ignore and is discussed below. While no recommendations are made, there is enough to indicate that the states and territories should review their local adoption laws.
- 1.3 The Committee believes there would be more people who would make submissions on these matters, should a specific inquiry be held into local adoptions, fostering and child protection. The committee believes such further inquiry would be justified.

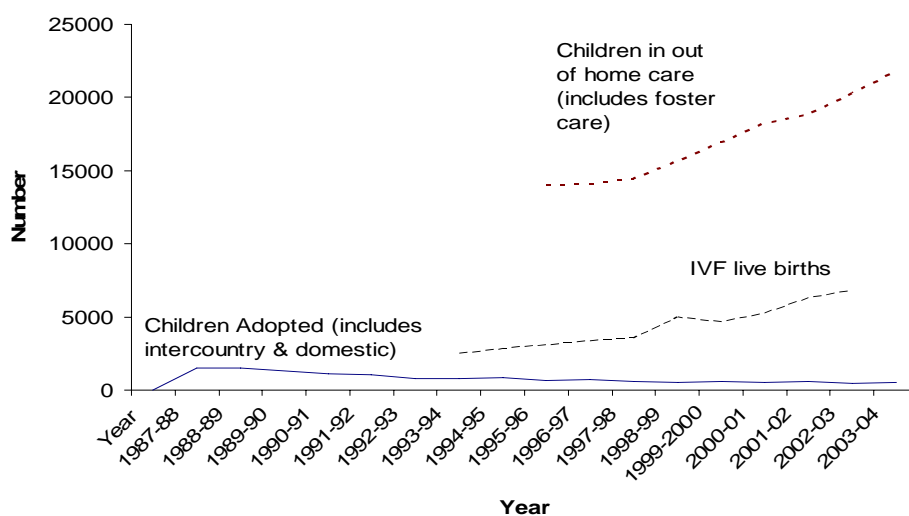
### Fostering

- 1.4 Foster care is a category of out-of-home care, which also includes kinship care (with the child's extended family) and residential care (such as a purpose built facility). Between 1996 and 2004, the number of children in out-of-home care increased by 56%, from 13,979 to 21,795. In 2004, 53% of

these children were in foster care and 40% were in kinship care. The balance between foster and kinship care differs significantly between the states and territories.<sup>1</sup>

- 1.5 If a child is placed in foster care because its parents are clearly unable or unwilling to look after it, that child becomes a potential candidate for adoption. It appears, however, that fewer and fewer children are being adopted out of care. Between 1998-99 and 2003-04, the number of carer adoptions (where a foster or other carer adopts a child) approximately halved, dropping from 48 to 25.<sup>2</sup> In fact, in New South Wales each year there are some 105,000 children who are subject to over 215,000 'risk of harm' reports to the Department of Community Services – often the first step to the placement of a child into out-of-home care.<sup>3</sup> However, in that state, the number of children in state care that were adopted dropped from 32 in 1998-99 to less than a dozen in 2003-04.<sup>4</sup>

Figure A.1: Adoptions, Children in out-of-home care and IVF live births 1997-88 to 2003-2004



Source: AIHW, *Adoptions Australia, Child Welfare Series*; AIHW, *Child Protection Australia, Child Welfare Series (yearly reports)*. IVF figures: P. Lancaster, E. Shafir, & J. Huang, *Assisted Conception Australia and New Zealand 1992 and 1993*, AIHW, 1995, p.5 (1979-1992 data); and J. Bryant, E.A. Sullivan, & J. Dean, *Assisted reproductive technology in Australia and New Zealand 2002*, AIHW, 2004, p.36 (1993-2002 data).

- 1 Australian Institute of Health and Welfare, *Child Protection Australia 2003-04*, pp 45-46 viewed at <http://www.aihw.gov.au/publications/index.cfm/title/10095> on 4 October 2005.
- 2 Australian Institute of Health and Welfare, *Adoptions Australia 2003-04*, p 21 viewed on 27 September 2005 at <http://www.aihw.gov.au/publications/index.cfm/title/10073>.
- 3 Dawson S, transcript, 12 October 2005, p 4.
- 4 Horin A, 'Adoption of foster children hits low' *The Sydney Morning Herald* 16 February 2005 viewed on 29 August 2005 at <http://www.smh.com.au/news/National/Adoption-of-foster-children-hits-low/2005/02/15/1108230005187>.

- 1.6 Similar to intercountry adoption, Australia lags other countries in relation to adoptions of children in care. In 2000, the estimated rate of adoptions of children in care for Australia was 1%, compared with 4% in the United Kingdom and 6-7% in the United States.<sup>5</sup>

### Is fostering being used inappropriately?

- 1.7 During the inquiry, some witnesses suggested that many children were placed in foster care when adoption may have been a more suitable outcome for them. Witnesses suggested this attitude was caused by the stigma attached to past adoption practices. Further, parents are reluctant to give up their children when the foster system relieves them of the responsibility of looking after them:

Unfortunately, what tends to happen is a lot of children get lost in the foster system. Unless the birth parents relinquish their rights to the child, many children end up in foster care, going from one foster home to another, because the parents do not want to sign on the dotted line to give up their rights but do not want the kid, either. These children would do amazingly in a permanent family but there is such a 'blood is thicker than water' mentality out there.... I do not know if it is blatantly anti adoption or just pro blood relation. I personally feel that some of this may be a swing back from the stolen generation pendulum. It was so extreme 40 or 50 years ago – I have a close friend who was one of the stolen generation – and, to me, it is like it has swung so far the other way. Now you put the kids back with their biological parents regardless of the child's safety.<sup>6</sup>

- 1.8 A number of social commentators have also raised the question of whether child protection agencies are achieving a proper balance between fostering, adoption and other care options. Bettina Arndt reported that some social workers have prided themselves on maintaining a high 'hit rate' in dissuading birth mothers from adoption. The risk, however, is that if a person who cannot properly look after a baby keeps it (such as a teenager) the child may be at risk and it may be placed in care later on.<sup>7</sup>

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5 Cashmore J, 'What can we learn from the US experience on permanency planning?' *Australian Journal of Family Law* (2000) vol 15, p 225.

6 Leckenby K, transcript, 21 July 2005, p 73.

7 Arndt B, 'Giving up baby' *The Sydney Morning Herald* 9 May 1998, p 5 reproduced in Healey J (ed) *Adoption* pp 19-22. See also Albrechtsen J, 'Restoring Adoption' *Quadrant* (2002) vol 66 viewed on 29 August 2005 at [http://www.quadrant.org.au/php/archive\\_details\\_list.php?article\\_id=626](http://www.quadrant.org.au/php/archive_details_list.php?article_id=626).

- 1.9 One agency, Wesley Dalmar, has reported that it took four years to finalise the adoption of a girl whose father was dead and whose mother was in long term psychiatric care. The delay was largely due to waiting for psychiatrists to confirm that the mother could not properly consent to the adoption.<sup>8</sup>
- 1.10 These practices are inconsistent with research findings that state that early, decisive intervention is usually in a child's best interests.<sup>9</sup>

### Permanence and stability for children at risk

- 1.11 One of the key determinants of a child's outcomes in out-of-home care is stability of placement, or permanency. The New South Wales Committee on Adoption and Permanent Care Inc advised the committee how 'foster care drift' can adversely affect children at risk:

I have seen the disastrous effects of children being shuffled from short-term care back to their families. There is that whole shuffling effect, which activates the child's attachment system in ways that are damaging for their development, their attachments later in life and their capacity to form intimate relationships, just generally speaking, in adulthood. I do not support that at all, personally or professionally.<sup>10</sup>

- 1.12 Research shows that placement instability is an important indicator for a child's well-being. If a child cannot obtain a stable placement within 12 months, then its behaviour tends to deteriorate. If a child has two or more placement breakdowns due to behaviour within the previous two years, then that child is significantly more likely to deteriorate over time and experience placement breakdowns in future.<sup>11</sup> One academic went so far as to say:

I believe that permanent care options such as adoption or long-term parenting orders provide the majority of good news stories, successes if you will, that we experience in child welfare.<sup>12</sup>

- 1.13 Productivity Commission data demonstrates that stability rates are lowest in South Australia.<sup>13</sup> In a longitudinal study of children in foster care in

8 Horin A, 'Adoption of foster children hits low'.

9 Rutter M, 'Children in Substitute Care: Some Conceptual Considerations and Research Implications,' *Children and Youth Services Review* (2000) vol 22, pp 691-692.

10 West J, transcript, 23 September 2005, p 76.

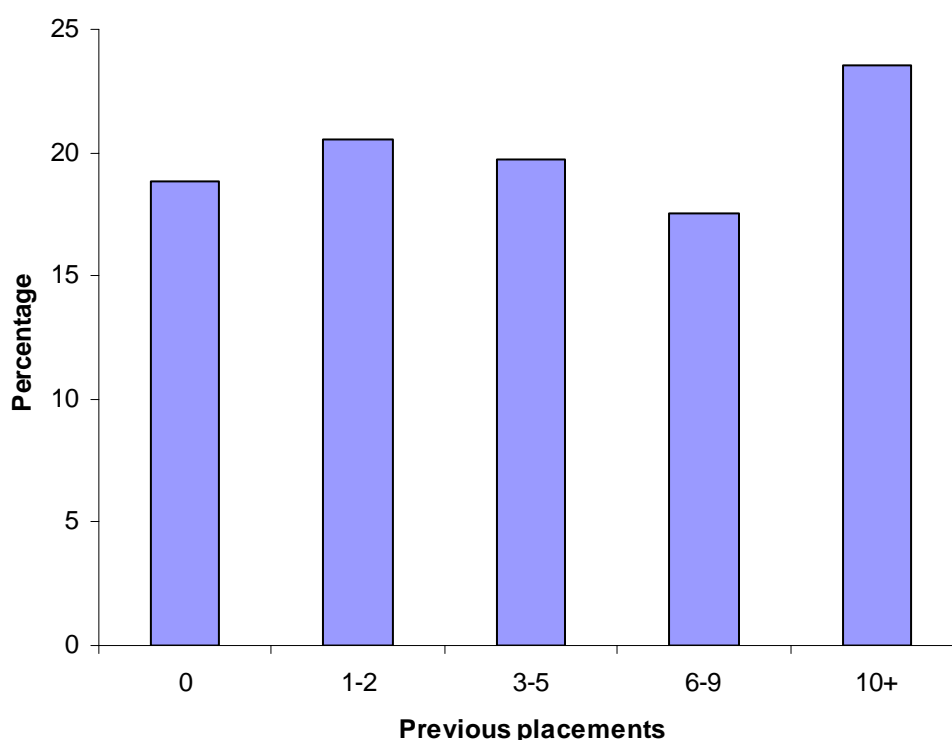
11 Delfabbro P, Barber J, *Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study*, p 5, viewed on 29 August 2005 at <http://www.aifs.gov.au/institute/afrc8/delfabbro.pdf>.

12 Bath H, 'Rights and realities in the permanency debate,' *Children Australia* (2000) vol 25, p 13.

13 Productivity Commission, *Report on Government Services 2005* (2005) vol 2, p 15.20.

South Australia, commencing in 1998-99, found the children had a history of high levels of instability, as the figure below demonstrates. High levels of instability occurred during the first four months of the study, which reduced over time. At the end of two years, 40% of the children had gone home, 25% were stable in care, 21% were unstable in care and 13% had other outcomes.<sup>14</sup>

Figure A.2: Previous placements for children requiring a new foster placement, South Australian longitudinal study, 1998-99



Source: Delfabbro P, Barber J, 'Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study,' p 4.

1.14 There has been a trend towards greater recognition of the value of stability for children in out-of-home care and the need for quicker action. In Victoria, legislation before Parliament will allow the Children's Court of Victoria to make a permanent care order if the child has not been in the care of a parent for at least six months.<sup>15</sup> Despite this rhetoric, however,

14 Delfabbro P, Barber J, *Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study* p 4 and Delfabbro P, *Placement disruption and its psychological consequences - Implications of the 3-year South Australian longitudinal study*, p 24, viewed on 8 October 2005 at <http://www.acwa.asn.au/cafwa/SymPapers/DelfabbroCAFWAA.ppt>.

15 Clause 319, Child, Youth and Families Bill 2005 (before the Victorian Parliament, November 2005) to replace the *Children and Young Persons Act 1989* (Vic). The *Children and Young Persons Act 1989*, section 112, allows the Children's Court of Victoria to make a permanent

some children still experience long delays and effective systems of permanency planning are still not implemented.<sup>16</sup>

- 1.15 For example, the New South Wales *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001* was designed to divert more children from care and place them, through adoption, with a family. A Bill for the legislation was tabled in June 2000 and attracted both support and criticisms. The latter included the suggestions that its goals could be met under current legislation or that it would lead to a 'white stolen generation'.<sup>17</sup>
- 1.16 The Bill was amended and became law in November 2001. Given the statistics presented earlier on adoptions out of care, however, it does not appear to have been effective. All but one of its provisions were repealed by section 4 of the *Statute Law (Miscellaneous Provisions) Act 2005*. The legislation's only remaining provision is the requirement that, where a child is placed in the care of a relative, the placement must be reviewed regularly in accordance with the regulations.
- 1.17 It appears that most placement changes in foster care are planned.<sup>18</sup> A certain amount of decision making, however, is still made according to administrative demands, rather than the best interests of the child:

In practice, much placement decision making appears to be based on the availability of scarce resources... Formulation of a placement plan based on an assessment of a child's needs works on the premise that there are a range of placement options from which to choose. Given the closure of residential beds and the difficulty in finding foster placements, the ideal or preferred choice for a child is often not available. Indeed, the decision to move a child from, or to, a placement, is sometimes made due to administrative or organisational reasons...

This lack of resources, combined with the philosophy that a child should only be removed from a family as an option of absolutely final choice, has meant that placement decisions are often made in

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care order if the child's parent has not had the care of the child for a period of at least 2 years or for periods that total at least 2 of the last 3 years.

- 16 Tomison A, Stanley J, *Strategic Directions in Child Protection: Informing Policy and Practice*, p 132 viewed on 28 September 2005 at <http://www.aifs.gov.au/nch/pubs/keyreports.html>.
- 17 Rath A, *Permanency Planning and Adoption*, Briefing Paper 2/2001, NSW Parliament, viewed on 28 September 2005 at <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/V3ListRPSubject>.
- 18 Delfabbro P, *Placement disruption and its psychological consequences – Implications of the 3-year South Australian longitudinal study*, p 36.

the situation of a crisis... This impacts on placement decision making, where the time to plan carefully may not be available.<sup>19</sup>

- 1.18 The Community and Disability Services Ministers' Conference has sought to improve the quality of foster care by releasing the *National Plan for Foster Children, Young People and their Carers, 2004-2006*. Action areas are training, research, uniform data collection, and better support for foster carers and children in care. Research is particularly important given the many gaps in the literature and the fact that many of these deficiencies were identified 30 years ago.<sup>20</sup>
- 1.19 The document refers to improving outcomes for children and young people and that they may move to permanent placement. It mentions neither adoption nor that permanent placement is generally in children's best interests.<sup>21</sup>

### Causes of the low rate of local adoptions from care

- 1.20 Dr Judy Cashmore of the Social Policy Research Centre at the University of New South Wales sets out a number of reasons for this low rate of adoptions.<sup>22</sup>
- 1.21 The first reason is that foster care is subsidised, whereas adoption is not. In 2000, subsidies for a 10-year-old child in foster care were as much as \$175 per week in New South Wales, down to \$75 per week in Tasmania. Foster carers can also receive other entitlements, such as not being means tested for Health Care Cards for children in their care.<sup>23</sup>
- 1.22 This financial imbalance has been recently reduced with the introduction of the maternity payment. Foster carers do not normally receive the maternity payment, but adoptive parents do.<sup>24</sup> Foster carers, however, continue to receive a weekly subsidy for as long as they provide foster

19 Tomison A, Stanley J, *Strategic Directions in Child Protection: Informing Policy and Practice*, pp 129-130.

20 Rutter M, 'Children in Substitute Care: Some Conceptual Considerations and Research Implications,' p 697.

21 Viewed on 29 August 2005 at [http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-national\\_plan\\_foster\\_children.htm](http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-national_plan_foster_children.htm).

22 Cashmore J, 'What can we learn from the US experience on permanency planning?' pp 226-227 and Cashmore J, 'What the research tells us - Permanency planning, adoption and foster care' *Children Australia* (2000) vol 25, p 21.

23 Richardson N, 'Foster Care,' National Child Protection Clearinghouse, Resource Sheet No. 8, p 4, viewed on 29 September 2005 at <http://www.aifs.gov.au/nch/sheets/rs8.html>.

24 Family Assistance Office, 'Maternity Payment - Guidelines for Apportioning and Instalments' viewed on 4 November 2005 at [http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/publications-factsheets-maternity\\_payment\\_guidelines.htm](http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/publications-factsheets-maternity_payment_guidelines.htm).

care. Depending on the age of the child and the year, the foster care subsidy is equivalent to 1-2 maternity payments every year per child.

- 1.23 The second reason is that government departments do not have the resources and skills necessary to process the adoption and conduct sensitive negotiations with birth parents about relinquishment. Family and child protection departments have difficulty in resourcing this activity when they must also meet their child protection obligations. Court professionals also need greater skills in managing adoptions.
- 1.24 The committee heard evidence from the New South Wales Committee on Adoption and Permanent Care Inc, on behalf of adoption agencies registered in New South Wales (Barnardos, Anglicare and Centacare) that they needed an extra five positions to be able to handle their caseload. They made submissions for extra funding to the Department of Community Services in 2002. The Department's response at the end of 2004 was to conduct a review, which is still running.<sup>25</sup>
- 1.25 The third reason is that Australian legislation does not generally support relative adoption where this would distort natural relationships. For example, if a child was adopted by their grandparents, the child's mother would legally become the child's sister. The legislation tends to prefer guardianship and custody orders in these circumstances.
- 1.26 The fourth reason is an anti-adoption bias, probably derived from poor past adoption practices. If a parent refuses to consent to adoption, then staff in government departments must be prepared to fund court proceedings for a court order to dispense with consent. These proceedings would cost tens of thousands of dollars. The evidence presented to this committee suggests that such a commitment is unlikely to exist.
- 1.27 The committee also received evidence from the New South Wales Committee on Adoption and Permanent Care Inc of a legislative impediment in New South Wales to adopting children in care.<sup>26</sup> In particular, section 67(1)(c) of the *Adoption Act 2000* states that the court can dispense with the parent's consent if there is serious concern for the welfare of the child. The difficulty is that, when the court is examining a matter, the child is likely to be in care and technically not at risk. The provision needs to be amended to make clear that there would be serious concern for the welfare of the child if they were to remain in the custody of that parent.
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25 West J, Candlin A, transcript, 23 September 2005, pp 78-79.

26 Candlin A, transcript, 23 September 2005, p 82.



## Discussion

- 1.28 The committee accepts that permanence is not the only factor to take into account in determining the best plan for a child. For example, older children may identify strongly with their original families.<sup>27</sup> The committee also recognises that making absolute statements that one form of care, such as adoption, is to be preferred over all others would be repeating past mistakes.
- 1.29 However, as suggested by the comparative statistics in the United States and United Kingdom, the committee believes that adoption is currently being under-used in Australia and effort should be given to increasing the number of children who are adopted out of care. However, as suggested by the comparative statistics in the United States and United Kingdom, the committee believes that adoption is currently being under-used in Australia and effort should be given to increasing the number of children who are adopted out of care.
- 1.30 The Commonwealth Minister for Family and Community Services could initiate some policy reform in out-of-home care and local adoptions. For example, the minister could, through the Community and Disability Services Ministers' Conference, develop a policy framework which acknowledges that adoption is a legitimate way of forming or adding to a family and adoption is a desirable way of providing for a significant proportion of children at risk. A new policy framework such as this should result in:
- increased resources for departments and agencies to process adoptions, both overseas and domestic;
  - better training for departments, agencies and courts to achieve the best court orders for children; and
  - recognition that adoption processes have considerably evolved for the better from a generation ago.
- 1.31 Further, the Commonwealth Minister for Family and Community Services could seek amendments to the *National Plan for Foster Children, Young People and their Carers, 2004-2006* and all further foster care policy documents. The stated goal in these policies should be to provide a loving, permanent and stable family for children as soon as possible and not regard long term foster care as a substitute for adoption.
- 1.32 Foster care policies could also state that practices of moving children from one foster carer to another for administrative purposes, as opposed to the interests of the child, cease. Responsible departments could also collect

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27 Bath H, 'Rights and realities in the permanency debate,' p 16.

and publish performance information on the extent to which the risk assessments made prior to returning children from foster care to their biological parents are borne out by actual outcomes.

- 1.33 Finally, the committee received evidence that there is significant interest in local adoption, but people do not pursue it and examine intercountry adoption instead because the chances of a positive outcome are so low.<sup>28</sup> For example, in the Australian Capital Territory in 2004, the department received 76 inquiries about intercountry adoption, but only 13 inquiries about local adoption.<sup>29</sup> An inquiry into local adoption practices could truly be 'in the best interests of the child'.

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28 Finkel S, Australian Korean Friendship Group, transcript, 21 July 2005, pp 12-13, Kylie, community statements, transcript, 23 September 2005, p 45.

29 Australian Capital Territory Government, sub 200, p 7.

