A Viable Option:
A National Adoption Framework

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Culture, Prosperity & Civil Society
Defending Liberty in Australia

THE CENTRE FOR INDEPENDENT STUDIES

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Living in unstable long-term government-supported 'out-of-home' care (OOHC) is causing harmful and often lifelong impacts for increasing numbers of Australian children. There is a growing awareness that all children need stable homes and families to thrive. This has led to policymakers facing mounting calls from adoption advocates (myself included) to increase the number of 'open adoptions'* from out of care in Australia.

The difficulties in giving more children safe and permanent homes through adoption led the Federal Parliament's Standing Committee on Social Policy and Legal Affairs to conduct a new inquiry into local adoption. The inquiry's terms of reference refer to reporting on approaches to a nationally consistent framework for local adoption in Australia, with specific reference to:

1. stability and permanency for children in out-of-home care with local adoption as a viable option; and

2. appropriate guiding principles for a national framework or code for local adoptions within Australia.[1]

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.

This paper will examine recent initiatives to boost adoptions in NSW and a way to roll out the core of these reforms nationally. It will also propose a national framework that will ensure permanency for children in OOHC, including making adoption a viable option.

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* '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.

Children in long term care: a growing problem

Since 2000, the number of maltreated children who live in OOHC in Australia has grown by 155% to more than 46,000 children in 2015–16. Yet in 2015–16, just 70 children were adopted from care nationally (67 in NSW alone, and just 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 and having little prospects of ever being able to return home and live safely with parents.[2]

There is overwhelming evidence — as detailed in my 2015 book, *The Madness of Australian Child Protection* — supporting the view that the greater use of adoption is in children's best interests, and this is supported by the well-documented failures of current child protection policies and practices to properly protect the safety and wellbeing of the many children whom 'the system' is failing.

The misguided bias towards the 'family preservation'-based child protection policies and practices employed across Australia has swung the pendulum of child protection systems too far in favour defending parental rights at the expense of protecting children's rights and best interests. The over-extended efforts made by state and territory child welfare authorities to keep and reunite children with even highly dysfunctional parents at almost all costs is responsible for the 'system abuse' — the harmful 'churn' and 'drift' suffered when attempts to achieve reunifications drag on, when placements break down, and when restorations fail and children re-enter care — that is endured by increasing numbers of (increasingly damaged) children spending the majority of their childhoods in care.[3]

As the 2015 Senate report into OOHC noted, all state and territory governments face the same "intractable and complex issues" related to the more than doubling in the number of children entering and remaining in care since 2000 — issues that clearly reflect the fact that child protection systems nation-wide are palpably failing to prevent children entering and remaining in long-term care.[4]

National leadership on adoption

The terms of reference for the Standing Committee on Social Policy and Legal Affairs inquiry into local adoption implicitly accepts that child protection systems in all jurisdictions are plagued by the same systemic problems that lead to tens of thousands of children spending too long in unstable care.

However, the role the federal government can play in promoting the greater use of adoption as a viable pathway for achieving permanency for children is constitutionally restricted by the lack of direct federal authority over child protection services that are a state and territory responsibility.

Nevertheless, the federal government could potentially exert significant national political leadership in this crucial policy area by developing the national framework proposed in this paper. With respect to the inquiry's terms of reference, the committee should recommend that the federal government develop a data-driven national framework that reflects the key guiding principles of the ground-breaking child protection reforms under way in NSW — the sole jurisdiction in Australia that has committed to increasing the number of adoptions from care.

The national framework outlined here is designed to embody the balanced, effective, and accountable approach to child protection being pioneered in NSW, by linking the guiding principles of the NSW reforms to a national set of key goals, indicators, priorities, and outcomes, underpinned by meaningful data and measures of the effectiveness of child protection services.

This national framework would establish a powerful national mechanism to drive reforms similar to those in progress in NSW in all states and territories, by holding all jurisdictions accountable for achieving stability and permanency for children throughout the nation, including by increasing the number of adoptions from care.

Resetting the Pendulum: System-wide Child Protection Reform in NSW

Since its election to office in 2011, the NSW Coalition Government has 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 7,786 to 17,800, and the real cost of OOHC services has increased from $243 million to $1.28 billion.[5] But more important than the financial cost, NSW policymakers have acknowledged the human cost of the current system: 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 (who exit the OOHC system after they turn 18) 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.[6]

The NSW government has recognised the major problem is that too many children are drifting in unstable and long-term care due to the systemic flaws and consequent problems caused by the current family preservation-based approach. The NSW government has therefore implemented a long-term plan to restructure the operation of the child protection system with the overarching aim of ensuring that children achieve permanency, including through adoptions for children unable to live safely with their parents and who otherwise would drift in long-term care.

In 2016–17, the number of adoptions from care in NSW doubled to 127 — up from 67 the previous year[7] – 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.[8]

In May this year, another milestone was reached when the pro-adoption advocacy organisation, Adopt Change, was appointed to deliver a new program — 'My Forever Family' — designed to halve the time children spend in care before finding a permanent home through either successful restoration with parents, or through guardianship and adoption.[9]

Predictably, critics have again zeroed in on the taboo subject of adoption — and falsely claimed that adoption is being used as a quick fix to solve the problem of rising numbers of children in care.[10] Opponents of adoption have consistently claimed that NSW has embraced a simplistic and punitive "grab the child and run"[11] approach to child protection reform, which will see children permanently removed as the "fast resort"[12] without providing struggling parents with adequate early intervention and family support services to prevent child abuse and entries into care.

But contrary to such misleading commentary, the NSW reforms do not treat adoption as a 'magic bullet' panacea for the growth in the number of children entering and remaining in care in NSW.

The claim that adoption will "see more children removed, without families getting the support they need to keep children"[13] is debunked by the system-wide reform agenda implemented in NSW, which is designed to strike an appropriate balance 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 genuine whole of system reforms underway in NSW do not constitute a simplistic 'child stealing' approach, because the government is also investing in the development of nation-leading, evidence-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.

Hence the NSW reforms feature three major elements:

1. The *Safe Homes for Life* reforms of 2014 introduced new permanency planning rules in NSW, making 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.[14]

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.[15]

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.[16]

While the NSW reforms are specifically designed to ensure adoption is a viable pathway for children who cannot safely return home within a child-centred timeframe, they are also specifically designed to assist parents and keep families together.

The NSW reform agenda explicitly recognises that the entire system across the spectrum of services — and despite heavy investment by taxpayers — is not producing good outcomes when so many children are not being kept safely home, are not being reunited safely to their families, and are not achieving permanency despite spending long periods of time in care.[§]

The NSW reforms are therefore designed to improve the effectiveness and performance of the child protection system *across the full service spectrum,* with the aim of achieving permanency for more children. The broad-based goals of the reforms — and especially of the extensive early intervention

and family support service system redesigns that the reforms entail — is to achieve permanency by:

(a) Preventing maltreatment and keeping more children at home safely with their parents;

(b) Restoring more children home safely from care by assisting families; and

(c) Finding permanent homes via adoptions for children who are found to be unable to return home and live safely, within a two-year permanency deadline.

Hence rather than continue spending heavily on 'crisis-orientated' OOHC services, the reforms aim to 'frontload' 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.[17]

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 will find a stable home and new family for life.

Enforcement of strict permanency deadlines is essential because the hard and unavoidable reality of child protection in that, in some cases, 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. In no way, therefore, can the NSW reforms be demonised as insufficiently supporting families or as using adoption to 'grab children and run'.

What the NSW reforms truly represent is an appropriate and measured resetting of the pendulum to better balance the principles of family preservation and achieve permanency for children in OOHC and ensure the child protection system across the spectrum of services is held accountable and operates in the best interests of children's long-term welfare.

§ 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. Their Futures Matter, 3-4.

National Child Protection Accountability Framework

The NSW reforms are a blueprint for genuine systemic change that should be emulated by policymakers in all states and territories to make child protection systems more effective and accountable nationwide. To advance this desirable objective, the current parliamentary inquiry into local adoption should — consistent with its terms of reference — encourage the federal government to develop a national framework that will influence state and territory policymaking in this direction.

The table below summarises and sketches the rudimentary element of a **National Child Protection Accountability Framework** that will help to achieve this objective.

The proposed framework would enable the federal government to exert leadership over national child protection policy by creating a nationally-consistent reporting and accountability mechanism. This would entail reshaping how the copious child protection data generated by all state and territory systems is presented and made publicly available at the national level to hold states and territories accountable for improving outcomes for vulnerable children and families throughout the nation.

Publication of key, *meaningful* performance and *effectiveness* measures — such as, for example, re-notifications, restorations and restoration breakdowns/re-entries into care, and placement moves and length of stay in care — would be linked to the key goals, priorities, and outcomes of the new national framework. These key indicators, along with the key goals, priorities and outcomes, would directly reflect the key elements of the NSW reforms.

The national framework would have four sections covering the following subjects:

- Key Goals
- Key Effectiveness Indicators
- Key Reform Priorities
- Key Performance Outcomes

KEY GOALS

The national framework would start with underlining that the problems in the child protection system — as has been recognised in NSW — are a function of defects and deficits *across entire system*s that are palpably failing to enable large numbers of children to live at home safely and achieve permanency in care. The national framework would therefore be designed to emphasise that restructuring child protection systems across the full spectrum of services is essential — as opposed to implementing a one 'point' solution (such as more early intervention or more adoptions) in isolation.

The focus on generating system-wide change would be reinforced by clearly articulating that the three **Key Goals** of the national framework — **Prevention, Restoration and Permanency** — span the full spectrum of services. It follows that these goals would be directly aligned with the indicators, priorities and outcomes included in the national framework outlined here.

NATIONAL CHILD PROTECTION ACCOUNTABILITY FRAMEWORK			
KEY GOALS	**KEY EFFECTIVENESS INDICATORS**	**KEY REFORM PRIORITIES**	**KEY PERFORMANCE OUTCOMES**
PREVENTION	• Re-notification rates • Subsequent 'decision to remove' rates	• Invest in evidence-based, evaluated, coordinated, and targeted early-intervention and family services to help more children stay safely at home.	• How well, or not, is the system functioning to keep children safe and at home after a notification is received?
RESTORATION	• Restoration rates • Restoration breakdown rates • Re-entries into care rates	• Develop evidence-based and outcomes-focused OOHC services that are accountable for assisting parents and children to achieve family reunifications from care within a designated two-year maximum time limit.	• How well, or not, is the system functioning to assist parents and return children home — and have them stay home — safely after a child has been removed into care?
PERMANENCY	• Placement moves • Length of stay	• Ensure children do not 'drift' (and are not repeatedly 'churned') in unstable OOHC by ensuring children who cannot safely go home within two years can achieve permanency through open adoption.	• How well, or not, is the system functioning to ensure children achieve permanency when they are unable to safely return home?

KEY EFFECTIVENESS INDICATORS

The Australian Institute of Health and Welfare and the Productivity Commission already publish substantial volumes of child protection statistics and analysis in their respective annual *Child Protection Australia* and *Report on Government Services* reports. Either of these organisations could be tasked with developing a simpler and more meaningful data 'dashboard' consisting of **Key Effectiveness Indicators** (including the kind of data noted above concerning crucial measures of effectiveness such as re-occurrence of abuse, placement breakdowns, and drift in care).

The key effectiveness data dashboard would form the cornerstone of the national framework, given that it would be directly aligned with the framework's goals, priorities, and outcomes.

KEY REFORM PRIORITIES

Importantly, the national framework would be specifically designed to bring greater clarity to national debate about child protection policy. The aim would be to thereby create a national accountability mechanism capable of exerting greater influence over state and territory government policymaking by encouraging the implementation of the kind of evidence-based, evaluated, targeted, and outcomes-focused policies developed in NSW.

Hence, the explicit purpose of national reporting of key effectiveness indicators — which would show if state and territories are (or are not) achieving the key goals of prevention, restoration and permanency — would be to encourage other states and territories to adopt and apply the three 'guiding principles' (which would be better termed **Key Reform Priorities)** behind the NSW model.

The three key reform priorities — based on the structural reforms in NSW, and aligned with the three key goals — that would be included at the heart of the national framework are:

1. Invest in evidence-based, evaluated, coordinated, and targeted early-intervention and family services to help more children stay safely at home;

2. Develop evidence-based and outcomes-focused out-of-home care services that are accountable for assisting parents and children to achieve family reunifications from care within a designated 2-year maximum time limit; and

3. Ensure children do not 'drift' (and are not repeatedly 'churned') in unstable OOHC by ensuring children who cannot safely go home within two years can achieve permanency through open adoption.

KEY PERFORMANCE OUTCOMES

A national framework outlining key reform priorities, allied with a meaningful data 'dashboard', would help guide and spur state and territory policy-making, especially by enabling comparisons to be made between better performing and poorer performing jurisdictions. A more transparent and meaningful set of key effectiveness indicators would also increase state and territory government accountability for the effectiveness of services and the outcomes achieved for children and families.

The national framework would hereby permit regular evaluation of the overall performance of child protection systems — by parliamentarians, media and other stakeholders — against clearly defined goals, indicators, and priorities. To further encourage scrutiny, debate, discussion, and policy reformulation, the national framework would also include three plain-language key questions, in the form of the following three **Key Performance Outcomes**:

1. How well, or not, is the system functioning to keep children safe and at home after a notification is received?

2. How well, or not, is the system functioning to assist parents and return children home – and have them stay home — safely after a child has been removed into care?

3. How well, or not, is the system functioning to ensure children achieve permanency when they are unable to safely return home?

Conclusion

Implementation of the National Child Protection Accountability Framework would correct the bias towards 'early intervention and prevention' — in isolation from other important policies and outcomes, especially as permanency — evident in the existing National Framework introduced under the Rudd Government in 2009.[18]

The new national framework would supplement a family preservation-based focus on prevention and restoration by encompassing a genuinely system-wide approach that gave appropriate importance to ensuring children in care achieve permanency in a timely manner.

The national framework would also address the longstanding problem of the lack of meaningful and nationally consistent child protection data, which currently makes comparisons between jurisdictions problematic, and limits the usefulness of the copious

amount of child protection data that is available in terms of shaping policy throughout the nation.[19]

The meaningful measures of performance and effectiveness the national framework would generate, would stimulate a more meaningful national policy debate. But more importantly, with respect to influencing child protection policy throughout the nation, the national framework would have a clear policy purpose and intent.

It would enable — constitutional realities notwithstanding — the federal government to offer real leadership on child protection, including an effective way of promoting the use of adoption as a viable option for achieving permanency for children.

Moreover, by embedding the 'NSW model' as the guiding principles of the key goals, indicators, priorities and outcomes of the national framework, other state and territories would be guided and encouraged to emulate the NSW approach to developing balanced, effective and accountable child protection services that properly protect children's right to have safe and permanent homes for life.

The national framework would thereby help drive genuine and overdue systemic child protection reform in all jurisdictions — including adoption reforms — and ensure that the pendulum is reset in all Australian child protection systems to properly protect the child.

Endnotes

1   https://www.aph.gov.au/Parliamentary_Business/ Committees/House/Social_Policy_and_Legal_ Affairs/Localadoption/Terms_of_Reference

2   See Jeremy Sammut, *Resetting the Pendulum: Balanced, Effective, Accountable Child Protection Systems and Adoption Reform in Australia,* Research Report 33, Sydney: The Centre for Independent Studies, 2017.

3   Jeremy Sammut, *The Madness of Australian Child Protection: Why Adoption will Rescue Australia's Underclass Children,* (Connor Court: Ballarat, 2015).

4   Senate Community Affairs References Committee, *Out of Home Care.* Canberra: Senate Printing Unit, 2015, 1.

5   Productivity Commission, *Report on Government Services 2017,* Table 16A.18*,* Table 16A.1, and Table 16A.3

6   http://www.community.nsw.gov.au/about-us/ permanency-support-program

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19 Broadley, Karen, Chris Goddard, and Joe Tucci. They Count for Nothing: Poor Child Protection Statistics Are a Barrier to a Child-centred National Framework. Melbourne: Australian Childhood Foundation and Child Abuse Prevention Research Australia, 2014.

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Research Publications

Jeremy Sammut, *Resetting the Pendulum: Balanced, Effective, Accountable Child Protection Systems and Adoption Reform in Australia*, Research Report 33, Sydney: The Centre for Independent Studies, 2017.

Jeremy Sammut, *The Madness of Australian Child Protection: Why Adoption will Rescue Australia's Underclass Children*, (Connor Court: Ballarat, 2015).