

Introduction

'Removing children permanently from family networks reduces harm of one kind, while inflicting harm of another kind.'

The lost love of a parent is no small thing.

Whether adopted from birth or living in temporary out-of-home care, children return to their families seeking answers.

It seems that the lost love of parents and children haunt for a lifetime as a sense of abandonment.

The Stolen Generations (and Forgotten Australians) have taught us this lesson.'

Sharynne Hamilton

The Family Inclusion Network WA (Fin WA) provides professional advocacy and support to families intersecting the child protection system. A key role is to ensure that parents play an equal part in the child protection process and in so doing place children and young people at the centre of the work. This is achieved by Fin WA staff working with parents to help them understand their rights especially when legal decisions are being made; to assist families to understand the issues that caused their children to be removed; as well as helping families to have their voice heard in the processes of assessment and decision making.

Fin WA makes this submission in response to the regulatory five yearly statutory review of the Adoptions Act 1994.

Fin WA engaged in a consultation session with parents, members and supporters seeking their feedback on the legislation. This submission is a summary of that feedback, supported by contemporary research into the longer term outcomes for children adopted through the care system. Due to the nature of our work at Fin WA, this submission focuses solely on the legislative provisions for children adopted through care.

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In compiling the submission, our attention has been drawn to legislative amendments recently enacted in other jurisdictions. In NSW changes in the Child Protection Legislation Amendment Bill 2014 were passed by both houses of Parliament making provision for children to be adopted from care a possibility, against the wishes of parents.

We are deeply concerned that the NSW government has recently awarded a state-wide carer recruitment and support contract for almost \$3 million to a consortium including AdoptChange - a group whose focus is on allowing children being available for adoption from the out of home care system, and away from their families. Children in the care system **have** families and carer focus needs to be supporting reunification, relational permanency and family inclusion. There is good evidence that when foster carers want to adopt the children in their care this will undermine and prevent reunification.

Similarly, in Victoria a recommendation has been put forward for adoption from care to occur (or, be part of a suite of care options) when children in state care have not been reunified with parents after 6 months.

Fin WA is vehemently opposed to these recommendations and the introduction of such provisions in legislation in WA, and strongly argues against the introduction of adoption for children in state care except in exceptional circumstances.

This position is taken on the basis that adoption is an outdated framework of care that does not moderate the lasting impacts of grief and loss experienced by adopted children and results in detachment and disconnection from biological and naturally occurring family relationships.

Added to this is the absence of the voice (or mechanisms for a voice) of the adoptee to inform decision making at a policy, legislative and practice level.

1. Adoption as an Outdated Framework of Care

Fin WA holds the view that adoption, as a legislated form of long term care for children, is an outdated response in contemporary society, and there is mounting evidence for a new framework that is in keeping with a changing society and emerging research which indicates that relationships (or *relational permanence*) is the essential element of any arrangement that promotes care, belonging and stability for a child.

As a legislated care option, adoption is based on the premise of **exclusion rather than inclusion**, and for the adopted child this often results in harmful disconnection from identity, family and culture. An example of this is the WA Adoption Act which provides for the original Birth Certificate to be replaced by a new one, with reference to the child's birth parents being kept on the registrar.

Studies undertaken in the United Kingdom and the United States (*minimal longitudinal research exists in Australia*) provide strong evidence that the outcomes for children adopted through the care system are not always positive or satisfactory as claimed by adoption advocates such as Jeremy Sammut, (2015) *The Madness of Child Protection: Why adoption will rescue Australia's underclass children USA: Connor Court Publishing Pty Ltd*).

Julie Selwyn, University of Bristol found concerning behaviour in adopted young people in adolescence as detailed in her report:

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

Research also points to the complex challenges adopted children face in overcoming the effects of early stress, and the loss of the biological family together with the significant challenges faced by current and potential adopted parents in caring for a child with multiple and complex needs.

The Institute of Family Studies in Charlottesville (US) recently undertook a study on the outcomes for adopted children in the schooling system. The data indicates that adopted

children are ten times more likely to experience severe emotional or psychological disturbances and poor physical health conditions than non-adopted children. ⁱ

The Australian Senate inquiry into Forced Adoption Policies and Practices (Senate Community Affairs References Committee, 2012) states:

One of the most significant findings within this respondent group appears to be that, regardless of whether they had a positive or more challenging experience growing up within their adoptive family (roughly equal proportions of each participated in this study), most participants identified issues relating to problems with attachment, identity, abandonment and the parenting of their own children.

Compared to Australian population estimates, adoptees responding to our survey had lower levels of wellbeing and higher levels of psychological distress, and almost 70% of adoptee survey respondents agreed that being adopted had resulted in some level of negative effect on their health, behaviours or wellbeing while growing up.

The inquiry also viewed that ‘adoption as it is now understood, is a peculiarly twentieth century phenomenon’ (p. 3).

2. Lack of provision in the legislation for Independent Representation for Adoptee Children

It is of great concern to Fin WA members and supporters that the voice of the adoptee appears to be absent in legislative, policy and practice reform, and no independent mechanisms exist to represent children in the adoption application process.

Grace Collier, a Melbourne columnist and adopted person writes in her article; ‘Adopt Another Way for Kids’ Sake’ (April 2018);

‘Adopted people are the ones most affected by adoption. When we are children, we have no voice; when we are adults, our voices are ignored. And many adopted adults are too shattered to cope, let alone speak’.

Although the legislation requires that a child over 12 years at the time of the application must also consent to the adoption application, no provision exists in the legislation for younger children to have independent representation.

This lack of *'agency'* for the adoptee child brings into question the capacity of the legislation to uphold the concept of *'In the child's best interests'*, now, and into the future.

Fin WA strongly recommends that mechanisms such as an Independent Child and Young People's Advocate (or Independent Assessor) be included in the legislation to provide for the legal and relational domains of child centred care arrangements thereby enacting and safeguarding *'the child's best interests'*.

3. Gaps in the legislation from which conflicts of interest can arise

The legislation currently provides for a foster carer applying for a Carer Adoption to apply to the Family Court to dispense with parental consent in certain circumstances.

Fin WA does not support this and views it as a conflict of interest given the foster carer is the applicant for the order.

Fin WA would support provisions in the Act which provide for an independent party, outside of government, to apply for the dispensation to ensure independence of the process.

4. Adoption as a pathway when other forms of permanent care are viewed as inadequate

In WA, government attempts at community endorsement to enact permanency planning in legislation, have been met with resistance, particularly amongst members of the Aboriginal community. Permanency speaks to stability, however, permanency is about connection, belonging, identity and relationships – relational permanency is central to providing all children with the care and wellbeing they need and deserve.

4.1 Strengthening Permanency Options:

For carers wanting to secure long term (legal) stability for the child they are caring for, adoption is viewed as a viable legislated alternative.

It is the view of Fin WA that flaws or weaknesses in current long term permanent orders, , such as Special Guardianship (SGO), is not a premise for carers to seek an adoption pathway. Rather, strengthening policy and practice around SGOs will enhance a child's connection,

identity and belonging in meaningful ways, without the need to sever or change a child's identity.

Legislating for permanent lifelong relationships such as adoption, **does not and will not** ensure more positive outcomes for children and young people in the care system.

Fin WA holds the view that adoption is not necessary for permanency and that the absence of relational based child protection practice should not create a pathway for adoption.

A systemic approach to *Relational permanence* (that is arrangements that hold meaningful and worthwhile relationships for the child at the centre to enhance connection, belonging identity) is the preferred approach and maintains connection and identity for the child while providing permanence.

Consistent with the need to adopt relational based and child centred practice, Fin WA holds the view that unless exceptional circumstances are warranted, no provision should exist in the legislation for adoption as a care option in blended families as it adds to complex connections, is not child centred, and is based on the premise of disconnection for the child.

Similarly, legislated provision shouldn't exist for 'Family Carers' (i.e. extended birth family members, for example grandparents, aunts) to apply for adoption in preference to other permanent care arrangements as this distorts natural family relationships for a child.

4.2 Adoption for Aboriginal Children

Aboriginal peak bodies hold the firm position that adoption for Aboriginal and Torres Strait Islander children is unacceptable, not part of culture and only reinforces (and reinstates) past government policy and practice that aim to control their people.

A recent public statement by Tim Ireland CEO of AbSec says;

'Adoption through the statutory child protection system will never be an acceptable or appropriate solution for Aboriginal children ... Prioritising adoption over family reunification is contrary to the best interests of all vulnerable children and young people.'

5. Usefulness of the Hierarchy of Care Principle

Fin WA holds the view that the Hierarchy of Care model has limitations as a framework for determining the most appropriate Protection Order for a child in state care.

The model provides for a step approach to placement choices for children in long term care and the principles underlying the model vary between, and within jurisdictions.

The hierarchy model as a placement framework doesn't provide a context for the physical, emotional and cultural safety needs of children and doesn't allow for the consideration of other factors outside of a linear conceptualisation of placement and care. There are also inconsistencies within, and across jurisdictions in relation to quantification and monitoring of the Principle.

Fin WA holds the view that a '*Suite or Scope of Options*' model would allow for more holistic decision making and give further agency to upholding the premise of, '*in the child's best interests*'.

6. Responsibility of the State to ensure the long term wellbeing of children taken into state care

Fin WA is connected with other state child protection jurisdictions through its national body FIN Australia.

Concerns have been expressed through the FIN Australia network about the legislator shift towards adoption as a permanent care option when reunification is deemed unlikely. As outlined in the introduction, this has occurred in NSW where legislation has been passed which provides for children to be adopted from care, possibly against a parent's wishes.

It would seem that financial imperatives and economic rationalism can, and do overlay a state agenda for children to be exited from the state care system sooner rather than later.

It is the view of Fin WA that if the state has intervened to remove children, and protect them from further harm, then the state has an ongoing role and responsibility to ensure stability, connection and permanency for children rather than relinquishing responsibility through legislation to private care arrangements, resulting in disconnection for children from identity, culture and belonging.

In the words of a former adoptee;

'It may also just prevent yet another Australian government apology to parents and children forcibly kept apart.'

Recommendations

Fin WA makes the following recommendations:

- An exploration of Alternative Models to Adoption which propose a systemic emphasis on Relational Permanence that is child focussed, retains children's identity and connection to family, and is based on principles of openness in care
- A review of the Hierarchy of Care Principles to incorporate a contextual lens
- Amendments to the current Adoptions Act to safeguard birth parent and family rights:
 - the removal to dispense with consent under s.24 of the *Adoption Act 1994*. (except in exceptional circumstances i.e. identity of parents is unknown)
 - To ensure provision of legal information and representation
 - the inclusion of grandparents and extended family (where known) as essential to considerations and decisions made
- Provision in the Act for an Independent Advocate /Assessor appointed to every child or young person, regardless of age and ability to access 'best interest', and take into account their expressed wishes
- A review of the Department's Case Practice Manual on Permanency Planning, Special Guardianship Orders and Carer Adoption in partnership with key stakeholders to ensure parent, family and adoptee voice in practice

References:

<https://aifs.gov.au/publications/past-adoption-experiences/executive-summary>

<https://ifstudies.org/blog/the-adoptive-difference-new-evidence-on-how-adopted-children-perform-in-school>

<https://www.acwa.asn.au/3124>
