Consultation on dispensing with consent provisions in the Adoption Act 1993

Report on consultation outcomes

Community Services Directorate
November 2019
INTRODUCTION

In August 2016, the ACT Government established a cross-directorate Domestic Adoptions Taskforce (the Taskforce) to identify issues and make recommendations about the timely and appropriate completion of the adoption process. In 2017, the ACT Government agreed to implement all six recommendations developed by the Taskforce.

In late 2018, the Community Services Directorate (the Directorate) commenced consultation to explore dispensing with consent as part of recommendation three from the Taskforce:

The Community Services Directorate, with the support of the Justice and Community Safety Directorate, 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.

Community members, relevant organisations and professionals were invited to make written and verbal submissions to the Directorate on issues raised in a discussion paper, which was open for response from 19 December 2018 to 31 March 2019.

The consultation sought community feedback on experiences of dispensing with parental consent in adoption (including in child protection settings). This will assist the Directorate to identify possible changes to existing grounds for dispensing with consent, to better reflect contemporary practice and respond to out of home care (OOHC) circumstances.

Adoption and permanency in the ACT

Two broad categories of adoption exist in the ACT: intercountry and domestic (which includes local and known adoptions). Domestic adoption involves a child or young person who was born in or is permanently residing in Australia before the adoption. In the ACT, the most common type of adoption is adoption by a carer or other person known to the child (known adoption).

In 2018-19, three known adoptions were finalised in the ACT. No local adoptions took place during this period. Of the known adoptions, two children were adopted by a step parent and one was adopted from OOHC.

In the ACT, adoption for children and young people in OOHC is one pathway to achieve permanency. Alternatively, Enduring Parental Responsibility (EPR) transfers responsibility for the day to day and long-term decision making for a child or young person to a carer, without severing the legal ties between the child or young person and their birth family.

Dispensing with consent

Consent of the birth parents or guardian(s) is required to proceed with an adoption, unless the court dispenses with this requirement. This is known as dispensing with consent.

Dispensing with consent is a legal mechanism to determine that the consent of a parent or guardian is not required to proceed with an adoption. The provisions that enable the ACT Supreme Court to dispense with consent for adoption are outlined in section 35 of the Adoption Act 1993:

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.

Dispensing with consent is a difficult, complex and sensitive process that is impacted by the circumstances of each child or young person, the circumstances of each parent or guardian, parental consent to the adoption, and the directions of the ACT Supreme Court.

SCOPE

This report outlines the findings from the first stage of consultation on existing provisions that guide dispensing with consent decisions. It considers key themes from submissions received in response to questions raised in the discussion paper (which can be found at Appendix A, p. 12). Issues raised in this report have informed the second stage of consultation – a series of targeted interviews led by a non-government facilitator during late September and October 2019. Analysis of the feedback provided during the second stage of consultation is currently underway.

In line with recommendation three from the Taskforce, the consultation has a narrow focus on the legislative provisions in section 35 of the Adoption Act 1993 (ACT). The Directorate received a range of responses addressing other issues related to adoption processes in the ACT. While this feedback is outside the consultation scope, it is captured in Part B of this report (at Appendix B, p. 13) and may inform policy and practice work on adoption more generally.

Matters outside the scope of consultation include intercountry adoption, surrogacy, step parent adoption and informal familial arrangements with no statutory or Court intervention.

Aboriginal and Torres Strait Islander families – position on adoption

The 2018 discussion paper outlined the ACT Government’s position that adoption is generally not considered for Aboriginal and Torres Strait Islander children and young people in the ACT. Nevertheless, submissions from Aboriginal and Torres Strait Islander advocacy organisations and representatives suggested that any reform of the dispensing with consent provisions could adversely affect Aboriginal and Torres Strait Islander families, due to their overrepresentation in the OOHC system. Feedback from the Our Booris, Our Way Steering Committee raised strong concerns about the potential impact of the consultation on the Aboriginal and Torres Strait Islander community. Another submission suggested that as the Our Booris, Our Way review is still underway, the consultation on the dispensing with consent provisions should be deferred until this review is complete.

Following this feedback, it was agreed that further work would be undertaken with the Aboriginal and Torres Strait Islander community to determine a community-led position on adoption and other permanency arrangements. This work, which is currently underway, acknowledges the challenges for the Aboriginal and Torres Strait Islander community in engaging with adoption reform, due to historic forced adoption practices and the Stolen Generations. Feedback on adoption as it relates to Aboriginal and Torres Strait Islander families is further captured in Part B.
ANALYSIS OF SUBMISSIONS

The Directorate received a total of 42 submissions from a range of stakeholders including:

- adoptees;
- birth parents;
- foster and kinship carers; and
- non-government organisations, including charities, advocacy groups, academics, associations, community services and not-for-profit agencies.

The submissions were evaluated using qualitative analysis methodology. As key issues and recommendations emerged, they were assigned a single unit of measurement and mapped across a broader set of distinct themes, which included areas such as ‘best interests of the child’, ‘birth parent considerations’ and ‘the adoption process’.

This approach enabled a clear distinction between themes that directly engaged with the stated aim of the consultation and other issues relating to adoption processes. This distinction determined the composition of the outcomes report:

- **Part A** – detailed outline of themes addressing the dispensing with consent provisions; and
- **Part B** – an overview of other feedback relating to adoption more broadly.

Analysis of the submissions highlighted several overarching themes, including a view that the provisions should prioritise children’s best interests and support their participation in decision-making. Many of the other issues that were raised sit under these overarching themes, and this provided a useful structure to guide the analysis of submissions.

**Part A – feedback on dispensing with consent provisions**

This section of the report addresses themes emerging from submissions that engaged directly with the dispensing with consent provisions. Many submissions emphasised the interaction between the provisions and the notion of a child’s ‘best interests’; this sits as a primary theme across many of the issues that were raised.

**Overarching themes**

**Paramountcy of the best interests of the child**

Most submissions expressed support for approaches to adoption (and dispensing with consent) that uphold the best interests of the child. However, submissions articulated this in diverse ways, indicating a substantial range in how the notion of ‘best interests’ is understood. While many respondents referred to the United Nations *Convention on the Rights of the Child* (UNCRC), there were variations in how the submissions identified a connection between the UNCRC and the concept of ‘best interests of the child’.

This was noted by the ACT Human Rights Commission:

> The concept of ‘best interests’ is neither absolute nor static over time. It can be, and is, argued by different adults to support different purposes.

- ACT Human Rights Commission

The submission from the ACT Human Rights Commission recommended changes to the definition of ‘best interests of the child’, suggesting that this could be based on the definition used in s 60CC of the *Family Law Act 1975* (Cth). The submission argued that the *Family Law Act 1975* definition provides a more contemporary understanding of ‘best interests’ and better addresses the competing priorities that should
be considered. Significantly, this definition incorporates a consideration of the child’s views (which is discussed below in the context of participation). While the *Family Law Act 1975* acknowledges the benefit to the child of having a meaningful relationship with both parents as a primary consideration, it requires the Court to ascribe greater weight to the other primary consideration – the need to protect the child from physical or psychological harm.

Another submission suggested the best interests of the child are inhibited by s 35(1)(e):

> We agree that despite the best interests of the child or young person being paramount under Section 5 of the Adoption Act 1993, the terms of subsection 35(1) hinder application of this principle, which effectively narrows consideration of best interests to subsection 35(1)(e).

- Barnardos Australia

Some submissions recommended that s 35(1)(e) be reframed to incorporate more child focused grounds for dispensing with consent. This could include clearer direction on the circumstances in which dispensing with consent may be in the best interests of the child.

Many submissions argued that the current ACT provisions are overwhelmingly adult-centric and focus on the demonstrated deficiencies of birth parents, rather than on the best interests and wellbeing of the child or young person:

> The current legislation around conditions for dispensation of parental consent place more weight on problematic birth parent behaviours (e.g., their abandonment, neglect or abuse of the child) rather than on how the adoption would promote the welfare of the child. Children have a need for safety, stability, belonging and permanence. Legislative changes should ensure that these needs are situated at the centre of decision-making...

- Institute of Open Adoption Studies

Several submissions stated that in contrast with the ACT approach, the *Adoption Act 2000* (NSW) more directly addresses the circumstances of children and young people in OOHC, acknowledging the importance of the child’s relationship with their carer. One submission described s 67(1)(d) of the *Adoption Act 2000* as an approach that:

> ...relates to adoption by known foster parents, who are able to demonstrate love and continuing, ongoing commitment to the foster child over time.

- Barnardos Australia

Further, s 67(1)(d) of the *Adoption Act 2000* directly addresses whether ‘it is in the best interests of the child to override the wishes of the parent or person who has parental responsibility’. Several submissions noted this difference between the ACT and NSW approaches, suggesting that the ACT legislation has an insufficient focus on the wellbeing of the child or young person, which undermines the paramountcy of their best interests.

**Children and young people’s participation**

Many submissions emphasised the importance of legislation that reflects and upholds the rights of children and young people. Respondents suggested that this may require a shift from the current provisions, which focus on adult behaviour, to a more child-centred approach that enables children to participate in adoption proceedings in a meaningful and age-appropriate way.

Some submissions stated that the requests of children and young people are critical and should be the most important piece of information when determining a dispensing with consent outcome. The wishes of a child or young person should be understood in the context of their age, level of maturity and
developmental stage. While submissions diverged on the overall appropriateness of adoption practices, support for upholding the views and wishes of children was a common theme.

Some submissions identified that a key aspect of recognising the rights of children and young people is enabling them to consent to their own adoption, where they are sufficiently mature and able to understand the legal consequences of this. A respondent who was adopted in 2018 reflected on the need for children and young people to be able to advocate for their own best interests:

*I was 11 years old when I started voicing my request to be adopted... I do not wish upon any child that they have to struggle to finally get their voices heard because the voice of the parents/guardians seems to be treated as more important.*

- Adoptee

Many submissions directly referred to the Adoption Act 2000. The NSW approach enables a child to consent to their own adoption and in most circumstances, the consent of a child aged from 12 to 18 is required for an adoption to proceed. This is described in s 54(2):

*A child who is 12 or more years of age and of sufficient maturity to understand the effect of giving consent may give sole consent to his or her adoption by a proposed adoptive parent or parents if the child has been cared for by the proposed adoptive parent or parents for at least 2 years.*

- NSW Adoption Act 2000

One submission recommended that children’s consent should be a key part of child-focused grounds for the Court to use in considering dispensing with parental consent in the ACT. This view was supported in several other submissions that explicitly referred to the UNCRC, noting that children’s right to participation is a well-established principle. These submissions recommended that the views and wishes of children and young people should be determinative in adoption decision-making.

**Other themes responding to the discussion paper questions**

**Circumstances in which dispensing with consent is appropriate**

Several submissions stated that consent should be dispensed with in cases where children cannot safely live with their birth parents and reunification is not a realistic option.

*Consent should only be dispensed with where there has been a deliberate decision of the parent to waive parental rights through intentional ill-treatment, neglect, rejection of care responsibilities or abandonment.*

- ACT Human Rights Commission

Some respondents suggested that s 35(1)(a) should be retained, arguing that consent should be dispensed with if the person cannot, after reasonable inquiry, be identified or located. One submission suggested that this provision could be refreshed to reflect contemporary tools available to support ‘reasonable inquiry’, such as social media.

Another submission proposed specific, limited circumstances in which the legislative provisions should enable dispensing with the consent of birth parents:

*The grounds for dispensing with consent should be... limited to circumstances where a parent cannot be found or lacks capacity; where the child was conceived as the result of a criminal offence committed by the father, where the father is a lineal relative of the mother, and where seeking consent would present an unacceptable risk of harm to the child or mother.*

- Child protection academic
However, many submissions acknowledged the inherent challenges in an agreed approach to ‘reasonable inquiry’ to find a birth parent as outlined in s 35(1)(a). Some submissions suggested that current practice for conducting ‘reasonable inquiry’ is a lengthy process that can be challenging for children, carers and birth parents. These submissions identified factors that make ‘reasonable inquiry’ difficult to quantify and implement in practice:

*Given that so many leads rely on the birth mother, if she doesn’t participate or doesn’t give factually correct information, it becomes really difficult to navigate. There are definitely layers of complexity, including that one of the birth mother’s partners died.*
- Carer

Another submission described the potential impact of ‘reasonable inquiry’ on the birth mother:

*A court process followed in order to dispense with the need for paternal consent for [the child] to be adopted, despite his mother having provided consent...Speaking with the birth mother and family after the adoption, she stated that she found this process extremely stressful as she was under a lot of pressure to identify the father and she was concerned that [the adoptee] be placed for adoption as soon as possible.*
- Carer

### Adoption is not a child protection response

Many submissions argued that adoption should not be used as a tool for child protection, stating that ongoing, safe and secure care for children can be achieved through long term and EPR orders, without severing familial ties:

*Children and young people in need of care and protection who must be separated from their parents in their best interests can still be kept safe and provided with a stable family life under existing out of home care enduring care arrangements without a formal adoption proceeding.*
- ACT Human Rights Commission

Respondents acknowledged that, where possible, ongoing contact between children, birth parents and biological siblings is in the best interests of the child. However, the process of adoption can make this contact between parties difficult. One carer stated:

*We would be pitted against his birth parents in the courts if he ever decided that he would like to pursue adoption. This is not helpful for our relationship with his birth family, and it is harmful to his relationship with his birth family.*
- Carer

Many foster carers and agencies stated that current adoption processes focus on the past circumstances under which a child came into care, rather than on the child’s current and future needs:

*We should be focussing on the best interests of the child instead of fighting birth parents who often have come from backgrounds of trauma themselves, and who are not bad people, but people who are unable to safely parent these kids.*
- Carer

One submission recommended amendments to s 35(1)(c) to address its current adversarial approach and sharpen the focus on the current and future best interests of the child:

*Subsection 35 (1) (c) should be amended to focus on current and future matters and not the re-prosecution of care and protection cases.*
- Barnardos Australia
Dispensing with consent provisions must remain limited

Many submissions advocated a cautious approach to any amendments to the dispensing with consent provisions, noting the need to strictly define and limit their scope:

*Justifications for consent dispensation must be limited, well defined and can only be granted where it is in the best interests of the child with consideration given to safeguarding the family and cultural connections.*

- Anglicare

One submission suggested that without a narrow focus on the way in which the provisions are applied, parents may believe their consent will be dispensed with regardless of their wishes, and may therefore be more likely to consent to an adoption:

*If there is a greater range of circumstances in which consent is not required, birth parents may feel as though the law is tipped in favour of adoption, with the effect that they give consent without it being fully voluntary.*

- ACT Human Rights Commission

Challenges for birth parents in providing consent

Several submissions noted that birth parents may feel concerned that their child will consider the parents’ consent to be a rejection of the parenting relationship. One submission included case studies in which birth parents had expressed support for the adoption but preferred for the Court to dispense with their consent, rather than formally consenting.

A submission from a person who has worked with birth parents seeking reunification described this significant concern:

*These women worry about what their children might think of them signing them over to be adopted. Worries like; will my children think I stopped fighting for them, will they think I don’t care about them, will they even want to talk to me again or see me.*

- Carer

Another submission noted that birth parents who struggle with the effects of their own traumatic background may face significant challenges when asked to consent to their child’s adoption:

*[The birth mother’s] experience with public servants, legal representatives, law enforcement and courts is the thing of nightmares...I can have empathy for why [she] will never sign the last and only right she has in a system that has only brought trauma to her life.*

- Carer

Consent in adoptions must be an informed and voluntary process

Many submissions expressed concerns about birth parents providing uninformed consent. This is more likely if birth parents do not fully understand the implications of adoption or experience pressure from external actors:

*Adoption is something that most of these women feel is pushed onto them, that if they don’t sign on the dotted line then they are not considering the best interests of their children, and in some cases their ability to even choose has been taken away under subsection 35 (1).*

- Carer

Several submissions recommended measures that should be implemented to ensure birth parents are better supported to provide informed consent:
To ensure that consent is both informed and voluntary, information and counselling must be provided about all options for care of the child that are available; all aspects of the adoption process and the possible impacts of the process and the outcome.

- Child protection academic

Consideration of vulnerable cohorts

Numerous submissions expressed concerns about seeking to dispense with the consent of birth parents from vulnerable backgrounds. The two major groups identified as being disproportionately affected by changes to the legislative provisions were Aboriginal and Torres Strait Islander parents (see Part B at p. 13, below) and parents with disability.

Concerns for the rights of parents with disability were expressed in several submissions, noting that disability should not be grounds for dispensing with consent or child removal:

Compatibility with human rights requires that in no case should a child or young person be separated from parents on the sole basis of a disability of either the child/young person or one or both of the parents. Instead, supports should be provided to the parents to enable them to care for their child, or, to make an informed decision to consent to adoption.

- ACT Human Rights Commission

Some submissions argued that the current dispensing with consent provisions do not reflect contemporary disability legislation and the rights of parents with disability, recommending changes to the provisions to align with these principles:

This ground for dispensation should be written in line with the principles underlying contemporary disability legislation and consideration given to simplifying the definition to a person, without support and guidance, lacking the ability to understand the information relevant to the decision, and the effect of the decision.

- ACT Child and Youth Protection Services

One submission proposed that the legislative provisions could be amended to incorporate supported decision-making, to enable people with disability to participate more fully in adoption processes:

The existing grounds could be reframed to reflect contemporary understanding, particularly around capacity to encourage the use of supported decision-making in adoption processes in situations where the decision-making ability of a parent/s and children or young people who might wish to be adopted is in question.

- ACT Human Rights Commission
CONCLUSION

The submissions received in response to the discussion paper are a valuable resource, supporting the ACT Government to understand and evaluate the complex issues related to dispensing with parental consent for adoption. The overarching themes and other issues raised in submissions serve to highlight areas of focus and will guide consideration of possible future reform. Many submissions suggested that legislative amendments may be required, to enable the provisions to appropriately support the process of dispensing with consent in the context of out of home care.

The submissions raised a range of views and emphasised the complexity of this aspect of permanency, particularly as it relates to the out of home care system. Any potential changes to the existing legislative provisions will need to carefully balance competing tensions between the rights of the child, the rights of birth families, and the rights of prospective adoptive families, while acknowledging the paramountcy of the wellbeing of children and young people.
APPENDIX A

Questions from the discussion paper

1. How should the circumstances of children in out of home care influence the grounds for dispensing with consent?

2. How should grounds for dispensing with consent reflect contemporary language, particularly with respect to a person’s capacity to consent?

3. How should the capacity to care for and protect a child or young person be considered in an adoption proceeding?

4. In what circumstances is dispensing with consent justified?

5. In what circumstances is dispensing with consent not justified?

6. What criteria are necessary for the Court to decide an application to dispense with consent?

7. Should the views of the young person determine the outcome of a proposed adoption, if they are considered sufficiently mature and capable to make decisions about their life?

8. How might birth parents be better supported to engage and remain engaged in child protection matters, prior to an adoption proceeding commencing?
Part B – feedback about adoption policy and practice

Effects of adoption practices on Aboriginal and Torres Strait Islander families

As mentioned earlier, the severe ramifications of past adoption practices (including forced adoptions) still impact heavily on the Aboriginal and Torres Strait Islander community. These lasting and wide-ranging effects include intergenerational trauma through the loss of culture, language, identity and heritage. The Our Booris, Our Way Steering Committee echoed this position:

*The history of forced adoption in the Aboriginal and Torres Strait Islander community is not a distant memory, it is a constant reality of the lack of respect for our people and culture. Dispensation of parental consent cannot be seen as an administratively expedient way to permanency for children, it must be seen in the context of our current engagement with the child protection system. Adoption is not just an individual child’s or family’s loss, but represents a collective loss of culture, language and identity for another generation of Aboriginal and Torres Strait Islander people.*

- Our Booris, Our Way Steering Committee

A similar position was expressed in several other submissions. For example:

*The Aboriginal Legal Service is of the view that traditional adoption that severs the connection for children to their families and communities of origin is not considered an appropriate care option for Aboriginal children. As such, the ALS strongly opposes any reforms that seek to dispense with parental consent in the adoption process.*

- Aboriginal Legal Service

Identity considerations for children and young people in adoption

Several submissions described the importance of identity for children and young people in the adoption process. Due to the permanent severing of familial ties, adoption can have significant long-term implications for children and young people.

Issues of identity for children and young people also interact with the belief that if birth parents provided consent, they had given up on their child. One adoptee respondent expressed ongoing issues with identity and complex feelings of rejection post-adoption:

*I am adopted. My mother consented to the adoption... I blamed myself for her not wanting me. Why did she want to give me away? Was I not good enough?*

- Adoptee

Many submissions noted that adoption can deny children their heritage and biological links, with long-term effects on their mental health. These experiences were especially traumatic for adoptees whose birth parents had been subjected to forced adoption practices. Some respondents reasoned that as adoption severs heritage and cultural identity, it should not be considered in any circumstances.

Identity was also raised as an issue related to the length and complexity of adoption processes. Some carers described the frustration experienced by children in their care who strongly associated sharing their foster family’s surname with a sense of belonging:

*“Since she was young she has regularly said that she wanted the same last name... At the age of six she has been frustrated and asks why it takes so long for her to be able to change her name.”*

- Carer
**Integrated birth certificates**

Submissions that addressed the topic of integrated birth certificates were all supportive of this mechanism to capture a child’s birth family history and their new familial circumstances:

> I have had discussions with my son around this, and I had to explain that if he were adopted, he would get a new birth certificate that does not have his birth parents’ names on it. He said that wouldn’t be true.

- Carer

Many respondents did not support the reissuing of birth certificates with adoptive parents listed as the child’s parents, describing this as an outdated practice that does not align with contemporary approaches to permanency and adoption.

**Independent advocates for children and birth parents**

The need for independent advocates for children, young people and birth parents during adoption proceedings arose frequently in the submissions. For example, the ACT Human Rights Commission suggested that advocates could be non-legally trained staff and should be present at all court proceedings to represent children. Respondents recounted experiences where children and birth parents were underrepresented throughout the dispensing with consent process. One respondent recalled:

> The fact that [the birth mother] had had little assistance and advocacy during this time was disturbing however not unbelievable given the issues that we had navigating the process.

- Foster carer

**Early support for parents**

Numerous submissions acknowledged the complex trauma and vulnerable backgrounds of many birth parents and claimed this is inadequately addressed before and throughout the adoption process. These submissions noted that with appropriate support, birth parents from vulnerable backgrounds may be able to parent children safely:

> Dispensing with consent should only be exercised if there is a situation of genuine abandonment. However, even in these circumstances it is often the case that the mother is experiencing complex issues related to poverty... It is entirely possible that with appropriate early interventions and financial support, she could parent the child.

- Forced adoption birth parent

Several submissions recommended early support for families at risk of having children removed. Proposed interventions included specialised programs to address issues that impact an individual’s ability to parent, such as drug and alcohol dependency, or domestic and family violence. One submission highlighted the need for more resources in this area:

> Currently these services, where they exist, are difficult to access due to high levels of demand. Ultimately, this is not in the best interests of parents or their children.

- Women’s Legal Centre ACT
Challenges in achieving permanency for children in OOHC in the ACT

Some submissions stated that difficulties in achieving permanency through either adoption or EPR caused significant insecurity for families. Some carer respondents felt that both pathways to permanency were difficult to achieve for their children. These submissions noted that children on care and protection orders to 18 years should be able to experience a sense of security through a permanency arrangement, as determined by the Court. Some respondents reported feeling disempowered due to a lack of timeliness:

My wife and I jumped through every hoop and attended information nights through ACT Together. This left us feeling like the adoption process was basically impossible...Our case worker is still trying to get an EPR given the difficulties of the adoption process.

- Carer

Insecurity for children on long-term orders

Carers noted that children can be left in ‘systemic limbo’ through a lack of perceived permanency. This is because children who are on care and protection orders to 18 years are unlikely to be reunited with their family but may not feel that their place in the foster family is a permanent arrangement. One carer noted:

He remains a ward of the state, not being able to live a 'normal' life and taking up valuable resources that could be expended elsewhere with no clear timeline on when his case will ever go before a judge to finalise his forever family.

- Carer

An OOHC agency raised this issue, noting the impact of visits from government officers, when a child may be in an otherwise permanent and stable environment:

The question should be asked – what is the detriment around sitting within the foster care system until adulthood and whether it would be beneficial not to have agency involvement for the child/young person i.e. example of having the placement reviewed, the intrusiveness of visits, decision making sitting with a government official and the lack of stability that the child experiences in this.

- ACT Together

Adoption should not be favoured over EPR

Some submissions expressed concern at the perceived preference of child protection systems to support permanency through adoptions over EPR. These submissions described EPR as a more suitable option than adoption, in terms of upholding the best interests of the child:

In the ACT context, an Enduring Parental Responsibility order may similarly achieve stability for a young person, while also mitigating stigma of being in care and enabling the carer to have a greater degree of autonomy in decision-making whilst still accessing support.

- Create Change

Under-resourcing of adoption procedures

Several submissions noted that a lack of resources for adoption proceedings was a significant barrier:

In our case some large pieces of information were almost left out of the affidavit... During this conversation I was able to determine that information had been left out/was missing. Again this was not unexpected due to the high number of people that had partially worked on the case.

- Adoptive parent

Staffing shortages on adoption matters was a common theme raised by carers:

I would put it down to a lack of staff... His case was always on the list, but it never gets to the top of the list. There are always delays and more information is always required.

- Carer
Suggested improvements to current practice

Some submissions described long-term benefits for maintaining contact with birth families post-adoption, even though this is not a statutory requirement. One submission described this in terms of supporting birth parents to remain engaged in child protection matters:

> Greater focus should be placed on working with birth parents to encourage them to engage with care and protection aims, purposes, and pathways. Mechanisms such as mandated post-adoption contact schemes and best practice integrated birth certificates...may encourage birth parents who are no longer day-to-day caregivers for their child to consider consenting to adoption where it does not mean a complete severing of all contact and all family ties.

- ACT Human Rights Commission

Another submission described efforts by an adoptive family and birth mother to establish and maintain contact following adoption. This submission suggested that an opportunity to work closely with the birth mother during the adoption process may have supported the families to find flexible options to enable ongoing contact.
Consultation on dispensing with consent provisions in the Adoption Act 1993