



Australian Government

Australian Government response to the
House of Representatives Standing Committee on Social Policy
and Legal Affairs report:

*Breaking barriers: a national adoption
framework for Australian children.*

September 2019

Introduction

The Australian Government welcomes the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee's) report, *Breaking barriers: a national adoption framework for Australian children: Inquiry into local adoption*.

State and territory governments are responsible for administering legislation in relation to the adoption of Australian children. This legislation, when read with child protection legislation, enables states and territories to arrange for the adoption of children in out-of-home care where they deem it is in the child's best interest. Some states support adoption as a viable option for children in out-of-home care more strongly than others do. This was highlighted in the State Government roundtable that was part of the Inquiry's Hearing process.

The Inquiry Report recognises the key existing national policy platforms that apply to permanency for children in out-of-home care, including adoption. These are the National Permanency Work Plan and the *National Framework for Protecting Australia's Children 2009-2020* (National Framework).

Both policy platforms include a commitment to strengthen compliance with the Aboriginal and Torres Strait Islander Child Placement Principle as a way of improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with, child protection systems.

The Australian Government supports those affected by past forced adoption policies and practices through the Forced Adoption Support Services, and recognises that forced adoption must not be repeated.

Agreement by Community Services Ministers to the National Permanency Work Plan on 1 June 2018 represents recent collaborative effort between the Commonwealth, states and territories to agree to a nationally consistent definition of permanency, and priorities for improving outcomes for children in out-of-home care. However, the Work Plan also accommodates jurisdictional differences with regard to the emphasis placed on adoption as a priority permanency option for children in out-of-home care.

The National Permanency Work Plan is reflected in the Fourth Action Plan 2018-2020 (Fourth Action Plan) of the National Framework under:

- Priority 1: Improving outcomes for Aboriginal and Torres Strait islander children at risk of entering, or in contact with, child protection systems, and
- Priority 3: Improving outcomes for children in out-of-home care by enhancing placement stability through reunification and other permanent care options.

There is also a priority under the Fourth Action Plan to improve prevention and early intervention through joint service planning and investment.

The Fourth Action Plan was endorsed by Community Services Ministers in late 2018 and launched by the Assistant Minister for Children and Families, the Hon Michelle Landry MP on 30 January 2019.

Summary of the recommendations and the Australian Government's position

| No. | Recommendation | Government position: Supported / Not supported/ partially support/ supported in principle/noted |
|------|--|--|
| 1 | The Committee recommends that the Commonwealth work with state and territory governments to achieve agreement, through the Council of Australian Governments, to develop and enact a national law for adoption. | Noted. Further consideration to be given to the implications of this proposal. |
| 2 | The Committee recommends that a national adoption framework be adopted as the model and starting point for a uniform national law. | Noted: to be progressed through the Fourth Action Plan 2018-2020 under the <i>National Framework for Protecting Australia's Children 2009-2020</i> |
| 2(a) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that the best interests and safety of the child are paramount and override all other considerations. | Supported |
| 2(b) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that returning a child to parents or family/kin must only be an option when it is appropriate and safe. | Supported |
| 2(c) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that adoption should be considered before long-term foster care or residential care. | Noted |
| 2(d) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that family preservation and cultural considerations are important, but not more important than the safety and wellbeing of the child. | Supported |
| 2(e) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that legal permanency is key in providing stability and permanency for children. | Partially supported |
| 2(f) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that adoption from foster care is a viable option where a child has an established and stable relationship with an authorised carer and adoption will promote the child's welfare. | Supported |
| 2(g) | Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that decisions on whether a child may be able to safely return to their birth parent(s) must be made within a legislated timeframe, such as six months of an interim care order for children under two years old, or within 12 months for older children. | Supported in principle |
| 3 | The Committee recommends that, when it is determined that it is not safe for a child in out-of-home care to be reunified with their parent(s) or placed in the care of kin, open adoption should be considered and progressed as a viable option in the best interests of the child. | Noted |
| 4 | The Committee recommends that a national law for adoption provides for 'open adoption' unless exceptional circumstances make an open adoption inappropriate. | Noted |
| 5 | The Committee recommends that a national law for adoption provides for integrated birth certificates that include the names of both birth parents and adoptive parents, while conferring full parental and legal responsibility for adopted children on the adoptive parent(s). | Noted |
| 6 | The Committee recommends that all states and territories improve the administration of adoptions and reduce the complexity and length of adoption processes. | Supported in principle |
| 7 | The Committee recommends that the Australian Institute of Health and Welfare (AIHW) continue to work with relevant Commonwealth, state and territory agencies to improve data collection on adoptions and child protection in Australia, including by: <ul style="list-style-type: none"> • Collecting unit record data rather than aggregate data • Agreeing on nationally consistent definitions • Collecting data on: timeframes for finalising adoptions, sibling separation, parental consent (including dispensation of consent), adoption of Indigenous children, adoption of children with disabilities and special needs, and long-term outcomes for all adoptees; • Maintaining registers of potential adoptive parents. | Supported in principle |

Recommendations made by the Committee

Legislative and policy framework

1. The Committee recommends that the Commonwealth work with state and territory governments to achieve agreement, through the Council of Australian Governments, to develop and enact a national law for adoption.

Noted

State and territory governments are responsible for administering legislation in relation to the adoption of Australian children. This legislation, when read with child protection legislation, enables states and territories to arrange for the adoption of children in out-of-home care where they deem it is in the child's best interest. Some states support adoption as a viable option for children in out-of-home care more strongly than others do.

Given state and territory governments have responsibility for statutory child protection and adoption of Australian children, the Commonwealth will consider further this recommendation and engage in further consultation with states and territories.

National Permanency Work Plan

The Senate Community Affairs References Committee Report into out-of-home care in 2015 recommended delivering a nationally consistent approach to permanency planning through the *National Framework for Protecting Australia's Children 2009-2020* (National Framework).

The National Permanency Work Plan was developed jointly by the Commonwealth, state and territory governments in 2017 and 2018, through the Children and Families Secretaries group, and was endorsed by Community Services Ministers on 1 June 2018.

This work recognises there are various pathways to permanency, based on the best interests of the child. It does not aim to achieve consistency in adoption legislation across states and territories.

Underpinning this national approach, state and territory governments are pursuing a range of individual reforms to improve permanency and stability for children in out-of-home care. These reforms place different priorities on adoption to achieve a permanency outcome for children.

The National Framework for Protecting Australia's Children 2009-2020

The National Permanency Work Plan is being delivered through the Fourth Action Plan 2018-2020 (Fourth Action Plan) of the National Framework.

The overarching 12-year National Framework was agreed by the Council of Australian Governments (COAG) in 2009.

Delivery was deferred by COAG to portfolio Ministers.

2. The Committee recommends that a **national adoption framework** be adopted as the model and starting point for a uniform national law.

Noted: to be progressed through the Fourth Action Plan 2018-2020

As outlined in the Australian Government's response to Recommendation 1, Community Services Ministers have agreed a nationally consistent approach to permanency planning for children in out-of-home care, through the National Permanency Work Plan, and now the Fourth Action Plan of the National Framework. This work seeks to improve outcomes for children in out-of-home care, by enhancing placement stability through reunification and other permanency care options, including through adoption. The Australian Government considers this provides a structure that would achieve the same effect as a framework.

2(a) Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise that the best interests and safety of the child are paramount and override all other considerations.

Supported

Under the National Permanency Work Plan, all Community Services Ministers agreed to Guiding Principles for Best Practice in achieving permanency, and a shared Outcomes Statement for all governments to achieve timely and more consistent permanency decisions. The first Guiding Principle is that *children's interests are paramount and at the centre of all decisions impacting on their lives*. The Guiding Principles and Outcomes Statement underpin the National Permanency Work Plan agreed by Community Services Ministers on 1 June 2018.

2(b) Key elements of a national framework regarded as essential for a uniform national law for adoption should **recognise that returning a child to parents or family/kin must only be an option when it is appropriate and safe.**

Supported

In supporting this recommendation, the Australian Government highlights that the objective of Action 3.2 of the Fourth Action Plan is to ensure that 'children and young people in out-of-home care achieve safe and stable care, in a timely manner, that supports lifelong relationships, belonging, identity and connection that takes into account the views of the child'. This Action will seek to deliver improved permanency options, including consistent processes for family reunification to be explored and resolved as part of permanency planning, in line with the first Permanency Guiding Principle, that *children's interests are paramount and at the centre of all decisions impacting on their lives*.

2(c) Key elements of a national framework regarded as essential for a uniform national law for adoption should **recognise that adoption should be considered before long-term foster care or residential care.**

Noted

The Australian Government notes that this is a matter for states and territories in the context of their own hierarchy of permanency options, and their individual permanency reforms.

Each state and territory has legislation to facilitate long-term arrangements for children in out-of-home care. This includes adoption but also legal orders to transfer guardianship, custody, and parental responsibility.

Underpinning the National Permanency Work Plan, the Permanency Guiding Principles recognise that:

- children’s interests are paramount and at the centre of all decisions impacting on their lives, and
- various pathways to permanency are available to children and are considered as soon as statutory involvement occurs and reviewed regularly.

2(d) Key elements of a national framework regarded as essential for a uniform national law for adoption should **recognise that family preservation and cultural considerations are important, but not more important than the safety and wellbeing of the child.**

Supported

The Australian Government notes that state and territory child protection agencies are responsible for assessing the safety and wellbeing of all children that come to their attention.

Under the National Permanency Work Plan, Community Services Ministers agreed to Guiding Principles for Best Practice in achieving permanency. The first two principles are *children’s interests are paramount and at the centre of all decisions impacting on their lives*; and *compliance with all five domains of the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) is supported and measured*.

The Principle has been introduced into legislation and/or policy and practice across the states and territories, and includes five elements: prevention, partnership, placement, participation, and connection. The importance of children retaining cultural identity and family connection is well accepted in Australia, and actions under Priority 1 of the Fourth Action Plan aim to uphold the five elements of the Principle.

2(e) Key elements of a national framework regarded as essential for a uniform national law for adoption should **recognise that legal permanency is key in providing stability and permanency for children.**

Partially supported

Legal permanency can provide stability and permanency for children from out-of-home care. However, national reporting on current Australian data reflects that not all orders for legal permanency represent placement stability, and residential stability can be achieved without orders for legal permanency (*Permanency planning in child protection: a review of current concepts and available data 2016, AIHW*).

The Australian Government is working with states and territories under the Fourth Action Plan to improve measurement of permanency outcomes through development of a holistic data reporting and evaluation framework. Reliable and consistent data will support improved policy and decision making.

Underpinning Priority 3 of the Fourth Action Plan, the national Permanency Outcomes Statement, agreed by Community Services Ministers on 1 June 2018, recognises the importance of placement and relational stability:

Children and young people, including those in out-of-home care experience

- *Safe and stable care;*
- *Timely decision making on permanency that takes into account the views of the child; and*
- *Lifelong relationships and a sense of belonging, identity and connection to culture and community;*

to achieve better life outcomes and realise their full potential.

This underpins the delivery of permanency actions under Priority 3 of the Fourth Action Plan.

As part of the national data reporting and evaluation framework to be delivered under Action 3.1 of the Fourth Action Plan, the Commonwealth and state and territory governments are seeking to establish additional permanency indicators, including measures for timely and informed decision making on permanency; and permanent, safe and stable care.

2(f) Key elements of a national framework regarded as essential for a uniform national law for adoption should **recognise that adoption from foster care is a viable option where a child has an established and stable relationship with an authorised carer and adoption will promote the child's welfare.**

Supported

The Australian Government supports the recognition that adoption from foster care is a viable option under these circumstances. It is noted that state and territory governments are responsible for assessing the suitability of adopting from foster care in individual cases, and making decisions that are in the best interests of the child. The national Permanency Outcomes Statement also recognises the importance of taking into account the views of the child.

2(g) Key elements of a national framework regarded as essential for a uniform national law for adoption should recognise **that decisions on whether a child may be able to safely return to their birth parent(s) must be made within a legislated timeframe, such as six months of an interim care order for children under two years old, or within 12 months for older children.**

Supported in principle

The Fourth Action Plan will deliver a national data reporting and evaluation framework to measure permanency outcomes. This includes a dedicated Permanency Indicator Report, to be released by the AIHW in 2019, subject to endorsement by Children and Families Secretaries. This will meet Community Services Ministers' expectations to publicly report on timeframes for permanent care decisions to better measure timeliness in ensuring children grow up in a family that is permanent, stable and safe.

The Fourth Action Plan also includes an action to further promote timely and consistent decision-making for permanency. This will involve a review of the legislation, policy and practice on timelines and processes for decision-making in each jurisdiction, to support a nationally consistent framework or approach to guide decision-making on permanency.

Adoption as a viable option for children in out-of-home care

3. The Committee recommends that, when it is determined that it is not safe for a child in out-of-home care to be reunified with their parent(s) or placed in the care of kin, **open adoption should be considered and progressed as a viable option in the best interests of the child.**

Noted

The Australian Government notes that this is a matter for state and territory governments.

The Inquiry Report (pp. 54-56) notes disagreement between different submissions about the evidence base for open adoption; that it is not appropriate for all children; and that there is a need for further research in the Australian context.

A range of factors is considered by states and territories to determine what is in the best interests of the individual child.

Policy and practice barriers to adoption

4. The Committee recommends that a national law for adoption provides for **'open adoption' unless exceptional circumstances make an open adoption inappropriate.**

Noted

The Australian Government notes this recommendation.

5. The Committee recommends that a national law for adoption provides **for integrated birth certificates** that include the names of both birth parents and adoptive parents, while conferring full parental and legal responsibility for adopted children on the adoptive parent(s).

Noted

The Australian Government notes that administration of births, deaths and marriages are matters for state and territory governments.

6. The Committee recommends that all states and territories **improve the administration of adoptions and reduce the complexity and length of adoption processes.**

Supported in principle

The Australian Government notes that this is primarily a matter for state and territory governments.

However, as noted in the Australian Government's response to Recommendation 2(g), the Fourth Action Plan includes an action to further promote timely and consistent decision-making for permanency. This will involve a review of legislation, policy and practice on timeliness and processes for decision-making, to support development of a nationally consistent framework or approach to guide decision making on permanency.

Evidence based decision-making

7. The Committee recommends that the AIHW continue to work with relevant Commonwealth, state and territory agencies to improve data collection on adoptions and child protection in Australia, including by:
- collecting unit record data rather than aggregate data;
 - agreeing on nationally consistent definitions;
 - collecting data on: timeframes for finalising adoptions, sibling separation, parental consent (including dispensation of consent), adoption of Indigenous children, adoption of children with disabilities and special needs, and long-term outcomes for all adoptees; and
 - maintaining registers of potential adoptive parents.

Supported in principle

The Australian Government acknowledges the important role of the AIHW in working with the Commonwealth, states and territories to improve national data on child protection and adoption.

The AIHW collects child protection and adoptions data provided by the responsible departments in each jurisdiction on an annual basis, under an agreement between the Australian Government and states and territories.

The AIHW provides technical expertise and works with relevant Commonwealth, state and territory agencies to improve the annual collection of child protection and adoptions data. This includes support to develop a national permanency data reporting and evaluation framework under the Fourth Action Plan to better measure permanency outcomes.

Work to develop the national data reporting and evaluation framework includes consideration of new priority permanency indicators and methodologies to achieve a better understanding of national permanency outcomes. Once finalised, this will be considered for endorsement by Children and Families Secretaries.

The pursuit of developments in national adoption and permanency data is contingent on the capacity, resourcing, and cooperation of relevant Commonwealth, state and territory agencies.