

FINAL REPORT: REVIEW OF THE DOMESTIC ADOPTION PROCESS IN THE ACT



ACT
Government

COMMUNITY SERVICES DIRECTORATE

FEBRUARY 2017

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1. Executive Summary

- 1.1. This report of the cross-directorate Domestic Adoptions Taskforce outlines current processes for domestic adoption in the ACT and identifies opportunities for improvement to achieve better outcomes for ACT families.
- 1.2. The findings and recommendations in this report have been informed by a review of information about adoption processes, consideration of developments in other jurisdictions and consultation with directorates. The Taskforce also received submissions from individuals and stakeholders wishing to share their experiences of the domestic adoption process and their views on the timely and appropriate completion of the process.
- 1.3. Both the research and consultation highlight the challenges that face the timeliness of the domestic adoption process in the ACT and identify solutions for what should be done to address these challenges.
- 1.4. With the focus of the Terms of Reference on the timely and appropriate completion of the domestic adoption process, the Taskforce reviewed policies and practices for domestic adoption in the ACT and factors that can affect timeframes in administering adoption processes. In addition, the Taskforce included consideration of broader permanency reform, adoption trends, as well as challenges in the child protection environment and community sector.
- 1.5. The report notes that there are areas where the adoption process is performing well and the strategic initiatives that are driving permanency reform in the right direction. Reform efforts across Australia focus on restoring or maintaining active contact with a child's parents, or maintaining a stable relationship with long-term carers to achieve permanency for children in the out of care system.
- 1.6. The ACT Government has implemented significant reform to improve permanency outcomes for children and young people in the ACT. *A Step Up for Our Kids – One Step Can Make a Lifetime of Difference 2015-2020* (Out of Home Care Strategy 2015-2020) (*A Step Up for Our Kids*) signalled the ACT's shift toward achieving better permanency outcomes for children and young people who remain in care.
- 1.7. *A Step Up for Our Kids* recognises the need to achieve permanency in a timely manner for children and young people who remain in long-term care. Legislative amendments have been implemented reducing the waiting period for a permanent care order (Enduring Parental Responsibility order) where a child or young person is in a stable long-term family from two years to one year.
- 1.8. Under *A Step Up for Our Kids*, more than half of all children and young people who are in out of home care in the ACT are in kinship care, living with relatives and broader

family. With an increased emphasis on permanency for children and young people the investment in permanency solutions will be enhanced, which may include additional adoption agencies as part of non-government agencies providing a continuum of care.

1.9. The Taskforce's recommendations broadly align with key government outcomes to improve social participation and to create a better service experience. The need for better collaboration and integration of services was identified in the Taskforce's research and consultations and is at the basis of the recommendations.

1.10. The Taskforce recommends work be undertaken to:

- identify key stages where communication with all parties should be supported by the development of a communication plan;
- improve availability of information online about the domestic adoption process;
- explore dispensation of consent provisions in the *Adoption Act 1993* to allow the ACT to better respond to the complexity of out of home care circumstances;
- support the provision of specialist resources within Child and Youth Protection Services to improve the assessment process and delivery of adoption services and support with, and between, government directorates and the community sector;
- continue to transition the delivery of permanency support services (includes planning, assessment and post-order support) to the community sector, as outlined under *A Step Up for Our Kids*; and
- explore integrated birth certificates to better support the recognition of both birth parents and adoptive parents and maintain the identity and heritage of children who are adopted.

1.11. The recommendations highlight areas of the domestic adoption process that could be enhanced to ensure the ACT is doing its best to promote the wellbeing and best interests of people who experience adoption. A number of improvements have been identified to strengthen the ACT's adoption processes and practices, ensuring that the needs of children and young people are paramount now and into the future.

2. Introduction

BACKGROUND

- 2.1. On 3 August 2016, the ACT Legislative Assembly agreed to a motion that established a cross-directorate Domestic Adoptions Taskforce (the Taskforce) to:
 - identify any issues and make recommendations regarding matters related to the timely and appropriate completion of the adoption process; and
 - report back to the Assembly by the last sitting day of February 2017 on the work of the Taskforce.
- 2.2. The Taskforce was established to review the timeliness of the adoption process to improve efficiency and better support people through the adoption process.
- 2.3. The Taskforce comprised officials from the Chief Minister, Treasury, Economic Development Directorate, Justice and Community Safety Directorate, ACT Government Solicitor and the Community Services Directorate.

SCOPE

- 2.4. The review of the adoption process set out to:
 - reflect on what is working in the adoption process and what needs to be improved;
 - examine the operation of the adoption process to assess its timeliness;
 - assess whether the current process appropriately protects children and young people;
 - assess whether policies and practices are efficient and effective; and
 - examine and make recommendations regarding possible amendments to the *Adoption Act 1993*, *Children and Young People Act 2008* and *Parentage Act 2004* to improve processes and timeframes to complete adoption applications.
- 2.5. The review does not include or consider:
 - the benefits or impacts of adoption practice generally;
 - whether adoption is a suitable permanent care option for children and young people in out of home care;
 - issues and processes relating to intercountry adoption. The review is limited to policy and procedural issues related to the time taken to complete applications in the domestic adoption process;

UNCLASSIFIED

- issues relating to intercountry adoption reforms by the Commonwealth Government and matters falling under the Commonwealth's obligations as set out in the *Commonwealth–State Agreement for the Continued Operation of Australia's Intercountry Adoption Program*;
- issues relating to adoption by same-sex and gender diverse couples; and
- issues relating to surrogacy in the ACT.

METHODOLOGY

- 2.6. A six-week public consultation was undertaken, supported by the publication of a discussion paper on the Community Services Directorate's website. Individuals and organisations made written submissions and provided verbal feedback to share their views, expectations and experiences regarding the timeliness of the adoption process.
- 2.7. Permission was sought from respondents to use de-identified quotes in the report to provide greater insight into the experience of people who have undergone the adoption process and protect the rights, interests and welfare of children and young people that information may relate.

ACKNOWLEDGEMENT

- 2.8. The ACT Government acknowledges the contribution of individuals, families and organisations who contributed to the development of the review including people who have been adopted, adoptive parents, carers, birth parents and representatives, out of home care services, staff of the Community Services Directorate and other government and community organisations.

3. Permanency

- 3.1. Permanency helps children and young people achieve emotional wellbeing and supports all dimensions of their development. Permanency allows children and young people in care to feel secure and allows children, young people and carers to enjoy autonomy as a family. Early consideration of permanency supports the best possible developmental outcomes for all children and young people, but particularly very young children.
- 3.2. In the ACT, permanency for a child can be achieved through either an adoption order made by the Supreme Court, or an Enduring Parental Responsibility (EPR) order made by the Childrens Court. For a variety of reasons, one order may be more suitable for a child or young person than the other. For each child and young person in care, consideration is required as to the best option given their individual circumstances.
- 3.3. Internationally, the *Convention on the Rights of the Child* provides that the best interests of the child should be a primary consideration informing decisions made concerning the child.¹ This is supported by the right to privacy and protection of family under the *Human Rights Act 2004* and the provisions of the *Children and Young People Act 2008*, including section 8 which states that the best interests of the child or young person is the paramount consideration. Any decision about the long-term care placement or adoption of a child will engage these rights and must be reasonable and proportionate. This includes considering, if possible, the views of the adopted person.

ADOPTION

- 3.4. In the ACT, adoption matters are governed by the *Adoption Act 1993* and the oversight and regulation of adoption practices and activities lies with the Community Services Directorate, with support from other agencies including the ACT Government Solicitor. The Supreme Court has jurisdiction over adoption proceedings in the ACT.
- 3.5. Adoption is a legal process that permanently transfers all the rights and responsibilities from a child's birth parent/s (or anyone with parental responsibility for the child) to their adoptive parent/s. A new birth certificate is issued for the child recording the name/s of the adoptive parent/s as the legal parent/s and, if given, the new name of the child.² The names of birth parents are not retained or recorded on the new birth certificate.
- 3.6. When considering adoption for a child or young person, birth parent consent is usually required. If the birth parent does not consent or cannot be found, an application can be made to the ACT Supreme Court for consideration of dispensation for the requirement

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990) Article 4.

² Australian Institute of Health and Welfare, *Adoptions Australia 2015-16*, Child Welfare Series No 65 (2016) 4.

of a parent's consent. The grounds for dispensation are outlined in section 35 of the *Adoption Act 1993*. The particular ground used for seeking dispensation will vary depending upon the circumstances of a given case and the advice of the Government Solicitor's Office who is responsible for filing the adoption application on behalf of the Director-General, Community Services Directorate.

- 3.7. The *Adoption Act 1993* provides that the Court may not make an adoption order in respect of an Aboriginal and Torres Strait Islander child, unless it is satisfied that the choice of adoptive parents has been made having regard to the desirability of the child being placed with a person from an Aboriginal community and whether the child will be able to maintain contact with its parents.³
- 3.8. Adoptions are categorised as intercountry or domestic (local or known) adoptions:
- *Intercountry adoption* occurs when an Australian citizen or permanent resident adopts a child or young person from overseas through authorities in the ACT.⁴
 - *Domestic adoption* occurs when a child or young person who was born or is residing permanently in Australia is adopted by parent/s that the child has no previous contact or relationship with (local adoption) or has a pre-existing relationship, such as a long-term carer, step-parent or relative (known adoption).⁵
- 3.9. A summary of key steps and timeframes associated with the domestic adoption process is at [Appendix B](#).

ENDURING PARENTAL RESPONSIBILITY

- 3.10. In the ACT, permanent care can also be achieved through an Enduring Parental Responsibility (EPR) order. EPR orders transfer daily and long-term parental responsibility from the Director-General, Community Services Directorate, to an approved carer without changing the legal identity of the child or young person. An EPR order is a provision within a care and protection order granted by the ACT Childrens Court.
- 3.11. EPR allows an approved carer to exercise all parenting functions for a child up until 18 years of age without the approval of the Director-General or approved Care and Protection Organisation (ACT Together). Carers are provided access to services and financial support, including carer subsidy payments, for their caring role. EPR provides an approved carer with all rights and responsibilities for a child, as if the child was adopted.
- 3.12. The *Children and Young People Act 2008* enables an EPR order to be considered for a child or young person when no one with parental responsibility for the child or young

³ *Adoption Act 1993*, s 21.

⁴ Australian Institute of Health and Welfare, *Adoptions Australia 2015-16*, Child Welfare Series No 65 (2016) 4.

⁵ Australian Institute of Health and Welfare, *Adoptions Australia 2015-16*, Child Welfare Series No 65 (2016) 4.

person has had care of the child or young person, and the child or young person has been living with a stated person under a care and protection order for:

- the year immediately before the order is made; or
- for a total of at least 1 year in the 2 years before the order is made; and
- the court must be satisfied that there is no reasonable prospect for the child or young person to be restored to birth family, that the current carers have the capacity to care for the child or young person and that it is in the best interests of the child or young person (now and in the future) for an EPR order to be granted.

OTHER ALTERNATIVES TO ADOPTION

3.13. In addition, two other alternatives to adoption exist:

Family Court Parenting Order

3.14. In many instances, a particular kind of Parenting Order under the *ACT Parentage Act 2004* (formerly known as guardianship order) is sufficient to formalise a relationship between step parent and the step child/ren. This kind of order does not result in changes to the child's birth certificate or give the child automatic inheritance rights, but will ensure that the step parent is able to participate in major decision making in the child's life and have particular legal responsibilities for the child's care.

Change of name by 'Deed Poll'

3.15. This is a process by which a person can acquire a different name without changing any aspects of his/her legal status. It does not alter the original birth certificate but makes the new name the legal name. Both legal parents need to agree in order to change the name of the child under the age of sixteen years. A child's name can be changed through the *ACT Births, Deaths and Marriages (Access Canberra)*.

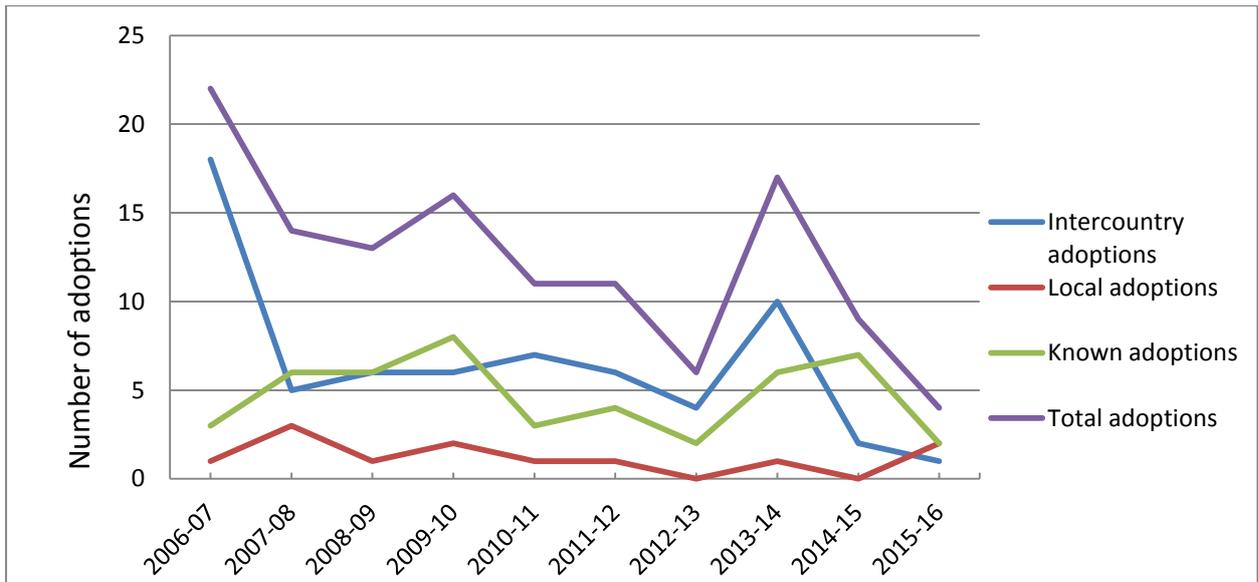
NUMBER OF ADOPTIONS

3.16. In 2015-16, 277 adoptions were finalised in Australia – a five per cent drop from 2014-15 and the lowest number of adoptions on record.⁶

3.17. The ACT has followed a similar trend to the national decline. In 2015-16, the ACT recorded its lowest number of adoptions with a total of four adoptions, down from nine adoptions in 2014-15 and 17 adoptions in 2013-14 (see Figure 1).

⁶ Australian Institute of Health and Welfare, *Adoptions Australia 2015-16*, Child Welfare Series No 65 (2016)13.

Figure 1: Adoptions in the ACT 2006-07 to 2015-16



Source: AIHW (2016) *Adoptions in Australia 2015-16*, Tables A1, A4, A13 and A19.

3.18. Of the four adoptions in 2015-16 all were domestic adoptions, with two local and two known adoptions, such as by a step-parent, other relative or carer. The four domestic adoptions were more than in South Australia (3), equal to the Northern Territory (4) and fewer than Tasmania (6) (see Figures 2 and 3).

3.19. As at 1 January 2017, there were approximately 11 adoption cases underway in the ACT that range from being at the initial consultation stage to the final stages in the adoption process.

Figure 2: Domestic adoptions in Australia in 2015-16

State/Territory	Local adoptions		Known adoptions		Total
	Number	%	Number	%	
New South Wales	10	22.2	97	64.2	107
Victoria	15	33.3	10	6.6	25
Queensland	9	20	13	8.6	22
Western Australia	3	6.7	22	14.6	25
South Australia	2	4.4	1	0.7	3
Tasmania	2	4.4	4	2.6	6
ACT	2	4.4	2	1.3	4
Northern Territory	2	4.4	2	1.3	4
Australia	45	100*	151	100*	196

* Percentages might not add to 100 due to rounding.

Source: AIHW (2016) *Adoptions in Australia 2015-16*, Tables A13 and A19.

3.20. Due to the small number of local adoptions nationally, changes at the national, state and territory levels should be interpreted with caution (Figures 2 and 3).

Figure 3: Number and rates of domestic adoptions in the ACT

	Total Adoptions	Intercountry Adoptions	Domestic (local/known) Adoptions	Rate* per 100,000 children and young people in the ACT population	Rate* per 100,000 children and young people in the Australian population
2013-14	17	10	7	8.3	3.9
2014-15	9	2	7	8.1	3.8
2015-16	4	0	4	4.7	3.9

* Rates are derived from domestic adoptions against the estimated population of children 0-17 years. Source: AIHW (2016) *Adoptions in Australia 2015-16*, Tables A13 and A19, and unpublished data.

- 3.21. An increasing number of EPR orders in the ACT represent a concerted effort to improve outcomes for children in out of home care, including through the use of permanent care orders. Figure 4 demonstrates that the rate of permanent care orders (total EPRs and adoptions) has increased by 30% over the last five years in the ACT.
- 3.22. In 2015-16, over 80% (22 of 26) of permanent care orders finalised in the ACT were EPRs. This reflects emphasis on providing permanency in placement for children in out of home care or foster care environments.
- 3.23. Of the 748 children in out of home care in the ACT at 30 June 2016, more than half (53%) were in kinship care living with relatives and broader family. This is increasingly the preferred permanent care option in providing a stable caring relationship, without the need to sever ties with the birth family. In such cases, adoption by relatives is not the preferred option because of the confusion it creates in birth family relationships. For example, a child adopted by grandparents would legally become their birth parent's sibling.
- 3.24. In addition, at 30 June 2016, 26% (197) of children and young people in out of home care in the ACT identified as Aboriginal and Torres Strait Islander. The majority (59%) are placed with kin or Aboriginal and Torres Strait Islander carers, in accordance with the placement priorities for Aboriginal and Torres Strait Islander children or young people.⁷

Figure 4: Number of permanent care orders in the ACT

Year	Enduring Parental Responsibility (EPR) orders			Adoptions						Total EPR and Adoptions
	Kinship care	Foster care	Permanent care***	Inter country	Local	Step parent	Foster Care	Kinship Care	Permanent care***	
2011-12	9	1	0	5	1	2	1	1	0	20
2012-13	3	11	1	4	0	1	1	1	0	22*
2013-14	5	3	2	10	1	3	3	0	0	27
2014-15	7	5	0	2	0	2	4	1	0	21
2015-16	10	10	2	0	2	1	0	0	1	26**
2016-17 (at 31 Dec 16)	3	1	0	1	0	0	3	0	0	8

⁷ *Children and Young People Act 2008*, ss 10 and 513.

* A discrepancy exists in 2012-13 between internal data above (7 adoptions) and AIHW data (6 adoptions) due to a counting difference between a placement and finalised adoption order.

** A discrepancy exists in 2015-16 between internal data above (0 intercountry adoptions) and AIHW data (1 intercountry adoption) due to the adoption not having been finalised by 30 June 2016, although the child was living in Australia.

***Permanent Care is where a child is in the permanent care of the Director-General and progressing towards EPR or adoption. Permanent care occurs where restoration to the child's birth parents is excluded as an option.

Source: Unpublished data, ACT Community Services Directorate.

PAST ADOPTION PRACTICES

3.25. Adoption in Australia is a sensitive process that elicits strong views due to the legacy of the stolen generation and forced adoption practices. While much has been done to repair this process, the consequences of these practices are far reaching, causing harm, anguish and suffering for those affected including mothers, fathers, people who have been adopted and other family members.

3.26. In 2012, the ACT Government acknowledged the pain caused by past adoption practices, officially apologised to all those affected, and made a commitment to providing support, counselling and assistance.

3.27. Adoption will not generally be considered for Aboriginal and Torres Strait Islander children and young people in the ACT. Most Aboriginal and Torres Strait Islander advocates do not support adoption of Aboriginal and Torres Strait Islander children or young people due to past abuses and because adoption changes a child's legal identity, severing legal connections to the birth family. Priorities for the placement of Aboriginal and Torres Strait Islander children and young people are set out in legislation.⁸

3.28. The *Children and Young People Act 2008 Act* provides a framework for specific considerations for the placement of Aboriginal and Torres Strait Islander children or young people. This includes the need to maintain connection with lifestyle, culture and traditions of the child or young person's community;⁹ consultation with particular Aboriginal and Torres Strait Islander people or organisations supporting the child or young person; and any traditions and cultural values identified by the child or young person's family and community.

3.29. Priorities for the placement of Aboriginal and Torres Strait Islander children and young people¹⁰ provide for the best interests of the child or young person to be demonstrated through a placement with:

- a kinship carer;
- a foster carer who is a member of the child's community in a relationship of responsibility according to local custom and practice;

⁸ *Children and Young People Act 2008*, ss 10 and 513.

⁹ *Children and Young People Act 2008*, s 10.

¹⁰ *Children and Young People Act 2008*, s 513.

- a foster carer who is a member of the child's community;
- an Aboriginal and Torres Strait Islander foster carer;
- a non-Aboriginal and Torres Strait Islander foster carer who is sensitive to the child or young person's needs, is capable of promoting ongoing contact with the child's family, community and culture and, if restoration is the goal, lives near the child's family or community.

OPEN ADOPTION

- 3.30. Contemporary adoption practices reflect a shift away from secrecy to open adoptions. All adoptions in the ACT are 'open', where the identities of birth parents are made known to children who are adopted and adoptive families. An open exchange of information and/or contact between the child and their birth parents/family is acknowledged as best practice.¹¹
- 3.31. Open adoption allows the child, adoptive parents and birth parents/family to know each other and the circumstances of the adoption. It also allows the parties to have contact with one another and exchange identifying information, to the extent that all parties agree. The degree of openness can be agreed upon by the child's birth family and the adoptive family and set out in an adoption plan.
- 3.32. Opportunities for ongoing contact are usually recommended and included in the child's adoption plan to maintain the child's understanding of their biological family background and develop their cultural identity. In cases where the birth parents/family do not have contact, access to identifying information about a person's birth family is available when the adopted person is 18 years old.

REFORM ENVIRONMENT

- 3.33. Since 2012, the ACT Government has implemented considerable reform, including a focus on improving permanency outcomes for children and young people in the ACT. *A Step Up for Our Kids – One Step Can Make a Lifetime of Difference 2015-2020* (Out of Home Care Strategy 2015-2020) (A Step Up for Our Kids) signalled the ACT Government's shift to achieving permanency in a timely manner for children and young people who are in long-term care.
- 3.34. *A Step Up for Our Kids* aims to reduce demand for out of home care places thus averting significant long-term costs to government and the community. It places a strong emphasis on preventing children and young people from entering care, reunifying them with their birth parents as quickly as possible and, where children and young people

¹¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990) art 9.

cannot go home safely, establishing them in permanent alternative family settings as quickly as possible.

- 3.35. Legislative amendments in the *Children and Young People Act 2008 Amendment Act 2015 (No 3)* were made to give effect to this focus by reducing the period of time a child or young person must be in care under before an EPR order can be made by the Court. The period of time has reduced from two years to one year, or a total of one year in the previous two years.
- 3.36. *A Step Up for Our Kids* also aims to improve outcomes for children and young people by providing more flexible, child-focused services. It seeks to strengthen relationships around the child or young person and allow decision making to happen as close to the child or young person's lived experience as possible. The strategy recasts the out of home care system as a therapeutically-oriented, trauma-informed system of care. It also aims to make the system safer, more effective, efficient, equitable and accountable and to improve its financial and social sustainability over the longer term.
- 3.37. The ACT demonstrates that reform efforts continue to provide children and young people with stable placements. The proportion of children and young people in out of home care who were placed with relatives or kin at 30 June 2016 was 53%. This is the second highest behind Victoria at 56% and is also above the national average of 49%.¹²
- 3.38. In addition, the ACT places a strong emphasis on keeping Aboriginal and Torres Strait Islander children and young people who are in out of home care with relatives or kin. At 30 June 2016, 59% of Aboriginal and Torres Strait Islander children and young people in out of home care were living with relatives or kin, compared to 51% of non-Aboriginal and Torres Strait Islander children and young people in out of home care.¹³

CHILD PROTECTION ENVIRONMENT

- 3.39. Understanding the context of timeliness in the adoption process is contingent on understanding that adoption in the ACT does not occur in isolation from other permanency processes. The suitability of adoption is affected by other processes in the child protection environment and is not immune to changing direction and pressures.
- 3.40. A sustained increase (123%) in child concern reports received occurred in the ACT from January 2014 to June 2016.¹⁴ These reports relate to the suspected abuse or neglect of a child and are made by mandated reporters, such as health professionals and teachers, or community members. This trend reflects a corresponding increase in all parts of the child protection system, including increases in the number of child protection reports

¹² *Report on Government Services – RoGS (2017) Volume F, Chapter 16, Child Protection Services, Table 16A.22.*

¹³ *Report on Government Services – RoGS (2017) Volume F, Chapter 16, Child Protection Services Table 16A.22.*

¹⁴ Unpublished data, (2016). ACT Government Community Services Directorate.

and appraisals (an investigation related to an assessed reasonable belief that a child may have experienced, is experiencing or is likely to experience abuse or neglect).

- 3.41. Heightened community awareness of child protection due to a series of high-profile tragic local events, the Victorian *Royal Commission into Family Violence* and the *Royal Commission into Institutional Responses to Child Sexual Abuse* have also increased the number of cases that come to the attention of child protection authorities in the ACT and nationally.
- 3.42. In recent years in the ACT, policy settings have prioritised mandated reporting of reportable conduct, therefore it is anticipated that more children may be brought to the attention of child protection authorities.
- 3.43. The overall impact of increasing referrals to child protection services is that less urgent work is likely to experience delays, including long-term permanency planning and domestic adoptions.

COMMUNITY SECTOR CAPACITY

- 3.44. Community organisations have only recently considered taking responsibility for adoption processes in the ACT, as part of the shift toward community organisation engagement under *A Step Up for Our Kids*.
- 3.45. Community organisations do not currently specialise in the provision of adoption services in the ACT and do not have capacity to fully support adoption. Community organisations are also yet to reach capacity to be effective in the legal decision making process. Current legislation allows for agencies to seek to become an adoption agency, however, no application has been received.

4. Developments in other jurisdictions

- 4.1. Reform efforts to achieve permanency for vulnerable or at-risk children across Australia have focused on restoring or maintaining active contact with a child's parents, or maintaining a stable relationship with a long-term carer/s.
- 4.2. Most jurisdictions allow the making of permanent care orders that provide security of placement with a foster or kinship carer and have policies that create permanency plans when there is no foreseeable likelihood of a child being able to safely return to the care of their parents.
- 4.3. New South Wales¹⁵, Victoria¹⁶, Queensland¹⁷, South Australia¹⁸ and Western Australia¹⁹ have recently reviewed their adoption legislation. These states are in varying stages of

¹⁵ *Child Protection Legislation Amendment Act 2014* (NSW).

¹⁶ *Adoption Amendment (Adoption by Same-sex Couples) Act 2015* (VIC).

developing or implementing major reforms to the adoption process, with a notable focus on extending eligibility criteria to include same-sex couples. In the ACT, same-sex couples are eligible to adopt a child or young person.²⁰

- 4.4. New South Wales introduced amendments in 2014 introducing ‘permanent placement principles’ and making it easier for foster carers to adopt children who cannot be returned to their birth parents.²¹ The amendments provide for two pathways to permanent care for a child or young person in out of home care, known as ‘dual authorisation’.
- 4.5. Dual authorisation allows for a carer to adopt the child in their care or to be authorised as both a foster carer and a prospective adoptive parent through a single assessment process.²² Theoretically, this should reduce the length of time the adoption process takes, as foster carers will not need to be reassessed should they wish to adopt a child who has been placed in their care (for more than two years).
- 4.6. Victoria has implemented guiding adoption principles and has a ‘permanency objective hierarchy’.²³ This places adoption ahead of other forms of care including permanent care and long-term out of home care.²⁴ Victoria’s adoption laws are currently under review by the Victorian Law Reform Commission due to report in February 2017.

5. Public consultation

- 5.1. The ACT Government conducted a six-week consultation process from 30 September 2016 to 11 November 2016, with extensions granted by request. The process was designed to seek feedback from people who had been adopted, families who had adopted in the past five years, families currently going through the adoption process, birth parents, and relevant stakeholders such as academics, community organisations and advocacy groups.
- 5.2. Feedback was sought through written submissions in response to a discussion paper that identified questions about timeliness in the adoption process. A total of 29 submissions were received comprising 22 written and seven verbal submissions.

¹⁷ Review of the operation of the *Adoption Act 2009* (2016). Queensland Government.

¹⁸ Hallahan, L. (2015). *Adoption Act 1988 (SA) review*, Adelaide: Flinders University.

¹⁹ Review of the *Adoption Act 1994* (2007). Government of Western Australia.

²⁰ *Adoption Act 1993*, ss 14 and 18(1).

²¹ *Child Protection Legislation Amendment Act 2014* (NSW).

²² NSW Government, Family and Community Services, *Open adoption of children in out of home care*, October 2014, http://www.facs.nsw.gov.au/_data/assets/file/0012/302430/3355_FACS-SafeHomeForLife_OpenAdoption.pdf (accessed September 2016).

²³ Victoria State Government, Health and Human Services, *Identifying and achieving the permanency objective*, September 2016 <http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/case-planning/identifying-and-achieving-permanency-objective> (accessed January 2017).

²⁴ Children, Youth and Families Act (2005) (VIC) s 167 (came into effect March 2016).

- 5.3. Submissions were received from people who had been adopted, birth families, families who had adopted or were currently going through the adoption process, academics, local community organisations, advocacy bodies and interstate organisations.

6. Domestic adoption themes

- 6.1. Consultation findings and a review of the adoption process identified a number of key themes that individuals and stakeholders highlighted as being important to improve the timely and appropriate completion of the domestic adoption process, and continue to provide for the wellbeing and best interests of people who are adopted.
- 6.2. While timeliness in the adoption process is important, it is also equally important that the process guiding adoption orders is robust, considered and transparent for all parties involved. The impact of a failed adoption is significant; this results in further trauma to all parties involved and can diminish the long-term outcomes for children and young people.

COMMUNICATION

- 6.3. Communication and access to adoption information was a common theme expressed by individuals and stakeholders who participated in the consultation. Respondents noted the need for a frank, open discussion about the adoption process and suggested that agreed communication plans could help to improve their adoption experience.
- 6.4. Respondents noted that instances of communication breakdown impacted the transparency of the system and respondents' understanding of the system, and caused emotional stress and frustration to respondents. Improving communication and information regarding the adoption process emerged as a priority in understanding delays in the adoption process.
- 6.5. Many respondents recognised the balance required between the need to be trauma-informed and providing realistic timeframes for each stage of the adoption process. Some respondents expressed concern about expediting the adoption process, and whether this would impact the child or young person's best interests. Others felt that not having an understanding of realistic timeframes caused stress and frustration:
- "my husband and I simply wanted a timeframe. Were we talking weeks, months, or possibly a year plus? [The directorate] was not able to give me any timeframe at all."*
- 6.6. Respondents reported that if they had been better informed about the process, including where delays would likely occur, and if those delays had been communicated, a great deal of stress and frustration could have been avoided.
- 6.7. Respondents also recognised that the consent stage of an adoption process is often necessarily time-consuming. It is, however, not the delay itself which causes frustration,

but rather the minimal reporting on progress that parties to an adoption receive. One respondent commented:

“our communication with the agencies and the [directorate] involved was not a negative experience. It just wasn’t proactive.”

- 6.8. Respondents reported a lack of consistency in the understanding of the adoption process. This was often exacerbated by a lack of communication between areas of government, including where there were large case loads for case workers and solicitors, and high turnover of staff. As one respondent noted:

“there was often confusion about what the next step in the process would be, and how long it would likely take.”

- 6.9. Many respondents felt that the communication received from ACT Government agencies and community organisations was irregular, lacked information, or was not forthcoming unless respondents repeatedly requested it. This included instances where agencies were unaware of the progress of cases, did not provide meaningful progress reports to parties and were unable to negotiate timeframes for completion of different stages of the process. Delays were often expected, however extensive delays without justification or communication often emerged as points of frustration.

- 6.10. Respondents stated that:

“over the past 14 months I consider the communication between Barnados, CYPS, the ACTGSO and us to be almost non-existent.”

“there certainly appears to be difficulties in communication between the agencies and across jurisdictions, and they are sometimes unsure of each others’ practices.”

ASSESSMENT PROCESS

- 6.11. Processes for suitability and assessment of applicants were viewed by some respondents as prolonged, repetitive and underpinned by duplication and inconsistent levels of support. On the other hand, a number of responses supported the robustness of the assessment process, recognising the need to ensure a comprehensive assessment of prospective adoptive parents.

- 6.12. Some participants expressed an overall positive experience of the process: *“My experience of navigating through the system was very positive overall”*, while others made reference to the assessment process needing to be *“expedient, effective and efficient”* with the support of additional resources.

Consultation

- 6.13. The decision to seek an adoption is a serious and life changing decision. It is imperative that such an important step in a child's life is made with the child at the centre and their best interests and needs paramount.
- 6.14. When a child comes under a care and protection order before adoption,²⁵ the child's care team may undertake concurrent planning, where a permanency plan is developed in addition to other care planning.
- 6.15. The out of home care adoption process begins when foster parents ask for a permanent order for the child in their care, or when the child's care team identify that a permanent order would be in the child's best interest.
- 6.16. A permanency consultation will take place following the decision to proceed with adoption. This process can take up to four weeks to occur during which a number of consultations may occur if there are issues or concerns to be resolved, including contact with birth family and the stability of placement.

Assessment

- 6.17. Following a permanency consultation, a permanency assessment is undertaken. This assessment is in addition to any foster care assessment already undertaken. Carers complete an adoption application providing detailed personal information, including financial and medical history, criminal history checks and character references.²⁶
- 6.18. The assessment process may take anywhere from six to eight weeks, or longer if there are unforeseen complications, to allow for necessary information to be gathered and discussions to occur with all family members, including the child or young person.
- 6.19. The assessment process determines whether a permanent order is in the child's best interest and if so, whether EPR or adoption is most suitable. The foster parents, the birth parents and the child's views are considered in this decision making process.²⁷
- 6.20. A concern raised by individuals who commented on the assessment process was the perceived duplication in re-telling family histories and providing required documentation. This view was reflected primarily in the experiences of foster carers:
- "The application process for adoption from Out of Home Care is unnecessary and inefficient... the process has involved unnecessarily writing up, again our life story and history. The process to become a foster parent was rigorous and we continue to be monitored while we provide ongoing care."*

²⁵ Adoption Act 1993, s 35A.

²⁶ Adoption Regulation 1993, s 4.

²⁷ Adoption Act 1993, s 35B.

6.21. Similarly, another participant noted:

“Foster parents who have been approved and granted a specific parenting authority to care for a child on 18 year orders should not have to undergo additional interviews, panels, applications, unnecessary questions, like how has your life changed since the child came into your care, how has your relationship changed. These things are observed and spoken about over the months and years the child is placed in their care through review of arrangements, meetings and linking panel.”

Endorsement

6.22. If the permanency assessment process recommends adoption, a report is presented to the Carer Assessment and Linking Panel (CALP) and subsequently to the Application Review Committee (ARC) for endorsement. Once the CALP and ARC endorse the recommendation of adoption, the assessment of the carer family is complete, and the carer/s will be placed on the list of suitable people.²⁸ This process can take anywhere from five to twelve weeks.

6.23. Overall, the minimum timeframe for the assessment process is 6 to 12 months or longer if unforeseen complications arise when undertaking the permanency process.

CONSENT AND DISPENSATION PROCESSES

6.24. Adoption legislation across all states and territories contains statutory requirements to obtain informed and voluntary consent from a parent of the child or young person to be adopted. At a minimum, the birth mother of the child must give consent where presumptions about parentage do not apply²⁹. Consent is sought through the provision of relevant information together with professional counselling to enable consent to be informed and voluntarily given by the parent.³⁰

6.25. An adoption order must not be made for a child or young person unless consent to the adoption has been given by birth parent/s or guardians.³¹ Obtaining the consent of the birth parents for an adoption takes a minimum of six to eight weeks. In order to give consent, a birth parent must first sign an ‘instrument of consent’, or specific form giving their consent.

6.26. In the case of out of home care adoption, the Director-General’s (Community Services Directorate) consent to proceed with the adoption must be sought. The Director-General’s permission is sought concurrently with consent from the child or young person’s birth parents.

²⁸ *Adoption Act 1993*, s 18.

²⁹ *Parentage Act 2004*, ss 7-11

³⁰ *Adoption Act 1993*, ss 26-30.

³¹ *Adoption Act 1993*, s 26.

- 6.27. Consent forms cannot be signed by a birth parent until 14 days after it was received by that parent. Once consent has been given, there is a legislated period of 28 days, or 42 days if the birth parents apply for an extension, within which consent can be revoked.³² No formal action to progress the adoption application can occur until this period ends.
- 6.28. The process of seeking parental consent must be attempted prior to an application to the Supreme Court to proceed without consent in every instance. If consent is given the adoption application will normally proceed without significant issue. These adoptions are usually processed and finalised within 12 months.
- 6.29. If consent is not given or is unable to be sought, for example, because a birth parent cannot be located after all reasonable enquiries have been made, the process can become more complex.
- 6.30. Respondents recognised the importance of the consent process, particularly to prevent practices of past forced adoptions, and expressed a need for greater support to enable informed consent. This includes providing education and resources, which are demonstrably effective, to enable a frank and emotionally adept conversation.
- 6.31. One respondent commented that:
- “there is a lack of suitable information available in Australia, including the ACT, on child-rearing as well as adoption measures for parents making a consenting choice.”*
- 6.32. A common concern among respondents who commented on the consent process was the perceived lack of focus on support for birth parents. This view was put forward by community advocacy groups, for example:
- “We do not see ‘capacity’ as being taken into account when the general consensus of CYPs and the ACT Government is a presumption that a parent with disability is unable to understand or exercise capacity at all.”*
- 6.33. Furthermore, the needs of parents with disability should be supported to enable family restoration, but also with regard to adoption:
- “women with disabilities who are parents, or who are seeking to become parents, report difficulty in accessing appropriate information, services and support.”*

Dispensation of consent

- 6.34. Australian jurisdictions provide that in circumstances where the birth parent does not consent or cannot be found, an application can be made to the court for consideration of dispensation for the requirement of a parent’s consent. Dispensation is a legal

³² Adoption Act 1993, s 31.

process by which a court may declare that the consent of a parent is not required for an adoption order to be granted.

- 6.35. In the ACT, grounds for dispensation applications are set under section 35 of the *Adoption Act 1993*. The particular ground used for seeking dispensation will vary depending upon the circumstances of a given case and the advice of the Government Solicitor's Office who is responsible for filing the adoption application on behalf of the Director-General, Community Services Directorate.

Section 35 Dispensing with consent

(1) On application, the court may, by order, dispense with the requirement for consent of a person to the adoption of a child or young person if the court is satisfied that—

- (a) the person cannot, after reasonable inquiry, be identified or located; or
- (b) the physical or mental condition of the person is such that he or she is not capable of considering properly the question whether consent should be given; or
- (c) the person has abandoned or deserted, or has neglected or ill-treated, the child or young person; or
- (d) the person has, for a period of not less than 1 year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian, as the case may be, of the child or young person; or
- (e) there are any other circumstances that justify the requirement for the consent being dispensed with.

Complexity in dispensation and delays

- 6.36. Dispensation of a birth parent's consent to an adoption takes necessary time to allow birth parents to fully consider their options and ultimately their decision. Decisions about the permanent removal and adoption of a child are complex. Ensuring that adoption is in the best interests of the child takes time and is often affected by complex family-based issues and organisational procedural requirements.
- 6.37. The dispensation of consent process, when it is required, is where the greatest delays occur and may take up to three years to resolve, significantly delaying the adoption outcome. Complex matters involving the dispensation of consent may cause delays where all reasonable enquiries are required to process an adoption application. For example, delays can occur where multiple partners have been identified by the birth mother and limited information is available about the location, identity and paternity of the possible birth father.
- 6.38. In complex adoption cases, a birth parent may refuse to engage with the process or the child's life, or deny that abuse or neglect of their child has occurred and refuse to consent to the adoption on the basis that the removal of their child is unjustified. In situations where birth parents may be non-cooperative, potentially resulting in

increasing time delays, tension may exist between the rights of birth parents and the child.

- 6.39. In other situations, a relationship breakdown between the birth parents and prospective adoptive parents might occur and the ability to develop an adoption plan to address issues relating to future contact arrangements and information sharing between parties can be delayed. Delays can occur when agreement is unable to be reached and work is required to repair the relationship between the parties to be able to finalise the adoption plan.
- 6.40. Procedures that the Supreme Court must abide by when presiding over a complex application for adoption can contribute to delays. The Court requires evidence to be presented to dispense with consent and, in some cases, this evidence is difficult to obtain. For example, where there is a death of a birth father and paternity has not been identified.
- 6.41. Timeliness in the dispensation of consent process was a concern for some respondents, particularly foster carers and adoptive parents, as one respondent stated:
- “we are unable to understand how 18 months of inquiry cannot be sufficient to satisfy a Court that “reasonable inquiry” has been made, especially in the case of a young person rapidly approaching adulthood who is willing and able to speak to the judge herself and continues to advocate for her own adoption.”*

Limited dispensation provisions

- 6.42. Current dispensation of consent provisions in the *Adoption Act 1993* (section 35) are more restrictive than several other Australian jurisdictions (see [Appendix C](#)). The provisions are limited in scope and no longer respond to the complex nature of adoption in the ACT, often resulting in time delays. These provisions have not been substantially amended or updated since 1993.
- 6.43. Provisions do not specifically consider domestic and family violence history when determining the dispensation of consent. Processes are required to strengthen the ability to apply for dispensation in domestic or family violence circumstances where the safety of either the child or birth parent would be at serious risk if the other birth parent or relative were to be informed of the adoption.
- 6.44. At present, children and young people in the ACT are unable to consent to adoption or override parental consent without satisfying one of the five grounds of section 35 of the *Adoption Act 1993*. A risk is that children and young people’s views and rights can be overshadowed by other parties, especially when a child has limited participation in formal proceedings.

- 6.45. Respecting the views of children and young people is important where the child or young person expresses different views than their birth parents or adoptive parents and exercises the necessary maturity to understand the implications of their views. However, specifying an age that is appropriate undermines the fact that maturity in understanding the implications of adoption can be apparent in children across age groups, ranging from 8 years to 16 years old and above.
- 6.46. Further consideration is required to whether current legislative provisions for the dispensation of consent provide flexibility while upholding the rights and interests of children and young people in the adoption process. Any proposed changes would require significant consultation with relevant stakeholders given that additional provisions allowing adoption without consent is a significant limitation on the rights to protection of family and children.

Possible areas for reform

- 6.47. Changes to dispensation requirements to better respond to the complexity of out of home care circumstances and to align with other jurisdictions should be considered (see [Appendix C](#) for a summary of dispensation of consent provisions across Australia).
- 6.48. Consideration should also be given for a support-focused dispensation process to reflect the complexity of adoption and respond to circumstances where birth parents may be willing but not able to discharge their parental responsibilities.
- 6.49. A support-focused dispensation process enhances the rights of the birth parents, while ensuring the best interests of the child are upheld. It moves away from a 'point in time' capacity assessment without reference to support mechanisms. Support-focused decision-making assesses the skills and capabilities of a birth parent but also whether supports are available, appropriate and in use, or whether circumstances require such intensive support that the best interests of the child and young person might be compromised.

SERVICE RESPONSIVENESS

- 6.50. Resourcing challenges, including high turnover of staff and limited resources, emerged as a common message from respondents. Many respondents attributed resourcing challenges to staffing, which often translated to low priority being given to adoption applications in comparison to other child protection matters.

“Throughout our adoption process we have had numerous people working on our case. This included staff from Barnardos, CYPs and the ACTGSO. Over the 12-month period that the adoptions section has been responsible for the completion of our adoption, there have been a number of changes in the staff working in the CYPs adoptions unit.”

6.51. Additional resourcing is seen as a key driver to reduce delays and provide more support during and following the adoption process. Resourcing challenges were clearly reflected in one respondent's experience:

"throughout our experience, we were assisted by some very competent caseworkers that were positive and very pleasant to deal with. We felt, however, that they were all stretched beyond capacity and that our situation was not a priority."

6.52. Several respondents said they felt that adoptions were not a Directorate priority, and that this was exacerbated when staff had high caseloads or there were insufficient staff. One respondent noted:

"I kept hearing that adoption 'is not a priority' in a heavy caseload."

6.53. The same respondent further noted:

"I submitted the application in January 2015, and was informed that the agency was so under resourced they did not have capacity to even consider or commence my application in 2015."

6.54. Another respondent commented on the frustrations they experienced as a result of resourcing; they found it difficult to schedule appointments when staff were available and experienced delays in reports being written due to staff absences. Respondents suggested these issues could be assisted by more funding to:

"support case workers and managers [who] already experience heavy caseloads. More case workers and support to ease the burdens and stresses to ensure staff retention and follow through on cases."

6.55. Another felt that the frequent changes in caseworkers contributed to delays in their application and work being misplaced or forgotten.

"Because of the many changes in caseworkers, it was later discovered that a referral to the Government Solicitor's Office had been forgotten or misplaced and nobody had noticed for a length of time."

6.56. Respondents also suggested that interruptions to the adoption process due to administrative delays prevent advocacy and community organisations from providing appropriate support to clients.

6.57. In addition to ensuring sufficient staffing capacity, respondents also recommended that government agencies and community organisations take steps to recruit, train and retain specialised workers. These staff would ideally specialise in the area of permanency planning.

SUPPORT SERVICES

- 6.58. Several respondents who commented on the adoptions process expressed concerns about the level of pre-adoption, post-adoption and ongoing support for all parties. Irrespective of timeframes, those involved in the adoption process will likely experience some level of stress and difference of opinion. Respondents reported that wrap-around supports are needed to better manage the adoption process experience.
- 6.59. Post adoption support services are available depending on the individual need and requirements of the child or young person and the family. Post-order support is usually time limited, for example to assist with a particular task or period of crisis, and may include making appropriate referrals to community support services, additional support around birth family contact and assistance to undertake a Freedom of Information request.
- 6.60. Supporting birth parents to enable informed consent is a message put forward by many respondents. This includes providing education and resources, which are demonstrably effective, to enable a frank and emotionally adept conversation. One respondent commented that, unfortunately:
- “there is a lack of suitable information available in Australia, including the ACT, on child-rearing as well as adoption measures for parents making a consenting choice.”*
- 6.61. An element of continuing support includes informing the birth family of progress in the adoption process and confirming with the adoptive family that this has occurred, prior to further contact.
- 6.62. One respondent reported potential confusion with legislative frameworks in relation to the decision making capacity of parents with a disability. Specifically, the respondent reported disparities between:
- “the Adoption Act 1993, the Children and Young Peoples Act 2014 [sic] and the Guardianship and Management of Property Act 1991 where the guidelines between decision-making capacity for a parent with disability, and the role of their guardian are ill-considered and confusing”.*
- 6.63. Another respondent commented that caseworkers were often unaware of the full spectrum of applicable legislative frameworks that may affect the adoption process. In particular, one respondent experienced delays in the consent stage as the caseworker was unaware of the implications of the *Parentage Act 2004* (ACT) when the birth mother was married at the time of birth:
- “coming to this conclusion after several years of an adoption process is not acceptable and resulted in unnecessary wastage of resources and time.”*

6.64. Furthermore, an issue was raised around the need for independent and appropriately qualified counsellors to be available to all those involved in the adoption process. Counsellors who are trained to address the emotional and experiential effects of the adoption process will increase the support for all parties to an adoption and provide an added level of confidence.

BEST INTERESTS OF THE CHILD

“My primary message is that the domestic adoption process must be firmly child focused”.

6.65. All submissions emphasised the importance of considering the rights and wishes of children and young people in decision making, and ensuring their best interests are upheld. Respondents particularly urged the review to ensure the views of the child or young person are given appropriate consideration throughout the adoption process.

6.66. One respondent soundly articulated this message:

“[we must ensure] that children have a real say about decisions that are made about them as per the Convention on the Rights of the Child. Protecting children’s rights involves facilitating their full participation in decision-making”.

6.67. A number of submissions supported upholding the *Convention on the Rights of the Child 1989* in the adoption process, giving particular attention to Article 9 that states that in any proceedings relating to a child being separated from their parents:

“all interested parties shall be given an opportunity to participate in the proceedings and make their views known.”³³

6.68. While respondents were keen that the best interests of the child remain at the centre of any adoption process, one noted that this need not slow down the process:

“we strongly believe that any process that leads to providing a child or young person with a safe, secure, loving and supportive permanent home should be thorough and all decisions made correctly and without doubts. It need not automatically translate to a lengthy process, particularly if efficiencies can be made to that process”.

6.69. Advocacy groups, community organisations and academics reported the need to improve investment directed toward researching long term effects and outcomes of domestic adoption in Australia. The collection and integration of data into government policies and procedures to inform research analysis that is independent and longitudinal in nature was also recommended.

³³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990) art 9.

7. Additional issues

- 7.1. Other relevant issues about adoption that were raised in the consultation relate to nationally consistent adoption legislation, integrated birth certificates and *Finn's Law* (SA).

NATIONALLY CONSISTENT LEGISLATION

- 7.2. Several responses commented on the value of nationally consistent adoption legislation, or at least transferable adoption procedures to reduce restrictions for people who express an interest in adoption in more than one jurisdiction. This is currently not facilitated as the *Adoption Act 1993* requires people expressing an interest in adoption to be a resident of the ACT.³⁴
- 7.3. Most jurisdictions (VIC, TAS, QLD and WA) do not facilitate cross-border adoptions. An applicant must be a resident of the jurisdiction to be eligible to adopt.

INTEGRATED BIRTH CERTIFICATES

- 7.4. The provision of integrated birth certificates that record details of both the adopted person's biological parents and their legal/adoptive parents was raised by a number of individuals and stakeholders, as a means of recognising the adopted person's birth family and adopted family.
- 7.5. Several respondents highlighted the importance of identity and recommended the use of integrated birth certificates as a way to reduce trauma and retain genealogical connection between an adopted child and their birth family. The current practice of producing two birth certificates can cause confusion and difficulty in accessing records, and may cause anxiety and distress for children involved.
- 7.6. Integrated birth certificates align with ensuring the child or young person retains their connection to biological identity, and original language, culture and religion. Recommendation 13 of the Senate Community Affairs Committee Inquiry states that "all jurisdictions adopt integrated birth certificates".³⁵
- 7.7. In the ACT, the *Births, Deaths and Marriages Registration Act 1997* facilitates a new birth certificate when an adoption order has been finalised. The new birth certificate does not include details about the child's original legal identity.
- 7.8. Adopted people in New South Wales can request an integrated birth certificate in the form of an 'adopted person's birth record'.³⁶ It contains details of the adopted person's

³⁴ *Adoption Act 1993*, ss 9, 10 and 13.

³⁵ Parliament of Australia, Senate Community Affairs Committee Inquiry, *Out of home care*, 19 August 2015.

³⁶ Government of New South Wales, Registry of Births Deaths and Marriages, *Birth Certificate Content Review* <http://www.bdm.nsw.gov.au/Documents/BDM-birth-cert-review-2014.pdf> (accessed January 2017).

birth information and a record of their adoption. Western Australia also provides integrated birth certificates for people who are adopted.³⁷

FINN'S LAW (SA)

- 7.9. Two respondents took note of South Australia's *Finn's Law 2015*, which commenced in September 2016. Finn's Law changed the rights of foster parents and guardians when a child passes away.³⁸ Specifically, it allows foster carers and guardians to be recognised on death certificates and to have the right to make funeral arrangements. The law is intentionally flexible to ensure the views and rights of both biological parents and carers are considered.
- 7.10. It is important to consider the issue, particularly because the *Children and Young People Act 2008* does not include information about parental responsibility when a child on a care and protection order dies. A foster parent does not have legal rights in the ACT following the death of a child in their care, as parental rights revert to the biological parents and family.
- 7.11. *A Step Up for Our Kids* includes initiatives that strengthen supports for carers, including establishing an independent carer advocacy service to assist carers to resolve issues that arise with Child and Youth Protection Services.
- 7.12. There is no current proposal to extend the rights for foster carers in South Australia in a nationally consistent way.

8. Recommendations

- 8.1. The Taskforce recommends that a number of operational improvements should be implemented or considered for further or future action. These actions have the potential to further develop the ACT's adoption practices to ensure that they continue to meet the needs of individuals requiring adoption now and into the future.
- 8.2. The recommendations outlined below respond to the key findings of the review: communication and access to adoption information, the assessment process, consent requirements, service responsiveness and support services.

Improve communication

- 8.3. The Community Services Directorate should develop materials to enhance communication between teams, directorates and individuals going through the adoption process. Options include communication plans and education to enable

³⁷ Government of Western Australia, Department for Child Protection, *Information about Adoption: Obtaining adoption information*, <http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx> (accessed January 2017).

³⁸ *Statute Amendment (Rights of Foster Parent, Guardians and Kinship Carers) Act 2016* (SA).

progress reporting and more frequent and appropriate communication from the Directorate, and to improve the accessibility and availability of adoption information.

Streamline the assessment process and reduce duplication

- 8.4. The Community Services Directorate should explore options to reduce duplication in the assessment process without compromising the quality of the assessment. This may include enhancing concurrent planning processes to account for additional requirements for EPR orders and adoption. This action will help to ensure that individuals only have to tell their story once and receive the support they need.

Explore consent requirements

- 8.5. The Community Services Directorate and Justice and Community Safety Directorate should explore possible legislative amendments to dispensation of consent provisions (i.e. section 35 of *Adoption Act 1993*) to align with ACT Government obligations, reform priorities and provisions in other jurisdictions, and to better respond to the complexity of out of home care circumstances.
- 8.6. Consultation will be necessary with all relevant stakeholders to determine the appropriate balance between protecting the rights of the birth parents and the best interests of children in challenging out of home circumstances. This will also include ensuring that any changes are in line with enhancing permanency under *A Step Up for Our Kids*.

Enhance support and service responsiveness

- 8.7. The Community Services Directorate should continue work to further transition the delivery of permanency support services (includes planning, assessment and post-order support) to the community sector, as outlined under *A Step Up for Our Kids*. Concurrently, the Community Services Directorate should continue to develop specialist staff in adoption to improve delivery of services and support with, and between, government directorates and the community sector. This will require additional resources and further support to improve community sector capacity, if concurrent assessments are to occur.

Consider additional issues

- 8.8. The Community Services Directorate, Justice and Community Safety Directorate and Access Canberra should explore whether the ACT could issue integrated birth certificates to better support recognition of both birth parents and adoptive parents to maintain the identity and heritage of children who are adopted. This may include understanding other jurisdictions' policy, assessing the practical implications of

introducing integrated birth certificates and whether integrated birth certificates would be a viable option in the ACT context.

- 8.9. The introduction of integrated birth certificates will require amendment to the ACT *Births, Deaths and Marriages Registration Act 1997*.

9. Next steps

- 9.1. The Taskforce notes that the ACT Government will consider the findings and recommendations of the review, including policy, practice and legislative changes that are required to improve timeframes in the domestic adoption process.
- 9.2. The Taskforce also notes that the ACT Government will continue to contribute to national discussions and work regarding nationally consistent adoption legislation.
- 9.3. Ensuring the best interests of the child, including determining whether adoption is the most appropriate path to permanency, is a process that cannot be rushed. Timeliness, however, is an important component in ensuring the best interests of the child or young person are met and achieving better outcomes for ACT families.

10. Appendix A: List of relevant reports

ACT Government. (2015). *A Step Up for Our Kids – One Step Can Make a Lifetime of Difference 2015-2020* (Out of Home Care Strategy 2015-2020).

Australian Government. (2013). *Australian Government response to the Senate Community Affairs References Committee report: Commonwealth Contribution to Former Forced Adoption Policies and Practices*. Canberra: Attorney-General's Department.

Australian Government Productivity Commission (2017). *Report on Government Services – RoGS (2017) Volume F, Chapter 16, Child Protection Services*.

Australian Institute of Health and Welfare. (2016). *Adoptions in Australia 2015-16*. Canberra.

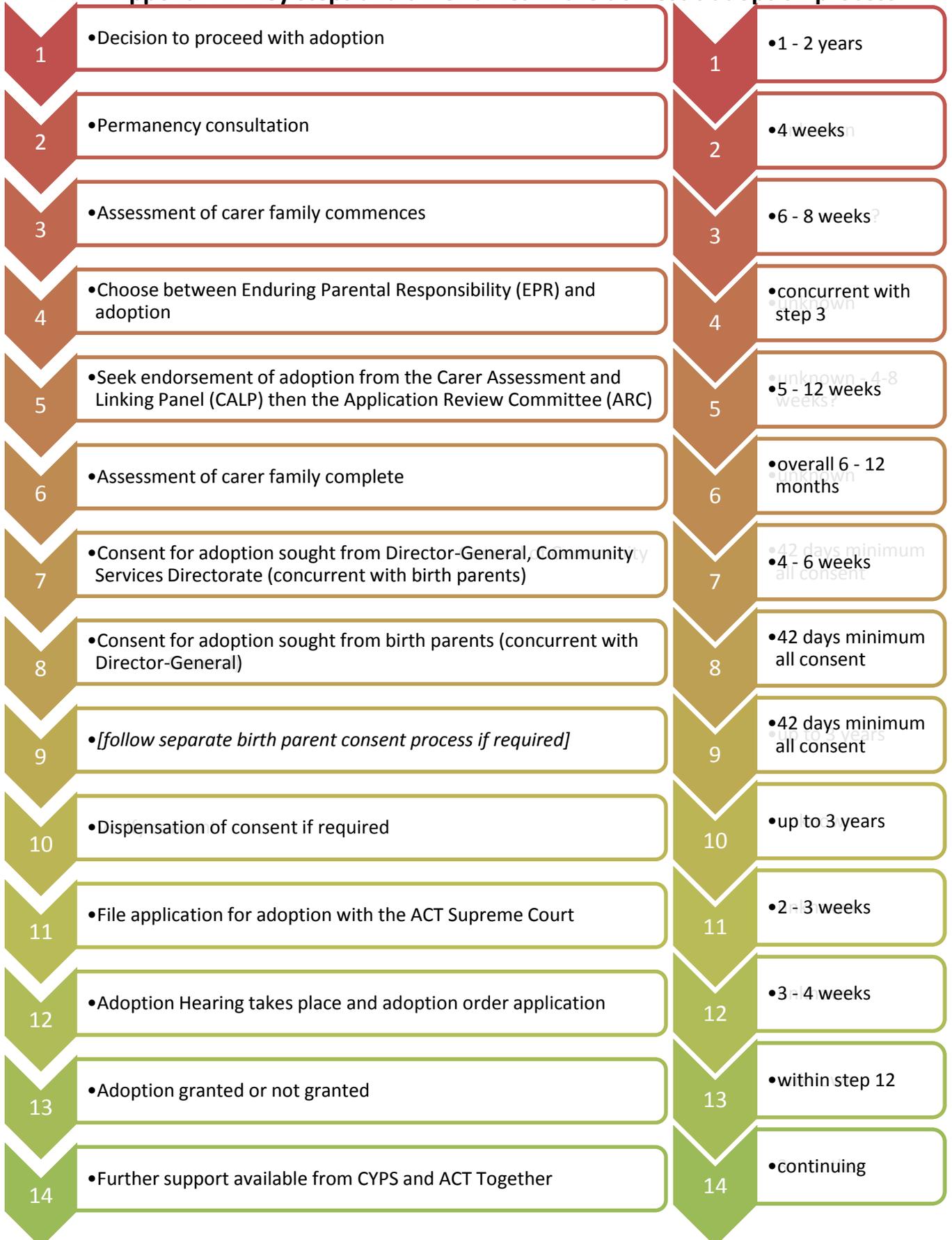
Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990).

Government of Western Australia, Department for Child Protection, *Information about Adoption: Obtaining adoption information*.

Post-adoption support for Adoptive Families in Australia: Is it time for the 'triple A' approach? (2016). Adopt Change Research.

Senate Community Affairs References Committee. (2012). *Commonwealth contribution to former forced adoption policies and practices*. Canberra: Parliament House.

11. Appendix B: Key steps and timeframes in the domestic adoption process



12. Appendix C: Dispensation of consent provisions across Australia

Key Concept	ACT	TAS	SA	WA	VIC	QLD	NT	NSW
The Court may dispense with consent of a person if the Court is satisfied that:								
The person cannot be identified or located.	✓	✓	✓	✓	✓	✓	✓	✓
The physical/mental condition of a person is such that they are not capable of properly considering the question of consent.	✓	✓	✓	✓	✓	✓	✓	✓
The person has abandoned, deserted, neglected or ill-treated the child.	✓	✓	✓	✓	✓	✓	✓	✓
The person has, for a period of not less than one year, failed, without reasonable excuse, to discharge the obligations of a parent/guardian.	✓	✓	✓	✓	✓	✓	✓	
There are any other circumstances that justify the requirement for dispensing with consent.	✓	✓	✓	✓	✓	✓	✓	
Any person has such a physical and mental disability or is so impaired that the person is unable to meet the needs of the child.		✓			✓			
Except in the case of a proposed adoption by a step-parent, the person is a birth parent but does not have the responsibility of the daily care of the child or a parent and child relationship with the child and is unreasonably withholding consent to the adoption.				✓		✓		
There would be an unacceptable risk of harm to the child or mother if the relevant parent were made aware of the child's birth or proposed adoption.						✓		
If the child has any views and is able to express those views, the court must consider the views having regard to the child's age and ability to understand.						✓		
If the person is an authorised carer of the child, the child has established a stable relationship with the carer, the adoption will promote the welfare of the child and, if the child is an Aboriginal child, alternative to placement for adoption have been considered under section 36 of the Act.								✓
Any person has seriously ill-treated the child to the extent that it is unlikely that the child would accept, or be accepted by the person within, the family of		✓			✓			

UNCLASSIFIED

Key Concept	ACT	TAS	SA	WA	VIC	QLD	NT	NSW
that person.								
The child is 16 or more years of age and consents to being adopted by a prospective adoptive parent who is a step-parent, relative or carer of the child.				✓				
Where the person is the child's father, the person has been convicted of an offence which resulted in the child's conception, compensation has been awarded to the child's mother under the <i>Criminal Injuries Compensation Act</i> in relation to an offence which resulted in the child's conception or the person is a lineal relative of the child's mother.				✓		✓		
It would be in the best interests of the child for arrangements for an adoption to continue.						✓		✓
If the relevant parent is believed to be the father of the child, the Court may not give dispensation within 30 days after notice is given to the relevant parent under section 33 or if the Court has reason to believe that there is a current application under the <i>Status of Children Act 1978</i> or the <i>Family Law Act 1975</i> (Cwlth) for a declaration of paternity or a parenting order for the child.						✓		