Barriers to Adoption: ACWA Submission

ACWA acknowledges the Cadigal People of the Eora Nation as the traditional owners of the lands where ACWA stands and wish to pay respect to their elders, past and present.

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1. INTRODUCTION

1.1 ACWA

The Association of Children's Welfare Agencies (ACWA) is the peak body in New South Wales representing the voice, experience and expertise of non-government community service organisations delivering services to vulnerable children, young people and their families.

ACWA thanks the Standing Committee on Social Policy and Legal Affairs for the opportunity to take part in the national discussion about adoption and barriers to adoption in the context of child welfare.

ACWA notes that the Australian Government, its States and Territories are signatories of the National Framework for Protecting Australia's Children. This Framework sets out in its priorities, the primacy of prevention and early intervention over that of removal for all children. There is also a special focus on our Indigenous population. Indeed, priority one of the plan is as follows:

'*Improving outcomes for Aboriginal and Torres Strait Islanders children at risk of entering, or in contact with the child protection system'. In addition, the action areas included Supporting Aboriginal and Torres Strait Islanders Community Controlled Organisations to ensure culturally appropriate placements and supports for Ingenious children and their families*.'

ACWA supports priorities of the National Framework.

1.2 Sources of information for this submission:

In making this submission I will draw from our experience of working as a peak body with member organisations and also with reference to specific projects that ACWA has undertaken. These areas are:

- Providing sector support in a changing legislative and policy environment;
- The development of more rigorous assessment tools and processes;
- Public perceptions of barriers to adoption gleaned from the Fostering NSW program.

1.3 Systemic barriers to adoption:

NSW is currently in the midst of a service system reform, and ACWA has been working with member agencies to equip them to respond to the *Safe Home For Life* (SHFL[1]) legislative reforms and the current *Permanency Support Program* (PSP). In addition, new contracts attempt to overtly orient service provision to the permanency approaches and pathways laid out in the SHFL legislation: preservation, restoration, guardianship, adoption and foster care. Of the 72 ACWA members, only three are currently accredited to undertake adoption work, although a small number are in the process of applying for accreditation. The remaining agencies facilitate adoption by working with the FaCS Adoption Information Unit.

1.The Safe Home for Life legislation consisted of the *Child Protection Legislation Amendment Act 2014*, and changes to the *Children and Young Persons (Care and Protection) Act 1998*, and to a lesser extent the *Adoption Act 2000* and the *Child Protection (Working with Children) Act 2012*. These changes came into effect on 29 October 2014.
https://www.legislation.nsw.gov.au/bills/1616bb8e-dc54-4b01-9aad-767c1d3b6342

In supporting our agencies adapt their services to the new legislative and policy environment, a number of service delivery issues that relate to the way the system operates have come into view as barriers to children being clearly identified as being suitable for adoption:

1.3.1 Workforce issues

Work force capacity to do early intensive work including assessment of the most suitable permanency pathway:

An intensive, timely and skilled assessment process needs to take place as the caseworker works along side the family soon after removal. At this time the possibility of restoration is tested. This is a critical assessment in determining the correct permanency pathway for the child – i.e., restoration, adoption, guardianship or foster care. However, this work is frequently not done well. The recent ACWA NGO workforce needs analysis (Urquhart, 2017) found that the assessment of parenting capacity and working with parents was nominated as the number one need by our members in NSW. (ACWA is currently developing a tool to assist with this specific area of assessment).

1.3.2 Costs related to intensive programs needed for assessment of restoration

Costs related to intensive specialist work that flows into adoption work:

The cost of undertaking this work is currently a barrier. For example, *finding family, life story work* and *family group conferences* are key activities in the early stages of this work that must be undertaken by trained and skilled staff. In addition, carrying through the legal work required once a decision is made that adoption is the right pathway, is expensive specialist work that requires training and access to legal professionals. As the new contracts in NSW come into force on the 1st July, the consequences of the new contractual arrangements will begin to have an effect. It will take time to see what the impact of these arrangements will be.

1.3.3.Equipping and skilling a reliable workforce: Developing standard tools and processes for the assessment of foster carers:

In order to develop the NGO workforce to a uniform standard ACWA has reviewed and re issued its well-regarded *Step-by-Step* assessment resources and process. *Step-by-Step* assessors are now required to undertake and pass an assessment process before gaining accreditation to be an assessor. This assessment process and tool are being rolled out across several Australian states. The training provides a sound process for determining the suitability of a foster care placement, which could be used as the basis from which to move to the next phase of determining the suitability for adoption.

While this is a desirable baseline expectation for professionals who undertake assessment in relation to decisions along the child protection decision continuum, unhappily, the expectations embedded in this tool are not uniformly held throughout NSW or Australia. There is some confusion about what is required to equip professionals to undertake sound assessment practices. Formal training or previous experience in casework is inadequate alone.

A well-developed assessment tool, substantial supervised experience in undertaking assessments in a workplace environment, and being situated in a professional setting in which there are peer consultations are also required. I note that assessments undertaken in these circumstances are frequently complex and distressing due to the immediate safety issues as well as multigenerational trauma being carried in the family. In addition, decisions may not be clear-cut. Debriefing may be required in order to ensure that clear

judgements are being made and that the mental health of the assessor is protected.

1.3.4 Statutory authorities must fulfil their responsibility in restoration efforts before other permanent options such as adoption are considered: *Ensuring appropriate service provision and the concept of 'active efforts'*
The families who are subject to children's court applications have frequently experienced multiple stressors and have complex needs, as have the child/ren who are the subject of the application. While court orders can be made that rehabilitation, classes on parenting education will be attended, and so on, in reality parents may not receive this help. It may not be available, or it may exist but is inaccessible. An approach being put forward in the USA to deal with this is the requirement that *active efforts* have been made by the statutory authorities to ensure that children's parents get the services that have been ordered by the court (Guidelines for Implementing the Indian Child Welfare Act, 2016 [2]). This concept is noted in the *National Framework for Protecting Australia's Children 2009-2020*, (2018).

1.3.5 Timely provision of the services needed by parents and forming a view that restoration is not in the child's best interests*:*
In the same vein as the 'active efforts' concept, the *Reunification Framework* developed by Wilkins and Farmer (2015) utilises the concept of a contract between the statutory worker and the parents where both are required to agree to the terms of the contract set up to facilitate reunification with a period of time. Most important here is that the statutory caseworker signs off on their responsibility to provide services/help to the parents. As with *active efforts*, the onus is placed on the State to provide the services needed. This is essential in order to provide the reasonable and fair opportunity for parents to change their quality of parenting. It is in this context that a parenting capacity assessment can be carried out.

Lack of clarity in relation as to whether the child's right to live with their own parents has been exhausted: There are many cases reported to ACWA by our members in which the child has been in care for some time and the Statutory Department has not looked for extended family, or parents have not been provided with the opportunity to be rehabilitated or improve their parenting capacity. Clarity would be achieved if a case plan, with explicit goals for the parents and commitment by the agency working with the parents were formulated and monitored, with feedback being given to parents. ACWA refers to the University of Bristol *Reunification Framework* as a best practice guide to this work (Wilkins and Farmer 2015). In order to ensure procedural fairness, this should also be a precondition before moving to adoption as a pathway for children unless specifically ruled out by the Children's Court for a compelling reason.

ACWA contends that adoption should only be supported when it is assessed as the permanency option <u>OF CHOICE</u> for a particular child and their family, and that it must be Open Adoption.

Adoption should not be posed as the solution to the following issues, (although it may provide a secondary benefit to them):

- childless couples;

[2] Indian Child Welfare Act, 2016, Regulation 23.2. of the guidelines, the following definition has been proposed by the CaFS Reform Working group 'Active efforts mean affirmative, active, thorough, and timely efforts an agreed definition, and ensure the safe care and connection of Aboriginal and Torres Strait Islander children and young people. (National Framework for Protecting Australia's Children 2009-2020, p 6, 2018).

- government expenditure;
- a failed family support and child welfare system;
- failed social policies on a broad macro level, such as poverty and the impact social disadvantage.

1.3.6 Culturally informed responses:

There is a lack of broad nuanced and informed discussion about the best way to achieve permanency within Aboriginal communities given the different cultural expectations, needs and historical policy driven systemic abuse of this population. Aboriginal controlled agencies in NSW hold that the only culturally suitable responses for Aboriginal children who are removed are: restoration, and long term foster care.

1. 4 Public perception of barriers to adoption: Fostering NSW Enquiries

In relation to the ACWA work undertaken for over five years by its *FosteringNSW* project (the NSW campaign to recruit foster carers, including those who wish to foster-to-adopt children). Since 2013 the service has taken over 11,000 enquiries and referred over 5,000 potential carers to agencies. During this work we have spoken to enquirers who are seeking information about fostering and adoption. Fostering NSW has noted perceived barriers that have been expressed by enquirers. These include:

1.4.1 Financial concerns

Enquirers being concerned that they would be unable to afford the expenses that will be incurred in looking after a child with additional or complex needs. (NB: The NSW Government has made available a $1,500 annual payment, [3] but this is unlikely to be sufficient in relation to children with complex needs).

1.4.2 Lack of clarity about the process and the time required to achieve adoption.

ACWA is aware that this process needs to be thorough and that the work is in two parts: the case management and development of the application, followed by the application to the Supreme Court. ACWA's position is these times should be managed as tightly as possible and that an administrative process may need to be put in place to expedite an application once it is submitted to the court.

1.4.3 The concept of 'Open Adoption'

Enquirers are not aware of the benefits for the child that contact with parents can bring or how it might occur. The idea of having the child's parent/s in your life, and the child's life is met with a lack of enthusiasm and the prospect of facilitating an on-going relationship with the parents can result in a decision not to proceed with adoption enquiries. This is not surprising as open adoption is relatively new, neither is it commonly practiced internationally- so there is no rich social narrative to draw on when imagining how one might achieve this oneself. Fostering NSW enquirers draw on their childhood knowledge/experience of [closed] adoption during their inquiry conversations. Enquirers also talk about wanting a child 'of their own' and of this being an opposing concept to open adoption. There is often a concreteness about the inquiry - If they have rung in response to a story in the newspapers, they may be inquiring about that specific baby or child.

Our observation is that there is not a rich social narrative to draw on when considering what Open Adoption might mean. The concept of 'openness in

[3] Since July 1st 2017, there has also been a 2-weekly allowance (similar to Foster care allowance) available to adoptive parents who are eligible for Family Tax Benefit Part A.

relationships': As the research evidence grows about the benefits of continuing contact with parents, this should be shared in the public domain to develop a wider appreciation of the value of Open Adoption.

The time that adoption cases take to be finalised can be drawn out, especially as other crisis work can easily be prioritised ahead of working with adoption families where there is stability. For this reason, the time lines of this case work need to be tracked and reported. In addition, once the application is filed, in the Supreme Court, the matter is currently at the behest of the court's administrative processes.

In NSW, the form of adoption that is legislated is 'Open Adoption'. As a result of this, the recruitment of carers who ultimately want to adopt begins with fostering.

I end with the assertion that the question that should be asked is not '*What are the barriers to Adoption?'* but '*What are the barriers to children being kept in their families, or extended family or kin and in their community*?' This position reflects ACWA's position is that our system should be built on the 'inverting the pyramid' model (ARACY 2008) that sees a public health model informing the design of a joined up service system. This presupposes the ability for jurisdictions both across State departments and Federal to plan together – seeing their work as contributing to joint outcomes.

1.5 Recommendations:

1. Families Australia be provided with funding to undertake the development of a set of *best practice* principles to guide the work of NGOs and government child protection authorities in States and Territories. This work would be to establish the research evidence and related practices supporting the decisions about the permanency pathways for each child, including when adoption is the pathway of choice.

2. The National Framework be used as a vehicle to promulgate these 'best practice' principles for children taken into care including restoration, kinship care, guardianship, adoption or foster care, and that State and Territory child protection systems be required to apply these to their policy and practice guidelines.

   These principles should consider:

   2.1 The development of national training guidelines to support the child welfare workforce in assessing the best permanency pathway for children;

   2.2 The funding of an extension of the Step-by-Step assessment guidelines, to develop a national approach to the practice of supporting permanency including the preparation of adoption applications, and their lodgment.

   2.3 The timelines for the components of the adoption application development and consequential legal work required to lodge an adoption application.

   2.4 Information is made available to the public in relation to Open Adoption and how it can be used to support the development of children in care.

3. The Aboriginal peak, SNAICC be engaged to develop principles that are suitable for working with Aboriginal children and families.

4. Administrative arrangements are made with each state's Supreme Court in order to achieve the active triaging of adoption applications so that they are expedited.

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