



# **Resetting the Pendulum: Balanced, Effective, Accountable Child Protection Systems and Adoption Reform in Australia**

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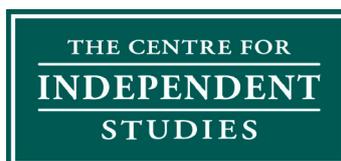
**Jeremy Sammut**



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**Resetting the Pendulum:  
Balanced, Effective, Accountable Child  
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Australia**

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**Research Report 33**

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All errors are the author's responsibility.



## Executive Summary

The 'family preservation'-based child protection policies employed across Australia are—in theory—meant to prevent child abuse and avoid the removal of children into care. In reality, there is a remorseless and unsustainable Australia-wide growth in 'out-of-home' care (OOHC) systems in recent decades, and the systemic cause is the over-extended efforts made by state and territory child welfare authorities to remove children into care only as a "last resort". Attempting to keep and reunite children with even highly dysfunctional parents at almost all costs has swung the pendulum of child protection systems too far in favour of defending parental rights at the expense of protecting children's rights and best interests. (Box 1)

Since 2000, the number of maltreated children who live in government-supported foster and other forms of out-of-home care in Australia has grown by 155% to more than 46,000 children in 2015–16. If state and territory OOHC systems continue to grow at the same rate, more than 1 in every 100 Australian children will be living in care by as early as 2020. (Box 2)

Virtually all children in care now have some level of abuse- and neglect-related 'high and complex' needs, due to suffering prolonged maltreatment at home prior to entering care in the name of 'family preservation'. This is increasing both the complexity of the care population and the need for more complex and higher-cost OOHC services (additional specialist support and/or expensive residential care placements).

The size, cost and complexity of OOHC systems is being further compounded by the extended length of time many children spend in unstable care placements while attempts to achieve reunifications drag on; when placements break down due to children's trauma-related problems; and when restorations fail and children re-enter care.

The 'churn' and 'drift' that children suffer in care without achieving permanency—the stable homes and families all children need to thrive—leads to many children spending the majority of their childhoods in care, and to the poor long-term outcomes and intergenerational disadvantage endured by many of the care leavers that exit the system after they turn 18. This especially includes the more than 2,500 children currently living in residential care—more than double the number in 2000—who are, effectively, institutionalised; and are growing up in what are modern day orphanages-cum-asylums due to their abuse, neglect, instability-related problems and anti-social behaviour.

The 'system abuse'—extended maltreatment at home and harmful lack of permanency in long-term care—suffered by increasing numbers of (increasingly damaged) children has led to growing calls to increase the number of 'open adoptions'\* from out of care to give permanent family lives to children with little prospect of ever going home safely.

\* See footnote p.11.

Adoption is 'taboo' and rarely occurs in Australia due to the cultural legacy of discredited historic practices involving the forced adoption of children of unwed mothers and the Stolen Generations of Indigenous children. Hence there were just 70 children adopted from care nationally in 2015–16 (67 in NSW alone, and *an appalling 3 in total outside of NSW in the other seven states and territories*), despite more than 31,000 children (two-thirds of the total OOHC population) having been in care continuously for more than two years.

The cultural politics of child protection policy are played out in the polarised debate, pitting family preservation against adoption as inherently antithetical approaches to keeping children safe. Hence critics argue that adoption is a "grab the child and run" quick fix for the problems in child protection systems, which will supposedly remove children rapidly and permanently from struggling families without providing parents with adequate early intervention and family support services to prevent child abuse and entries into care.

The system-wide reform agenda implemented in NSW — the sole jurisdiction in Australia to date that has committed to increasing the number of adoptions from care — debunks the assertion that adoption is a simplistic and punitive 'child stealing' approach.

The average total period of time that children spend in care in NSW is 12.5 years, and 35% of children moved placements three times or more in 2016. The NSW government has therefore embarked on a long-term plan to restructure the operation of the child protection system to increase sustainability and improve performance by achieving permanency for more children. The plan features three major elements:

1. **The Safe Homes for Life** reforms of 2014 introduced new permanency planning rules in NSW, which make it mandatory for a decision to be made about whether restoration to the parents is feasible within six months of entering care for children under two years of age and within 12 months of entering care for children aged two years and older. Once it is determined a child cannot safely go home, an application is to be made in the Supreme Court for an order to legally free them for open adoption by a new family.
2. Under the follow-up **Their Futures Matter** reforms announced in March 2017, the NSW government has also committed to ensuring by 2020 that all children in or at risk of entering care and their families receive coordinated packages of support services. Under the **'Targeted Earlier Intervention Program'**, the social service system across all government agencies and non-government providers will be redesigned in local districts to ensure tailored support services are available to meet the complex needs of vulnerable children and families to reduce entries to care.
3. The NSW government has also introduced the **'Permanency Support Program'** to improve the accountability of OOHC services. From 1 October 2017, a new outcomes-based contract

and funding system will incentivise the non-government providers that manage half of all out-of-home care placements in the state to find all children a permanent home within a two-year maximum deadline after entering care. The new OOHC system will also extend the reconfiguration of the social service system and development of new service models to ensure OOHC services function in a child-and-family centred way, delivering targeted support services to help parents achieve change and keep their children permanently through successful restorations.

The *Their Futures Matter* "whole of system" reforms are based on an 'investment approach'. Actuarial analysis of the whole of government lifetime costs of the most vulnerable children and families will drive investment in evidence-based (trials, tested, and evaluated) support services. The 2016 Tune Review found the average 20-year cost of providing government services to care leavers (who exit the OOHC system after they turn 18) was \$284,000, and that \$1.86 billion of government expenditure in 2015-16 on at least 61 child and family support programs (including \$302 million of expenditure on the 67% of programs that had never been evaluated to measure their effectiveness) produced poor results for many children and families.

Rather than continue spending heavily on 'crisis-orientated' OOHC services, *Their Futures Matter* aims to 'front-load' child protection expenditure by investing in effective, evidence-based services to prevent child abuse and keep families together. This is consistent with the major recommendations of virtually all of the (at least 39) inquiries, reviews and royal commissions into child protection in Australia in the past decade alone, which have repeatedly called for child protection services to be re-orientated around early intervention and family support.

Nevertheless, the two-year maximum permanency timeline may seem harsh and unwarranted. However, it is justified by the need to prevent the harm done by instability and lack of permanency in care, and ensure children who can't go home safely find a stable home and new family for life. Enforcement of strict permanency deadlines is essential because some families with the most serious and entrenched problems will not be able to change in a timely fashion, and adoption is needed to prevent drift in unstable, long-term care.

In these circumstances—and only in these circumstances—will adoptions occur in NSW: not as the 'fast resort, but as the last resort to achieve permanency, after the best efforts to assist families have failed. The NSW reforms therefore represent an appropriate and measured resetting of the pendulum to better balance the principles of family preservation and permanency, and ensure the child protection system is held accountable and operates in the best interests of children's long-term welfare.

The national significance of the NSW reforms cannot be overstated. The changes to child protection services in NSW constitute a blueprint for genuine systemic change across the full service spectrum, designed to

address the unsustainable trajectory of OOH services. Perhaps even more importantly, the balanced, effective and accountable system being pioneered in NSW also marks a turning point in the contentious debate about child protection and adoption. If the NSW reforms are emulated, this will allow other state and territory governments to successfully negotiate the cultural politics and end the 'adoption wars'.

By pledging to implement the 'NSW model', policymakers in other jurisdictions can escape being demonised as proponents of a simplistic 'child stealing' approach, and can proceed with overdue systemic reforms—including adoption reforms—to ensure the pendulum is reset in all Australian child protection systems, and the right balance is struck between parent's rights and children's rights.

### **Box 1: A primer on Australia's child protection crisis<sup>1</sup>**

- Since the 1970s, the official policy of child welfare authorities in all Australian states and territories has been predicated on the principle that removal of children from unsafe homes should only occur as a "last resort". Wherever possible, children suffering abuse and neglect should be kept with their even highly dysfunctional families, and parents given virtually limitless opportunities to address their problems; when 'temporary' removal into care cannot be avoided, extended efforts should be made to reunite children with their families. By supplanting the traditional approach to child protection (the timely rescue of abused and neglected children via removal into state care), the over-emphasis on family preservation has enfeebled community response to child maltreatment.
- The overarching flaw with family preservation is 'under-responding' to child maltreatment. Child removal is relegated to a last and reluctant resort, even when abusive and neglectful parents are demonstrably unfit. The same families end up being reported multiple times, mostly by mandatory reporters (health, education, police and other professionals obliged by law to report suspected abuse and neglect), who make numerous re-reports trying to prompt action to address unresolved safety and welfare concerns. Well-intentioned child and family welfare social services are designed to help struggling parents adequately care for children. But these 'family support' services, which aim to build personal capacity and family resilience, struggle to overcome entrenched behavioural problems in the underclass of families with the most serious problems (drug and alcohol abuse, family violence, mental illness).
- The over-emphasis on family preservation means statutory intervention often occurs, if at all, too late. Action is taken only after a child has been damaged by prolonged exposure to neglect and abuse. The damage perpetrated by delayed removal is compounding the complexity of the care population. Hence, virtually all children in out-of-home care these days have some level of 'high and complex' needs because of emotional, psychological and behavioural problems.
- The ill-effects of abuse and neglect are further compounded by the instability of time spent in care. Overzealous efforts to achieve reunification see many children continually moving in and out of care while attempts to work with parents to achieve restoration drag on and on. Many children are further damaged by unstable living arrangements when care placements break down because of 'hard to handle' children's trauma-related personal and behavioural problems, and when they are repeatedly taken into and out of foster care after reunifications break down because of recurring parental problems and child maltreatment. The difficulties associated with caring for high needs children, and the heartbreak of seeing children returned to bad homes, contribute to high dropout rates among foster carers and difficulties in recruiting new carers. Many children are 'churned' through the system, and 'drift' in care through multiple placements without achieving permanency – a safe and stable home and family. Many children therefore end up spending the majority of their childhoods and adolescences in care, thereby increasing the size and cost of OOH systems.
- The strong growth in the average cost of care per child (see p.6), which has contributed significantly to increasing in the total cost of OOH services, reflects the level, and high cost, of the 'system abuse' children are subjected to in the name of family preservation. The increasing number of damaged children in care who have been left with abusive and neglectful families too long, and who also suffer additional harm due to the unstable placements while in care, is generating the need for children to receive additional specialist support services (psychological counselling, speech therapy, anger management, etc.) to help recover from the effects of maltreatment and instability. The same factors have also led to strong growth in the use of expensive residential care ('group homes' staffed by full-time professional carers) to house the most damaged and disturbed children, whose abuse, neglect and instability-related problems and threatening, violent and self-destructive behaviour make it impossible for them to live safely with a normal foster family. Residential care (which has a strong psychiatric focus and includes 'secure facilities' for the most anti-social children) amounts, effectively, to institutionalising children, who grow up in what are modern day orphanages-cum-asylums. In the past 15 years, the number of children living in very expensive residential care facilities in Australia has more than doubled from 1,117 in 2000-01, to 2,510 in 2015-16.<sup>2</sup>

- Due to the misguided priority given to family preservation, too little, too late, is being done to remove children; and once they are removed, out-of-home care is too unstable. An alternative strategy for breaking the vicious cycle of abuse, neglect and instability, and providing children with safe and stable homes, is for child protection services to intervene in a timelier manner among the families in which parental capacity is severely impaired. More timely statutory action is needed to permanently remove children from unsafe homes and prevent children drifting in care without achieving permanency by taking legal action to terminate parental rights and free children for adoption by suitable (properly screened and vetted) families. This policy prescription is controversial due to the perceived association with historic wrongs and the harm done to parents and children in the past.
- Adoption, whether by consent or by court order, is officially 'taboo' in child protection circles because permanently removing children—even from parents incapable of properly caring for children—is considered socially unacceptable due to perceived associations with the discredited forced adoption practices involving unwed mothers in the 1950s and 1960s, and the forced removal of the Stolen Generations of Indigenous children. Given the harm past practices had done to parents, children and families, especially the negative psychological effects on the personal identity of 'stolen' children, the conventional wisdom is that children are almost always better off with their natural parents so all efforts should be made to keep and restore children to the family home.
- This misguided thinking has swung the pendulum too far towards family preservation and preserving parental rights at the expense of the best interests of children. This explains why legal action is almost never taken by child welfare authorities to free children for adoption, even for children who languish in foster care with little prospect of ever safely being returned home. Thus in 2015-16, there were only 70 children adopted from care in Australia (67 in NSW alone, and *an appalling 3 in total outside of NSW in the other seven states and territories*),<sup>3</sup> despite more than 46,000 children being in government-funded care placements, and despite almost 31,000 of these children having been in government-funded care placements continuously for more than two years.<sup>4</sup>



## Introduction: Bend the Trajectory, Negotiate the Cultural Politics

The systemic cause of the remorseless and unsustainable growth in OOHC systems Australia-wide in recent decades is the ‘family preservation’-based child protection policies employed by child welfare authorities in all jurisdictions. The policy of removing children into care only (in the words of the Australian Institute of Health and Wealth) as a “last resort”,<sup>5</sup> and attempting to keep and reunite children with even highly dysfunctional parents at almost all costs, has swung the pendulum of child protection systems too far in favour of defending parental rights at the expense of protecting children’s rights and best interests. (Box 1)

Australia’s child protection services will become increasingly unsustainable in the next 10 years if current trends—and the current policies underlying these trends—continue. (Box 2) The additional demand and cost pressure placed on Australia’s already bulging OOHC systems over the coming decade will make it extremely difficult for governments to provide quality ‘foster’ homes for the record numbers of Australian children requiring care and protection.

The projected growth in demand will place additional pressure on OOHC systems in all jurisdictions, which are already struggling to cope not only with the unprecedented numbers of children living in care, but also with the increasingly ‘complex’ needs of a care population requiring more complex and expensive services. As the 2015 Senate report into OOHC noted, all state and territory governments face “intractable and complex issues” related to the more than doubling in the number of children entering and remaining in care since 2000.<sup>6</sup>

The projected increase in the total care population to 2025–26 will not only exacerbate (to potential breaking point) critical problems, including exacerbating the national shortage of suitable foster carers; it will also

have major financial implications for government budgets. Growth in the size, cost, and complexity of OOHC services will impose significant burdens on state and territory budgets. In the absence of meaningful change to current policy and practices to bend the OOHC demand-and-cost trajectory downwards, state governments will be forced to fund increasingly expensive child protection services for increasing numbers of—increasingly damaged—children that virtually all experts and stakeholders agree are systemically flawed, and ‘in crisis’, ‘broken’ and ‘crisis driven’.<sup>7</sup>

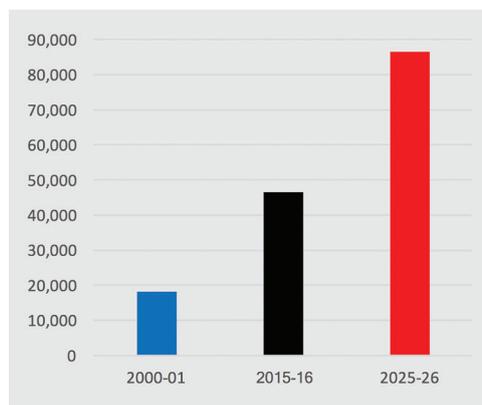
The first challenge for policymakers in seeking to change the unsustainable trajectory of OOHC systems is to understand the true systemic nature of Australia’s child protection crisis, which is causing tens-of thousands of Australian children to end up in care. The second challenge is to then implement the kind of systemic solutions that are needed to change the current trajectories of these systems, which must include recognising the need to increase the number of children who are adopted from out of care in Australia.

The greater use of adoption will require state and territory policymakers to negotiate the contentious cultural politics that surround child protection policy in Australia. However, as this report shows, the cultural politics can be successfully negotiated, and adoption reforms successfully introduced, if state and territory governments commit to implement the kind of genuine systemic change that is currently underway in NSW. By pledging to emulate the NSW approach to developing balanced, effective and accountable child protection services across the spectrum, other jurisdictions can also reset the pendulum that has swung too far towards defending parental rights to the detriment of children’s best interests, and instead ensure that Australian child protection systems properly protect children’s right to have safe homes and permanent new families for life.

## Box 2: OOHC demand-and-cost-curve to 2026

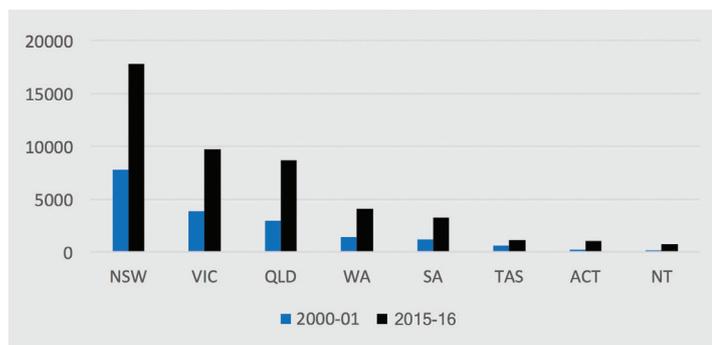
- Since 2000, the number of maltreated children Australia-wide who have needed to be removed from their families due to parental abuse and neglect, and who therefore need to live in some form of government-supported 'out-of-home' (OOHC) foster, kinship or residential care<sup>§</sup>, has increased by 155%—from 18,241 children in 2000–01 to 46,448 children in 2015–16.
- If the number of children living in care grows at the same average annual growth rate as occurred during the 15 years between 2000–01 and 2015–16, more than 86,000 children will be living in care by 2025–26 - a 87% increase in the OOHC population nationally over the decade between 2015–16 and 2025–26. (Figure 1)
- All states and territories have recorded significant increases in the number of children in care since 2000–01 (Figure 2), as well as substantial increases in real (adjusted for inflation) expenditure on OOHC services. (Figure 3)
- If OOHC systems continue to grow at the same average annual rates as during the last 15 years, the projected growth, all things being equal, means that real total government spending on OOHC services Australia-wide—which grew by 347% since 2000–01 to reach more than \$2.7 billion in 2015–16—will top more than \$7.4 billion a year by 2025–26 (Figure 4).
- The projected growth in OOHC systems also means that the average cost of care per child—which increased significantly in all jurisdictions except ACT between 2000–01 and 2015–16 due to the increased complexity of the care population and OOHC services (Figure 5)—will increase to almost \$97,000 nationally in 2026. (Figure 6)
- Unless state and territory policymakers take action to address the projected growth in OOHC systems, more than 1 in every 100 children (10 per 1000 population) will be living in OOHC by as early as 2020. (Figure 7)
- Even if the rate of growth in OOHC systems over the next 10 years is half the rate that occurred over the previous 15 years, by 2026 there will still be almost 64,000 children in care, at annual national cost of \$4.5 billion, with the average cost of care increasing to more than \$79,000 per child.

**Figure 1: Projected children in out-of-home care, Australia 2000–26**



Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.18.

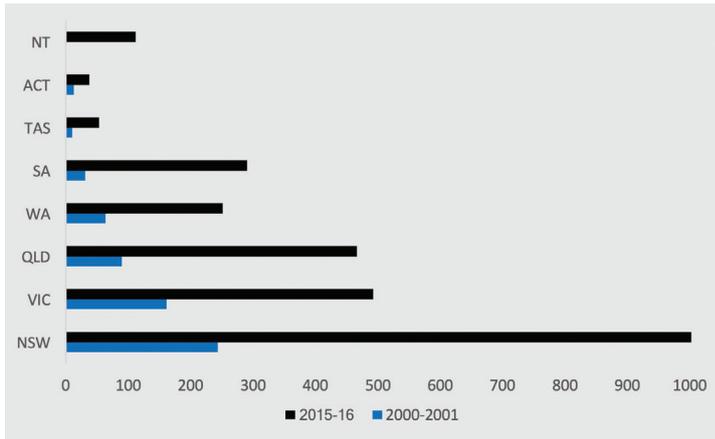
**Figure 2. Children in out-of-home care, state or territory 2000–16.**



Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.18.

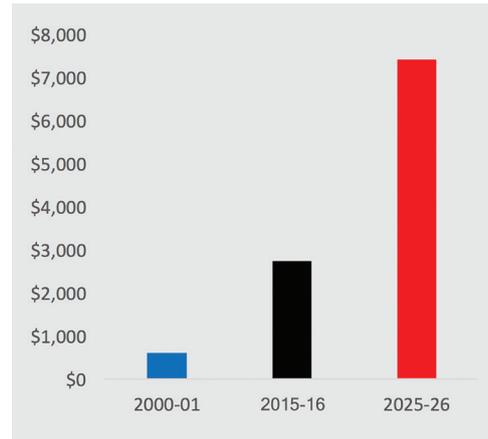
§ Contemporary residential out-of-home care is non-home based care provided in 'group homes' where multiple non-related children are cared for by paid staff. Foster and kinship out-of-home care is home-based care provided by volunteer foster and kin carers who agree to take a child into their family home and act as substitute parents.

**Figure 3. Real (adjusted for inflation) recurrent out-of-home-care expenditure, state and territory 2000–16.\* (\$'000)**



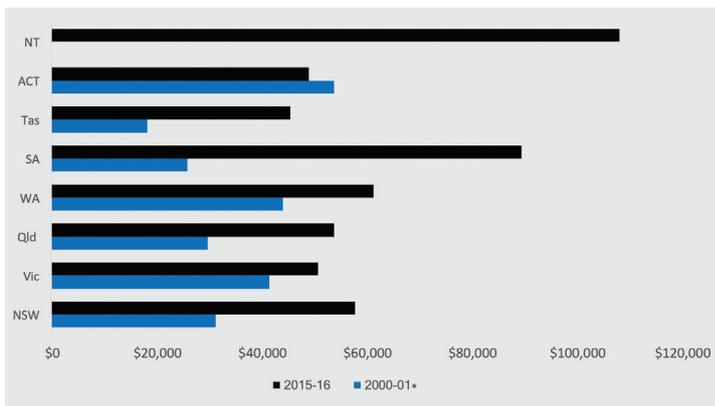
Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.1.\* Data not available for the Northern Territory for 2000–01.

**Figure 4: Projected recurrent out-of-home care expenditure, Australia 2000–2026, (\$'000 000).**



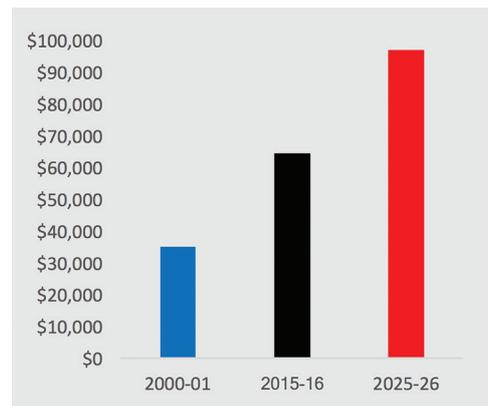
Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.1

**Figure 5. Real recurrent out-of-home care expenditure per child, state and territory 2000–2016.**



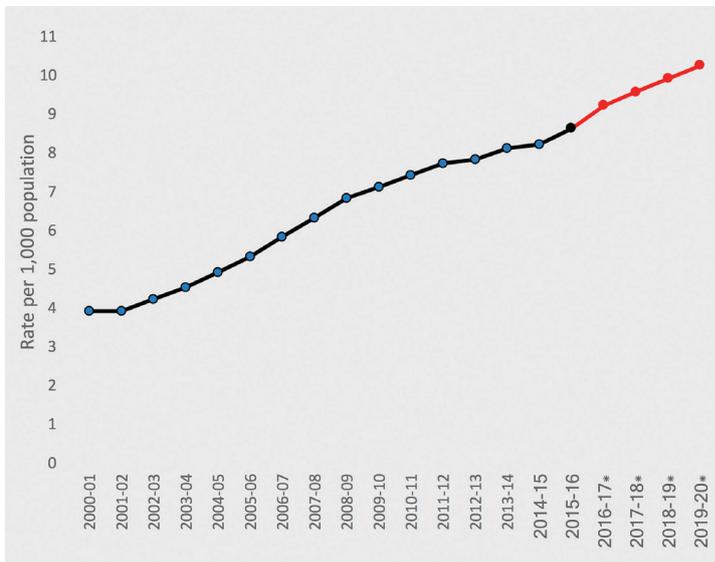
Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.3 \*Data not available for the Northern Territory for 2000–01.

**Figure 6: Projected real recurrent out-of-home care expenditure per child, Australia 2000–2026.**



Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.3

**Figure 7. Projection of Children in out-of-home care per 1,000 population, Australia 2000–2020.**



Source: Productivity Commission, *Report on Government Services 2017*, Table 16A.17



## Orthodox Account and Counter-Intuitive Truth

The challenges policymakers face in addressing the unsustainability of child protection systems are made more difficult by the competing, diametrically opposed accounts of why so many children are in care. According to the orthodox account given by many influential experts and stakeholders in the child and family welfare social services sector (see below) the chief problem with Australian child protection services is that children are too quickly removed from their struggling families based on reported child safety concerns. Removal allegedly occurs without providing parents with adequate early intervention and family support services that could prevent entries into care by addressing the personal and social issues that impede proper parenting.<sup>8</sup>

This explanation—the notion that Australian child protection systems still operate based on an “outdated model” focusing on the statutory investigation of reports of maltreatment and removal of children into care<sup>9</sup>—sounds logical, given the record and remorselessly-rising numbers of children in care. In reality, however, a paradox lies at the heart of Australia’s child protection crisis.

The explanation for the crisis—for the rising number of children in care, and also for the growing length of time spent in care; the multiple and unstable occasions of care many children experience; the increasingly complex needs of the care population; and the intergenerational disadvantage and poor long-term social outcomes

achieved by many care leavers—is counter-intuitive. These problems are actually the consequences of the family preservation-based child protection policies and practices that are employed by all Australian child welfare authorities, which, in theory, are meant to prevent child abuse and avoid the removal of children into care. As Box 1 explains, the root causes of the growth in the size, scale, cost and complexity of OOHC systems in all states and territories are the systemic flaws that plague child protection services in all jurisdictions, due to a misguided bias towards the principle of family preservation and attempting to keep maltreated children with parents, at almost all costs.

Nevertheless, state and territory governments are still routinely advised that too many children are in care because child protection services need to be re-structured away from statutory intervention<sup>†</sup> and child removal by expanding the provision of lower cost prevention and early intervention services to reduce entries into OOHC. For example, according to National Children’s Commissioner, Megan Mitchell, “the way we invest in care and protection is at the removal end, not at the family support end.”<sup>10</sup> And according to prominent social work academic Professor Philip Mendes, the fact that child protection expenditure is “skewed” and that higher sums are spent on OOHC and statutory services compared to family support services, allegedly that child protection services are unbalanced, and are too

<sup>†</sup> Statutory intervention refers to the process by which child protection caseworkers investigate risk of harm reports, assess child wellbeing, and determine whether court-approved removal is necessary to satisfy the requirements of child welfare laws.

heavily focused on child removal and too little on helping families.<sup>11</sup> However, the spending data across child protection systems needs to be closely scrutinised to understand what this truly signifies.

Supporters of greater investment in family support, such as Mendes, point out that state and territory governments currently spend just 17% (\$790 million in 2015–16) of total child protection funding (\$4.7 billion) on family support services, compared with 83% (\$3.9 billion) on child protection statutory interventions and OOHC.<sup>12</sup> This overlooks the fact that the expenditure data by type of service understates actual expenditure on services that provide support for families with child abuse and neglect concerns. This is because the leading edge of contemporary statutory child protection practice is focused on working with families and case-managing problem parents to achieve family preservation. The same applies to many services officially classified as out-of-home care, which focus on reuniting children and parents.

Also overlooked is the fact that growth in spending on 'intensive family support services' (designed to remove imminent child removals and provide a less-costly alternative to out-of-home care) grew by an extraordinary 565% between 2000–01 and 2015–16 (from \$57 million to over \$380 million), at a higher rate than spending on out-of-home care (354%) and statutory services (192%).<sup>13</sup> Over the same period, however, not only has the number of children in care more than doubled, total real national out-of-home care expenditure has more than tripled, rising by more than \$2 billion, from just under \$600 million in 2001 to over \$2.7 billion in 2015–16.<sup>14</sup>

Nevertheless, the orthodox account informed the major recommendations of the Child Protection Systems Royal Commission established in August 2014 to investigate the adequacy of the child protection system in South Australia. The final report of the Nyland Commission, published in August 2016, advised the state government to "make a greater investment in early intervention services", on the basis that South Australia had "under-invested in services for at-risk families" to keep children out of the child protection system.<sup>15</sup> It is true that among the states and territories, South Australia spends among the lowest proportions of child protection expenditure on family support services (6.2%) compared to other jurisdictions, including Victoria (25%), which spends the highest percentage nationally.<sup>16</sup> But this overlooks the fact that states that have spent larger sums on family support have also experienced large increases in the size and cost of OOHC: since 2000–01, the number of children in care in Victoria has increased by 150%<sup>17</sup> and spending on OOHC has grown by 206% from \$160 million to \$492 billion.<sup>18</sup>

Also overlooked are the findings of the 2012 report of the Protecting Victoria's Vulnerable Children Inquiry, which bluntly concluded that "despite increased investment" in family support services, there had been no "marked change in Victoria in the incidence and impact of child abuse or neglect or overall outcomes for vulnerable children taken into out-of-home care."<sup>19</sup> This conclusion was reinforced by the Victorian Auditor-General's 2015 report *Early Intervention Services for Vulnerable Children and Families*, which found there was no way of knowing "whether the services provided are effectively meeting the needs of vulnerable groups" due to:

"...significant limitations in the service performance data and a lack of outcomes monitoring at the system level ... [The] monitoring of services focuses on outputs – such as the number of cases and service hours—rather than requiring service providers to show positive outcomes for families. ... The department does not have a framework for measuring the effectiveness of services for vulnerable children and families."<sup>20</sup>

The orthodox notion that the increasing numbers of children in care at increasing cost to government are due to a "systemic failing...to support at-risk families and prevent children entering the child protection system" is simplistic, at best.<sup>21</sup> The substantial and growing spending on family support services indicates that the orthodox policy advice has gained traction since 2000. But this has not produced the promised results. Child protection services increasingly oriented around family preservation and support services designed to prevent removals into care have failed their own test of effectiveness because record numbers of damaged children are still ending up in increasingly expensive care. The significant increase in the average cost of care indicates the perverse effect family preservation-based policies are having on the cost of the system: the increasingly high needs of a care population requiring more expensive specialist and residential services are due to the prolonged harm children suffer at home and the compounding harm suffered due to instability while in care in the name of family preservation. As the evidence from Victoria especially shows, higher spending on—ineffective and unaccountable—family support services is not guaranteed to reduce entries into care and lower the cost of the system. Overall, higher spending on family support in Australia has failed to keep children safe at home with their families, and has failed to lower OOHC spending and the overall cost of the system.



## Where To From Here for Australian Child Protection?

The evident failures of family preservation-based child protection policies—measured by the increasing number of damaged children spending long periods of their childhoods in care—have led to increasing numbers of advocates calling for greater use of adoption to provide safe and stable homes and permanent new family lives for children who are unable to live safely with their parents. The importance of achieving permanency and adoption in a child-centred timeframe for children who would otherwise experience long-term instability is emphasised by a large and uncontested international literature on the importance of ‘attachment’—stable and secure living arrangements with at least one devoted carer—for a child’s psychological development.<sup>22</sup> ‘Attachment deprivation’, a syndrome associated with parental inattention to their children’s basic needs and broken attachments associated with periodic moves from one placement to another, impairs children’s cognitive, behavioural, and emotional development, including development of the capacity to bond, trust, and form close relationships throughout life.<sup>23</sup>

In response, supporters of family preservation have doubled down on the orthodox thinking: they misrepresent calls for greater use of adoption—the legal process of extinguishing the parental rights of biological parents and transferring responsibility to new adoptive parents—as promoting a “grab the child and run” model,<sup>24</sup> that will see adoption occur as the “fast

resort”<sup>25</sup> and “see more children removed, without families getting the support they need to keep children.”<sup>26</sup> Some opponents of adoption even assert that advocates of adoption dismiss the role of early intervention and family support services in reducing child maltreatment “as waste of time”.<sup>27</sup>

Claims that adoption is being proposed as a simplistic panacea, or “‘magic thinking’ approach”<sup>28</sup> are exaggerations, at best. Opponents ignore that calls for the greater use of adoption have arisen in response to the problems created by the emphasis placed on family preservation, to the detriment of children’s long-term well-being and opportunities in life. Adoption advocates, in reality, are seeking a re-setting of child protection systems by ensuring the pendulum is appropriately balanced between the principles of family preservation and permanency. They do not oppose early intervention and family support services; what they argue—based on the overwhelming evidence that children are suffering ‘system abuse’ and are being harmed by the system that is meant to protect them—is that the pendulum of the system has swung too far towards preservation at any cost, and is out of balance. The over-emphasis on family preservation by Australian child welfare authorities is rightfully viewed as problematic, because the defence of parental rights is prolonged to the point of damaging children who are, firstly, exposed to maltreatment at home in the statutory part of the system, and then are,

secondly, when they finally enter the OOHC system as a last resort, further harmed due to the instability and lack of permanency endured in care.

The political and cultural sensitivities that surround the subject of adoption explain the controversy generated by proposals to increase the use of this 'taboo' practice. However, the opponents of adoption are mischaracterising and misunderstanding the scope of the system-wide child protection reform agenda being implemented in the sole jurisdiction to date that has committed to increasing the number of 'open adoptions'<sup>\*\*\*</sup> from care when children are unable to go home safely.

Since its election to office in 2011, the NSW Coalition Government has, under the Premierships of Barry O'Farrell, Mike Baird, and Gladys Berejiklian, initiated a comprehensive child protection reform agenda that includes overcoming the cultural and other obstacles to adoption. This reform agenda is designed to address the unsustainable trajectory of the OOHC system in NSW. Since 2000–01, the number of children in care in NSW has increased from 7786 to 17,800; the real cost of OOHC services has increased from \$243 million to \$1.28 billion; and the real average per child cost of care has risen from \$31,215 to \$57,800.<sup>29</sup> But more important than the financial cost, NSW policymakers have acknowledged the human cost of the current system: the increasing number of children spending most of their childhoods in care, who—in the words of former Minister for Family and Communities Services, Brad Hazzard—are "taken when the families fail and go into care, being moved from pillar to post until they are 18."<sup>30</sup> Children spend almost as much time in care in NSW—average length of stay (average total period of

time spent in care) is 12.5 years—than other children in the state spend in primary and secondary school combined. Children also endure harmful instability, with 35% having to move placements three times or more in 2016. As a result, care leavers ultimately suffer poor long-term outcomes in life compared to their peers who grow up in stable family homes; including higher rates of unemployment and incarceration, among other social disadvantages.<sup>31</sup>

The NSW government has therefore recognised that the major problem and source of pressure on the OOHC system is that too many children are drifting in unstable and long-term care. The NSW reforms therefore bear out the 'counter-orthodox' critique of the systemic flaws and consequent problems caused by family preservation-based child protection services. To address the systemic problems, the NSW government has implemented a long-term plan to restructure the operation of the child protection system with the overarching aim of ensuring that children achieve permanency. This includes aiming to enhance the sustainability of OOHC services by increasing adoptions to give more children—who otherwise would drift in long-term care—safe homes and permanent families for life. However, the NSW government has also embarked on genuine whole of system reform, whilst seeking to ensure a better balance is struck between the preservation of the rights of parents and the protection of the rights and best interests of children to have permanent homes and families. The NSW government is, therefore, also investing in the development of nation-leading evidenced-based early intervention and family support services to prevent child maltreatment, and enable more children to stay safely at home with their parents wherever possible.

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<sup>\*\*\*</sup> 'Open' adoption refers to the standard contemporary practice whereby adopted children's origins are acknowledged, connections with birth parents and extended family are maintained, and links with culture and identity are developed as part of the duty of adoptive parents to act in children's best interests. The practice of adoption has evolved to reflect the harm done by past practices in early eras when adoptions were 'closed': original birth records were sealed, and adopted children were treated as blank slates and as if they had no previous heritage or identity. Children therefore had no contact with their birth parents and extended families, and no knowledge of their background and culture. The result was that some adopted children experienced confusion, loss, and isolation later in life due to psychological impacts of separation from their birth family.



## Systemic Reform in NSW

In March 2014, the NSW government began legislating a sweeping reform program designed to address the systemic problems plaguing the state's child protection system, with the aim of significantly reducing the number of children living in OOHC, and addressing the unsustainable growth in the OOHC population and budget in NSW.<sup>32</sup> The *Safe Home for Life* reforms were principally designed to ensure open adoption is a viable and well-used pathway to securing a permanent alternative family for (non-Indigenous<sup>33</sup>) children who are unable to be returned home and live safely with their birth parents within a child-centred, time-limited period after entering care. This chiefly involved implementing important changes to child protection laws, policy, and practice, whereby new rules were laid down regarding timely and realistic decision-making about permanency for children in care to avoid harmful drift and instability in care. The policy direction taken in NSW was based on international research that has found that children who are adopted have better outcomes "compared to long-term care in terms of placement stability, emotional security, sense of belonging and general well-being."<sup>33</sup>

Under the new permanency planning rules, it is mandatory for a decision to be made about whether restoration to the parents is feasible within six months of entering care for children under two years of age and within 12 months of entering care for children aged two years and older. Once it is determined a child cannot safely go home, an application is to be made in the

Supreme Court for an order to legally free them for open adoption by a new family.<sup>34</sup> The new focus on adoption has slowly begun to have an impact. In 2016–17, the number of adoptions from care in NSW doubled to 127, up from 67 the previous year,<sup>35</sup> under a \$24 million fast-track program that includes a taskforce dedicated to reducing the number of outstanding adoption orders, and which allows foster families to start an application to adopt after the child has been in their permanent care for 12 months.<sup>36</sup>

However, *Safe Home for Life* was only the first stage of the overhaul of the system. In March 2017, additional major changes were announced to child protection services in NSW. Under follow-up reforms introduced as part of *Their Futures Matter—a new approach to child protection and well-being in NSW*, the government has committed to ensuring that by 2020, "All children in, or at risk of entering out-of-home care, and their families, will be receiving a coordinated package of supports based on their needs." This will entail the development of a "new service model based on child and family centred tailored support packages", and will involve "a coordinated response across government and the sector". Instead of children and families receiving fragmented, siloed, and uncoordinated assistance from child protection, housing, health, education and other government agencies and services providers, the tailored support packages will be designed to "bring together all government agencies, non-government organisations and the community to

§§ *Safe Homes for Life* explicitly excluded Indigenous children from open adoption on the grounds that adoption is not considered a culturally accepted practice for Aboriginal children. Approximately one-third of all children in care in NSW (and nationally) were Indigenous in 2015–16. Under *Their Futures Matter*, the objective is to ensure that all Indigenous children in care are supported by Aboriginal-controlled foster and kinship care services, in order to place Aboriginal children with Aboriginal carers, in line with the Aboriginal placement principle. For a critique of the continuation of the 'separatist' approach to Indigenous child protection in NSW and in all states and territories, see 'Ch 6. Kinship conundrum: politicisation of the Stolen Generations' in Sammut, *The Madness of Australian Child Protection*.

deliver the right supports to vulnerable children and families.”<sup>37</sup>

*Their Futures Matter* recognises that systemic, whole of government reform was needed because the drivers of child maltreatment and demand for OOHC were complex spanning drug and alcohol abuse, domestic violence and mental health issues that cut across the responsibilities of many government portfolios.<sup>38</sup> It also acknowledges that despite the best efforts made to support families by the current system, “the number of children reported at risk of significant harm continues to grow.” After consulting with stakeholders and community groups, a three year funding commitment has been made under the *Targeted Earlier Intervention Program* to develop effective early intervention services in all local districts throughout the state, which will involve redesigning the social service system to deliver tailored support packages aligned with the often complex needs of vulnerable families and children. This will require government agencies and existing providers of family support programs to work with the Department of Family and Community Services to ensure families and children can access the flexible, client-centred, and evidence-based assistance that effectively meets the assessed, individualised needs of families and children across the spectrum, including intensive and specialist therapeutic support for the most vulnerable families with children most at risk of removal into care.<sup>39</sup> (Figure 7)

*Their Futures Matter* complemented and consolidated the government’s *Safe Homes for Life* commitment to achieving permanency for children by focusing, in addition to early intervention services, on improving the effectiveness and accountability of OOHC services. From 1 October 2017, new outcomes-based contracts and funding (which will ultimately involve commissioning of services by an independent entity) were introduced for the non-government organisations that currently manage over half of all OOHC placements in NSW. Consistent with the permanency principles legislated in 2014, the new contract model will incentivise OOHC providers to find children in care a permanent home within two years to minimise both lengths of stays and re-entries into care. The focus on achieving permanency within two years has put the focus on parents given a deadline to ‘clean up their acts’ or face permanent removal of children via adoption or permanent guardianship.<sup>40</sup>

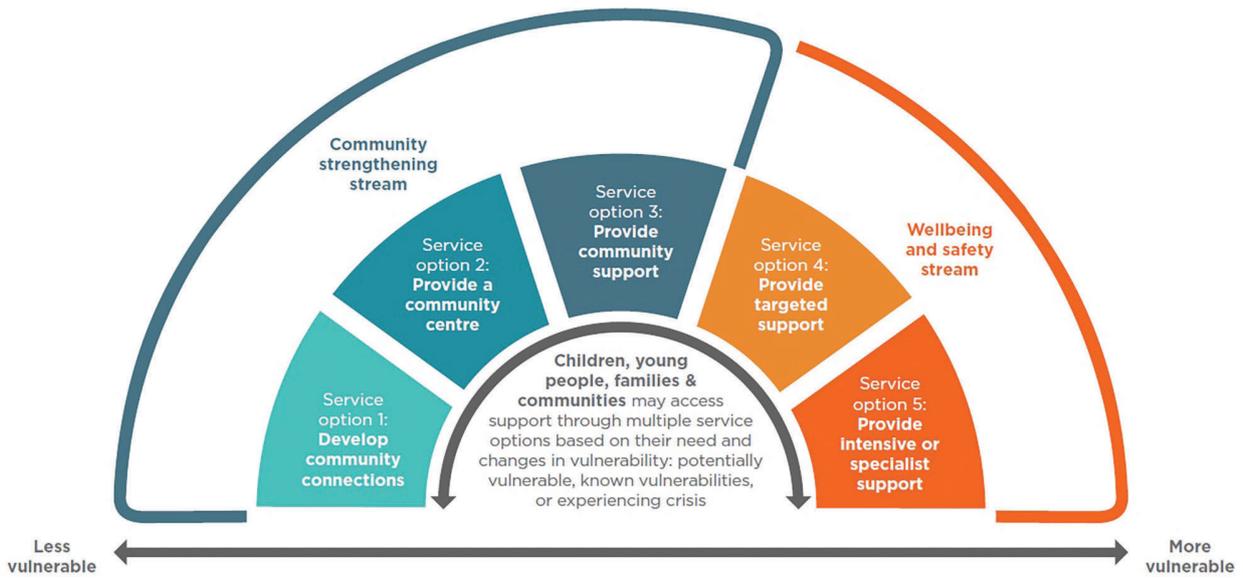
The two-year maximum permanency timeline may seem harsh and unwarranted. But not when placed in context by the high level of instability and the 12.5 years average length of stay in care NSW. Enforcing permanency

deadlines is essential to ensure the system is held accountable and operates in children’s best interests, and is justified to avoid the harm done to children by spending lengthy periods in highly unstable care, and never finding a stable home and permanent family if they are unable to be safely reunited with parents. Two years is a long time in a child’s life, and the period of childhood is fleeting: this time of life must be optimised for children’s sake to give them the best possible start in life. *Safe Homes for Life* recognised that in relation to achieving the permanency that all children need to thrive, the system must operate on ‘children’s time’, not on ‘adult time’, to appropriately balance the rights of parents and children.

However, *Safe Homes for Life* included an explicit legislated “commitment to keep children and families together, in circumstances in which it would be safe to do so.”<sup>41</sup> The NSW government is meeting this commitment under the *Permanency Support Program* (Figure 8) by placing the onus on OOHC service providers to work effectively and accountably with families to address their problems and achieve restorations wherever possible.<sup>42</sup> Hence *Their Futures Matter* recognises that the current OOHC system is funded to simply operate as a “placement-based service” that provides alternative accommodation for children in care. It does not focus on achieving long-term outcomes such as family reunification or adoption; nor does it function as a “child-and family-centred service system that focuses on individual needs and helping families to change.”<sup>43</sup>

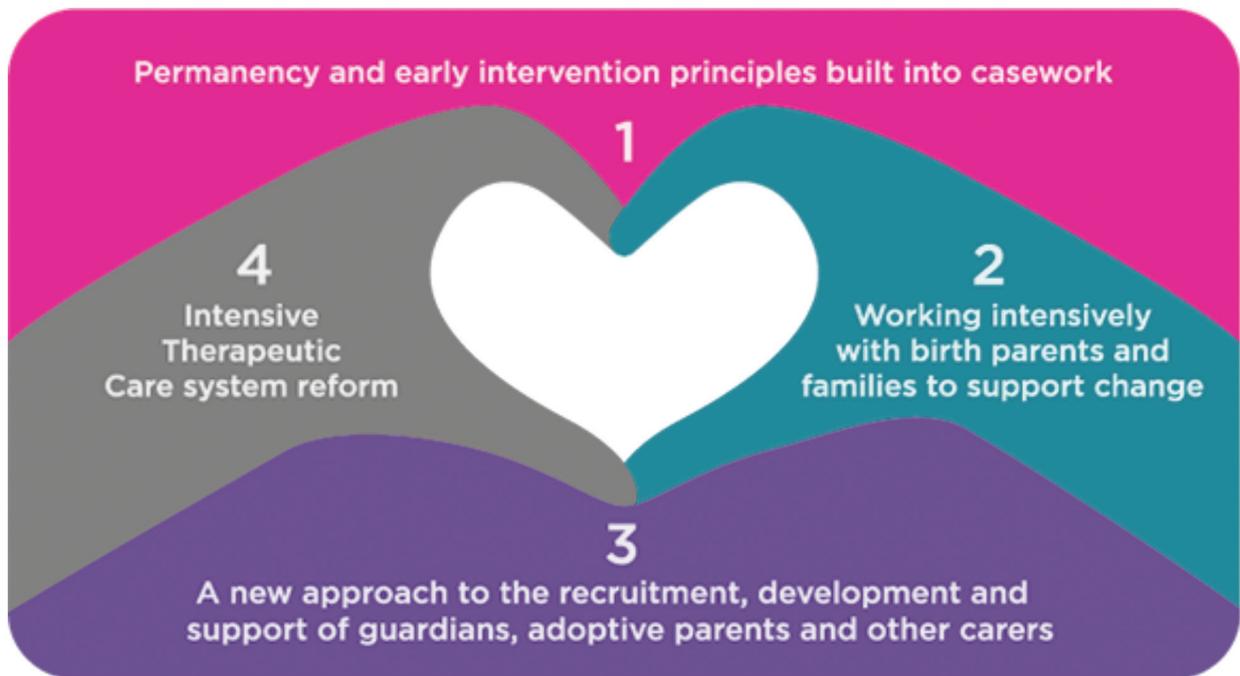
Under the new outcome-based contract model, providers of OOHC services will therefore be incentivised (consistent with the principles of *Safe Home for Life*) to achieve the appropriate outcome for families and children by “developing a case plan tailored to each individual child or young person with the goal of achieving a permanent home within two years of entering care.”<sup>44</sup> In addition to (and in keeping with) the family preservation focus of the Targeted Early Intervention Program, the Permanency Support Program will encompass the reconfiguration of the social service system in the state by including a “new service requirement” (under “new program and operation guidelines”<sup>45</sup>) focused on provision of targeted, therapeutic, evidence-based, and home-based services for children and families to help parents achieve change and keep their children permanently.<sup>46</sup> This includes a \$90 million investment over four years “to help 900 children per year through intensive family preservation and restoration services aimed at keeping families together.”<sup>47</sup>

**Figure 7. Targeted Earlier Intervention Program Structure**



Source: <https://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/targeted-earlier-intervention-reform>

**Figure 8: Permanency Support Program**



Source: <http://www.community.nsw.gov.au/about-us/permanency-support-program>

## Debunking 'Grab the Child and Run' Myths

The comprehensive approach to child protection reform in NSW can hardly be characterised as a 'grab the child and run' solution for the problems plaguing the OOHC system in the state. The NSW reforms recognise the system is unsustainable due to the growth in the numbers of children in care. But they also recognise the current system across the spectrum of services—spanning early intervention to OOHC—is ineffective, because “despite the best intentions, the current system is failing to change the trajectory of vulnerable children and their families.”<sup>48</sup> As the former Minister Hazzard stated, “currently the focus is not on the families that need to change”, by way of explaining what the operation of permanency deadlines in conjunction with the new outcomes-based OOHC contracts would mean for parents in practice: “government agencies will work with you but if you don't improve in two years we are going to have to do something.”<sup>49</sup>

The revised OOHC service system in NSW is based on a proven and effective United States model of permanency deadlines combined with targeted restoration support services for families. This model has significantly cut the number of children in care where applied in the US by enabling more children to either go home safely or exit through adoption and guardianship.<sup>50</sup> In New York City, it cut the number of children in care from 55,000 to 8000, and in Illinois from 53,000 to 13,000.<sup>51</sup> The announcement of the NSW OOHC reforms were characterised in the media as a “radical crackdown” on bad parents. However, the same media reports explained that the major reason for the reduction in the number of children in care in Illinois, for example, was restoration of children with their families. Less than half (40%) of parents had their parental rights terminated after two years, and 90% of these children entered successful adoptions or guardianships.<sup>52</sup>

The true scope and intent of the NSW reforms—and how the reforms have rebalanced parental rights with children's right and best interests—was aptly conveyed by the Minister Hazzard's declaration that:

We aim for about two years where we would work with the family and if we can't—with our best endeavours—get them to change their ways and become the sort of parents the community wants them to be, then those children deserve to get a forever family.<sup>53</sup>

Rather than making adoption the so-called “fast resort”, the objective of the NSW reforms is to swing the pendulum of the system and strike the right balance between the principles of family preservation and permanency. The commitment to assisting parents to change *before* the deadline, and using adoption and guardianship as the

last but timely resort to achieve permanency thereafter, is borne out by the truly systemic scope of the NSW reform agenda.

The *Their Futures Matter* reforms responded to an independent review of the OOHC system in NSW by former senior public servant, David Tune. The Tune Review highlighted the poor results achieved—both in terms of numbers of children in care and in terms of the poor outcomes for children and their families—despite the approximately \$1.86 billion of government expenditure in 2015-16 on at least 61 programs intended to support vulnerable children and their families. Echoing the similar findings of the Victorian auditor-general (see above), Tune concluded that it was “difficult to assess the effectiveness of interventions for families” as client and expenditure outcomes across government were “rarely measured or monitored.”<sup>††</sup> The review also found that 67% of programs had not been evaluated, meaning that \$302 million was “spent on programs for which the effectiveness is unknown.” On top of the inflexible and siloed approach to dealing with the specific needs and complex problems of vulnerable children and families on a program-by-program basis across multiple government agencies, Tune concluded the only way to address these fundamental systemic issues was through “whole of system” reform.<sup>54</sup>

The findings of the Tune review laid the foundation of the “new approach” implemented by *Their Futures Matter*, centring on the creation of tailored support packages for vulnerable children and their parents across the spectrum from early intervention to OOHC. This encompassed a commitment of \$120 million (the lion's share of the \$190 million funding allocated to *Their Futures Matter*) to fund “investment in evidence-based services to reduce entries to OOHC” by expanding existing and trialling (and evaluating the effectiveness of) new family preservation and restoration services. This covers the Targeted Early Intervention Program to prevent escalation of family problems and entries into care, and the 'American Model' of “new evidence-based intensive family services based on therapeutic intervention models” to assist parents with children in OOHC meet the two-year permanency deadline and achieve successful restorations.<sup>55</sup> As then Premier Mike Baird said when announcing *Their Futures Matter* in November 2017, what made the overhaul of the system the “single biggest reform to child welfare in NSW” was that the government had recognised that the additional resources that had been provided to keep children out of care had not produced good results; and this was why the state was now investing in new evidence-based, individually targeted support for children and families.<sup>56</sup>

†† This finding was reinforced by the 2016 NSW Auditor General report on FACS which pointed out that NGOs are heavily dependent on government funding NGOs received \$2.8 billion in government funding in 2015-16 to deliver services (approximately \$800m in children and young people services) without being directly accountable to the NSW Parliament for how these funds are spent. It added that the Department relies on NGOs to collect their own data to self-assess performance. Not surprisingly, data is unreliable, inconsistent and not reviewed. <https://www.audit.nsw.gov.au/publications/latest-reports/volume-six-2016-facs>

## Frontloading Investment Approach

The NSW reforms are informed and guided by an “investment approach”<sup>\*\*\*</sup> towards improving the sustainability of the child protection system. This involves, as a first step, calculating the lifetime costs of the most vulnerable families and children across the whole of government. Actuarial analysis of lifetimes costs will inform greater understanding of the needs of families and children involved in the child protection system, and this information will be used to drive targeted investments in tailored interventions and cost-effective evidence-based services that can improve long term and life trajectories and outcomes.<sup>57</sup>

Noting the poor outcomes achieved by many children after leaving OOHC, the Tune Review estimated that the average 20 year cost of providing government services to the care leaver cohort was \$284,000. Six services accounted for about 95% of the 20 year costs: child protection (26%), ambulance (22%), time in custody (18%), court appearances (11%), hospital care (10%), and public housing (8%).<sup>58</sup> “Sadly all too many of them end up in juvenile justice or the correctional system”, explained Minister Hazzard, noting that 65% of children in juvenile justice were ‘known’ to the child protection system.<sup>59</sup> The Tune Review found that one-third of care leavers did not finish year 12 and 44% were unemployed within 5 years of exiting care.<sup>60</sup> The 20-year cost estimate did not include the cost of the intergenerational cycle of child maltreatment associated with the fact that “20% of females and 12% of males will have a child in OOHC at some point in the 20 years after exit; and OOHC leavers are more than 10 times more likely to need OOHC for their child compared to the general population.”<sup>61</sup>

The Tune Review cited these figures to illustrate the limited effectiveness of existing programs and services, which “have not addressed the complex drivers that send children into OOHC or that continue the intergenerational transfer of abuse and neglect.”<sup>62</sup> As Premier Baird explained when announcing the *Their Futures Matter* reforms, the current system was:

failing to improve long-term outcomes for children and to arrest devastating cycles of intergenerational abuse and neglect. For decades we have seen the number of kids in out-of-home care get larger and the outcomes are not just a cause for concern but a cause for action. We have been providing additional resources but the question is: are they producing the sort of results we want to see? Clearly they haven't. We must do better.<sup>63</sup>

What ‘doing better’ meant was implementing, in a truly systemic fashion, the orthodox policy advice. In March 2017, a NSW parliamentary inquiry into child protection found that the system was failing vulnerable children and families because it “operates predominantly in crisis mode”, and is “not addressing the systemic need for early intervention”, despite “the systemic issues that review after review have identified over the last decade.”<sup>64</sup> The Minister for Families and Community Services, Pru Goward, quickly and honestly responded by saying that reforms addressing the inquiry’s major recommendations for systemic change were already well under way.<sup>65</sup> By using the investment approach to align funding with evidence, outcomes, and the development of targeted services, *Their Futures Matter* is essentially ‘frontloading’ expenditure on the children protection system (and across the whole of government) by investing in early intervention and support services for vulnerable children and families. Rather than continue with “crisis-orientated” spending of the greatest proportion of expenditure on statutory and OOHC services, *Their Futures Matter* made explicit the NSW Government’s commitment to investing in effective, evidence-based “early intervention or family preservation and restoration services.”<sup>66</sup>

The assertion that the emphasis placed on the need for greater use of adoption means the NSW reforms are a simplistic and punitive ‘grab the child and run’ approach is a myth. The focus on adoption in NSW is an aspect of a much wider and measured focus on rebalancing the system, which encompasses genuine system-wide reform to ensure that it is operating in an accountable fashion in the best interests of families and children across the full spectrum of services from early intervention to OOHC and permanency. The focus on achieving permanency, including via adoption, reflects not only the failings of the current system. It also reflects the reality that in even the most balanced and effective child protection system, some families with the most serious and entrenched problems will be unable to change in a timely fashion. Children who are unable to go home safely need adoption—safe and stable homes and permanent new families—to prevent harmful drift and damaging instability in care.

These hard realities are ignored by critics who have argued that the mandatory permanency timeframes in NSW are “arbitrary”, and unfair to parents “under intense pressure trying to meet deadlines”.<sup>67</sup> Two years, as any parent knows, is long time in the life of a child; a two-year deadline for parents to show they deserve to get back children—children who have had to be removed

\*\*\* An ‘investment approach’ has also been adopted by the federal government as the foundation of reforms to the provision of social services throughout Australia, in recognition of the fact that problems with data, monitoring, evaluation, and measuring and demonstrating effectiveness and outcomes—as identified in this report in relation to child protection services in NSW and Victoria specifically—plague child and family welfare sectors and services in all jurisdictions. <https://www.dss.gov.au/review-of-australias-welfare-system/australian-priority-investment-approach-to-welfare/try-test-and-learn-fund>

for their own safety to parental abuse and neglect—is hardly harsh, nor grabbing the child and running. To contrary, mandatory permanency timeframes are the centre-piece of the systemic reforms that are designed to make the child protection system operate in a truly child-centred way in NSW, which encompasses an appropriate, measured and overdue resetting of the pendulum between parental rights and children’s rights, in a way that better balances the principle of family preservation with the principle of permanency. As former Minister Hazzard put it, the aim of the NSW reforms is to “rethink the whole approach and completely change the dynamics”.<sup>68</sup> Or as Premier Gladys Berejiklian explained: “We are committed to supporting families to stay safely together, but when that is not possible we need to ensure children have a safe home for life”.<sup>69</sup>

Given the focus on rethinking the dynamics of the system to provide effective, targeted support services under the NSW reforms, the Premiers’ statement about helping

keep families together—and ensuring the system was balanced—was more than rhetoric. This is to say that adoptions will only occur in NSW after parent’s right have been properly upheld by giving them the best opportunity and support to ‘get their act’ together. Ensuring the system provides this support to parents to try to achieve successful restorations is essential to ensure the system can function properly to prevent drift in care. Courts, rightly and fairly, will refuse to terminate parental rights and approve adoption orders unless it can be legally proven that parents have been given a genuine chance and assistance to change. But by limiting the time in which parental change and decisions about permanency must occur, the NSW reforms will make the system accountable for the ultimate outcome in children’s best interests, and prevent children from drifting in the care system and never finding a ‘forever family’.<sup>‡</sup>

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‡ To ensure the system is accountable and operates in children’s best long-term interests, including courts have sufficient quality of information based on high-quality casework practice, the Their Futures Matter reforms therefore include investment in “Specialist casework to ensure child protection legislative priorities, including the permanency principles, drive better outcomes.” [https://www.facs.nsw.gov.au/\\_\\_data/assets/file/0005/387293/FACS\\_OOHC\\_Review\\_161116.pdf](https://www.facs.nsw.gov.au/__data/assets/file/0005/387293/FACS_OOHC_Review_161116.pdf)



## Conclusion: Ending the Adoption Wars

“The problem is, this country has a long-term, engrained, cultural opposition to adoption which is entirely understandable, given the Stolen Generation.”<sup>70</sup> So said Brad Hazzard about what he also called the “long-standing systemic cultural mindsets” and “anti-adoption sentiment” that has long prevailed in the child and welfare sectors.<sup>71</sup> The cultural objections to ‘stealing’ children all over again have been expressed, institutionally within the child protection system, by the overzealous commitment to family preservation at almost all costs; by the reluctance to remove children from families except as a last resort; and by the taboo, of course, that has been placed on adoption to give children permanent new families for life. The cultural politics of child protection policy in Australia has played out in the polarised debate, pitting family preservation against adoption as inherently antithetical approaches to keeping children safe—a debate that continues over the character and purpose of the ‘adoption reforms’ in NSW.

However, when the NSW child protection reforms are accurately assessed, the claims made about ‘fast resort’ to adoption are debunked. Genuine systemic child protection reform should involve re-balancing the system to ensure it is effective, accountable, and child-centred. To achieve this in the current policy context in Australia requires swinging the pendulum of child protection systems back from the over-emphasis on preserving families and defending parental rights, which is the root

cause of the growth in the number of damaged children spending most of their childhoods in care. Rebalancing the system to ensure children’s rights and best interests are properly protected requires both enforcement of permanency timelines, in concert with greater use of adoption, as the NSW reforms aim to achieve. But as the reforms in NSW also demonstrate, the focus on permanency and adoption is not at the expense of focusing on the need to invest in family support services to reduce child maltreatment and entries into care. Due to the scope of the *Their Futures Matter* reforms across the full service spectrum, NSW is, in reality, undertaking the kind of comprehensive, ‘frontloaded’ systemic reform that has been recommended by virtually all 39 inquiries, reviews, and royal commissions into child protection in Australia that have occurred in the past decade, which have time and again called for child protection services to be re-orientated around early intervention and family support.<sup>72</sup>

The assertion that advocates of adoption do not believe in early intervention and family support was never true. Those in favour of greater use of adoption (including myself) have never advocated simply stealing kids from bad homes at the earliest opportunity and running to the courts to terminate the legal rights of parents and sever the family connections of children. The objection to family preservation, as currently practised, is that so-called early intervention and family support is prolonged to the point of harming children who

suffer extended maltreatment at home and instability in care. The rationale for—and evidence produced to justify—the NSW reforms prove this is so. To ensure that child protection services, and especially OOHC services, are sustainable in the state, strict permanency deadlines have been legislated in NSW. The state has, hereby, committed to addressing the systemic and cultural obstacles to greater use of adoption to achieve permanency. But only misinformed critics could argue that the reform agenda is pro-adoption, as in being ideologically biased and hostile to family preservation.

In reality, the restructured NSW system is agnostic as to how permanency is achieved. Vulnerable children and parents in the state will receive targeted support to keep as many families together as possible. However, the crucial difference and innovation compared to the status quo, is that under the reformed NSW system, the provision of family support services will be held accountable for achieving the best long-term outcomes for children, through outcomes-based OOHC contracting linked to strict enforcement of the legislated permanency timelines to prevent children suffering from harmful drift and damaging instability in care. Adoptions will therefore only occur in NSW if the best endeavours to support parents have been tried and have failed to fix families; and adoption is therefore in the best interests of children's vital need for a permanent home and loving new 'forever family' that can help children recover from trauma and overcome their disadvantaged start in life.\*\*

The genuinely "whole of system" character of the NSW reforms are highly significant, and mark a turning point in the national debate about child protection policy. They not only constitute a blueprint setting out *what* kind of reforms are necessary to improve the operation of

failing systems, but, even more importantly, *how* those reforms can be implemented by negotiating the cultural politics of child protection. By pledging to emulate the 'NSW model', policymakers in other jurisdictions can not only address the same systemic problems faced in NSW that exist in child protection systems in all states and territories; they can also escape being demonised as 'child stealers' and proponents of a simplistic and punitive 'grab the child and run' model. By emphasising that the true policy goal, as in NSW, is to address the systemic problems across the spectrum of services, and thereby ensure the rights of both parents and children are protected in an appropriately balanced way, supporters of family preservation will have no substantive grounds for opposing the reform that promote the greater use of adoption on the basis that the system does not do enough to support families.

This is as it should be. The purpose of child protection reform is not for states and territories to compete against each other to increase adoptions, per se. Nor is the goal for adoption to serve as a panacea for the intractable problems in overwhelmed OOHC systems. Instead, all state and territory governments should aspire to lead the nation in developing child protection systems that properly balance the preservation of parental rights and the protection of children's best interests.

In the kind of balanced, effective, and accountable child protection systems pioneered in NSW, adoptions will not occur as the fast resort, but only as the last resort to achieve permanency, and only after early intervention and family support has been tried and has failed to ensure that children have safe homes and stable families for life.

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\*\* Hence as well as investing through the Their Futures Matter reforms in intensive therapeutic care to replace residential care and help older children recover from trauma and find a permanent home (<http://www.community.nsw.gov.au/permanency-support-program/intensive-therapeutic-care>), the NSW Government has also introduced a new means-tested adoption allowance which "acknowledges the higher costs associated with children in out-of-home care who require ongoing—and sometimes intensive—support to meet their educational, social, physical and emotional health needs." <http://www.community.nsw.gov.au/parents,-carers-and-families/fostering,-guardianship-and-adoption/adoption/want-to-adopt/out-of-home-care-adoption-allowance-fact-sheet>

## Endnotes

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