BELONGING IN TWO FAMILIES

EXPLORING PERMANENCY OPTIONS FOR CHILDREN IN LONG-TERM OUT-OF-HOME CARE IN AUSTRALIA

ADOPT CHANGE ™

WESTERN SYDNEY
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Nursing and Midwifery

CONTENTS

Note on language:
The terms used to describe individuals impacted by out-of-home care (OOHC) and adoption is an
area of contention, confusion and sometimes pain. We recognise in needing to clearly distinguish
between people with different experiences of OOHC and adoption, we have used some terms that
may cause distress to some readers.

FOREWORD

Every child deserves to grow up in a safe and nurturing environment where they can grow, learn, play, thrive and experience a sense of belonging and stability. For many of Australia's children in the statutory out-of-home care system, they belong in two families – their family of origin, and the family they live with who is caring for them. The current legal care orders in Australia for children in statutory care have both strengths and weaknesses in going some of the way to providing security, stability and providing life-long ties to family of origin, foster, guardian and adoptive families. In looking abroad, we believe there is a legal order that may provide an improved option for children who are unable to return home to family of origin, in providing them with permanency. This order is called Simple Adoption, which provides the benefits of adoption through lifelong connection and legal security with the adoptive family, while retaining legal ties with family of origin.

This research report explores the strengths of weaknesses of the current legal care orders in Australia, according to all those involved – from the voice of the adoptee or care leaver, through to family of origin, adoptive families, foster carers, guardians and social workers. It is critical in exploring if there is a better way to serve the children and young people in care across Australia. We recommend that Simple Adoption deserves further exploration as an additional permanency order for all Australian jurisdictions, and at the same time, as an avenue to recognise both families on identity/birth certificates.

This is an opportunity to move forward in Australia, recognising the strengths and shortfalls of the current orders available, and provide an option that supports a spirit of openness, belonging, stability and life-long connections. This is an issue of utmost importance, so that we can provide the benefits of permanency, while better respecting heritage and identity. It is also an opportunity to have a unified approach to permanent care across jurisdictions, with this new model, and standards for implementation.

RENÉE CARTER
Chief Executive Officer
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EXECUTIVE SUMMARY

While there has been much public discussion surrounding long-term foster care, guardianship and adoption in Australia, there has not previously been any formal research considering stakeholder opinions on these legal frameworks.

Australia currently has three legal frameworks for caring for children in out-of-home care (OOHC) who cannot be safely returned to their parents: long-term foster care, guardianship, and plenary open adoption. Increasingly, states and territories are seeking to avoid long-term foster care because the lack of stability, permanence, and belonging often inherent to this form of care has been demonstrated to be harmful to children. Guardianship and plenary open adoption have been presented as better options, however the public discourse surrounding these solutions has indicated strong differences of opinion regarding their suitability. In particular, plenary adoption is seen to have issues because in order to create a new legal relationship with an adoptive family, it legally excises the child from their biological one. This means they are no longer legally related to their birth parents, birth siblings or other extended birth family members. Internationally, another form of adoption exists allowing a new legal relationship to be created with an adoptive family without removing a child's legal connection to their birth family. This form of adoption is called simple adoption.

This report presents the findings of an online survey which investigated permanency options for children in OOHC in Australia. While there has been much public discussion surrounding long-term foster care, guardianship and adoption in Australia, there has not previously been any formal research considering stakeholder opinions on these legal frameworks. This research aimed to fill this gap by asking participants to share their views on the existing legal frameworks of long-term foster care, guardianship, and plenary open adoption, as well as the concept of simple open adoption.

Survey data was collected from 1,019 individuals from all Australian states and territories. Key findings are summarised as follows:

■ **Overall simple open adoption had the highest strength score, and the lowest weakness score of the legal frameworks.** Specific strengths identified were; the legal relationship between children and adoptive parents would not end when children turn 18 (nominated by 84% of participants), a legal relationship would be made between children and their extended adoptive family (82%), a legal relationship would be made between children and their adoptive parents (81%) and children could gain inheritance rights from their adoptive parents (81%).

Internationally, another form of adoption exists allowing a new legal relationship to be created with an adoptive family without removing a child's legal connection to their birth family. This form of adoption is called simple adoption.

- **Long-term foster care had the lowest strength score and the highest weakness score of the legal frameworks.** Weaknesses identified were; children can easily be moved out of their foster family (73%), children do not have inheritance rights from their foster family (51%), carers need to gain permission from agencies for some important decisions (51%), and agencies make important decisions for children (50%).

The personal experiences of individuals impacted how they viewed each of the legal frameworks. Adoptees, care leavers, health/child welfare professionals, and birth family members of adoptees and children in OOHC provided the highest strength scores for simple open adoption. Foster/ kinship carers and guardians provided equally high scores for plenary and simple open adoption. Adoptive parents and prospective adoptive parents provided slightly higher strength score for plenary open adoption than simple open adoption. Birth parents of adoptees and birth parents of children in OOHC provided the highest strength scores for long-term foster care however, they also preferred simple open adoption over plenary open adoption.

Recommendations Summary:

This study has revealed there is strong support for consideration of the implementation of simple open adoption in the Australian context. To that end, the following recommendations are made:

1. Commonwealth, States and Territories to explore options on the introduction of a new legal care order (Simple Open Adoption) for children in statutory care who cannot return home to family of origin.

   Each state and territory seek and review legal advice on current best practice in relation to permanency and how to effectively implement the practice of simple open adoption.

2. A unified national approach to the introduction of the legal order across the jurisdictions be agreed. The approach to birth certificates should also be addressed in this process.

3. A national agreement to appropriate post-permanency supports be established and implemented to ensure children and young people who have experienced trauma and displacement are supported through life.

BACKGROUND

Simple adoption provides for creation of a new legal relationship between children and adoptive parents while retaining legal recognition that the child is still a member of the family into which they were born (O'Halloran, 2015).

Australia has a large number of children and young people in long-term OOHC. In 2017-18 there were 31,800 children who had resided in OOHC for two years or more and more than 23,000 of these children had legal orders requiring that they remain in care until they attain 18 years of age (Australian Institute for Health and Welfare, 2018). Children in OOHC commonly experience placement instability with many moves during their time in care (Osborn et al., 2008). Research has repeatedly identified that placement instability has multiple negative short and long-term implications for children, as it reduces their ability to form healthy relationships, engage in education, and participate fully in society in adulthood (Ryan and Testa, 2005; Osborn et al., 2008; Australian Institute for Health and Welfare, 2011; Rock et al., 2015; Scannapieco et al., 2016). Australian states and territories are endeavouring to reduce the number of placements children experience in OOHC and the associated harmful effects. This is being achieved by better supporting vulnerable families so where possible, their children can be quickly reunified with them. When this is not possible, alternative care arrangements providing greater permanence for children who cannot be returned to parental care are being facilitated (Australian Institute for Health and Welfare, 2019).

The legal frameworks for providing greater permanence for children vary between jurisdictions, but their aim is to provide children with a stable family environment where they feel safe and experience belonging throughout the whole of childhood. In most of Australia, guardianship orders are preferred by governments as the method of providing permanence for children (Australian Institute for Health and Welfare, 2019). Guardianship orders allocate parental responsibility to children's foster or kinship carers until they attain 18 years of age. However, the expiration of guardianship orders when children become adults, and the lack of a legal familial relationship between the child and their caregiving family, has been identified as undermining belonging and security (Adopt Change, 2017). Such undermining is known to have negative implications for the well-being of the child and may increase the risk of placement disruption (Triseliotis, 2002; Selwyn and Masson, 2014).

In New South Wales (NSW), adoption has become the stated preferred option for children who cannot be safely returned to the care of their birth family (Bretherton et al., 2016). This support for adoption is based on research indicating children who are adopted experience better developmental outcomes and well-being compared to children in other long-term care arrangements (Triseliotis, 2002; Selwyn et al., 2006; Selwyn and Masson, 2014). Research from the United Kingdom (UK) indicates adoptive placements are less likely to disrupt than placements with legal orders that do not create a recognised enduring familial relationship such as guardianship (Triseliotis, 2002; Selwyn and Quinton, 2004; Selwyn and Masson, 2014). None-the-less, even in NSW, adoptions from OOHC are relatively few in number with only 142 adoption orders being granted in 2017-18 (Australian Institute for Health and Welfare, 2017). Outside of NSW, adoptions from OOHC are extremely rare with only five children being adopted in the seven other jurisdictions combined in 2017-18 (Australian Institute for Health and Welfare, 2018).

31,800
CHILDREN HAVE BEEN IN OOHC FOR TWO YEARS OR MORE

23,000
CHILDREN HAVE LEGAL ORDERS REQUIRING THEY REMAIN IN CARE UNTIL THEY TURN 18 YEARS OF AGE

Despite the comparatively better long-term outcomes for children who are adopted, there are several legal aspects of adoption considered problematic by many. These aspects are rooted in the history of adoption. Modern adoption legislation in Australia was developed in the post-World War II period within a context where illegitimacy, infertility and adoption were considered shameful (Quartly and Swain, 2012). For these socio-cultural reasons, it was considered that adoption needed to be secret and required a complete legal and physical severance of a child from his/her birth family. This necessitated the child's pre-adoptive identity be erased and a new identity to be created, with a birth certificate naming the adoptive parents as if the child was born into the family (Quartly and Swain, 2012). Associated with this legislation, was abuse of vulnerable women by health professionals, religious institutions, social workers, and family members in order to facilitate the adoption of children (Quartly and Swain, 2012; Senate of Australia Community Affairs References Committee, 2012). This resulted in the unnecessary separation of children from their mothers from the mid-20th century to the 1980s in what is now known as the "forced adoption" period (Senate of Australia Community Affairs References Committee, 2012; Tregeagle et al., 2012). During this time, individuals often did not know that they were adopted and by law were prevented from obtaining information identifying their birth family. Preceding and parallel to these practices was the forced removal of Aboriginal children from their families known as the 'stolen generations' which separated children from family and culture, devastating individuals and communities (Australia, 1997; Tregeagle et al., 2012)

The social environment that facilitated the 'forced adoption' period no longer exists. In recognition of the harm caused by the unnecessary separation of children from their families and the associated secrecy, legislation and practices in adoption have changed dramatically throughout Australia. Processes are now in place to ensure consent for adoption is provided ethically. However, birth parent consent can also be dispensed with in cases where children have been removed due to abuse or neglect, but the bar for doing so is high, requiring a judgement of the court after an assessment that this is in the child's best interest (Community Services Directorate, 2017). In addition, adoptions are now 'open'. This means children know the identity of their birth family and often have ongoing regular contact arrangements which are specified in court orders (del Pozo de Bolger et al., 2018). It has been recognised that children can belong in two families simultaneously and experiencing belonging in both birth and adoptive families is of benefit to them (Colaner et al., 2014; Colaner et al., 2017).

Nonetheless, legislation in all Australian jurisdictions continues to legally excise children from their birth family when an adoption order is made, in a form of adoption called 'plenary adoption'. As stated by Tregeagle et al (2012) plenary adoption involves the "irrevocable severance of the tie which is traditionally perceived to be the most profound connection of a person's life" which is considered by many to be problematic. In addition, in most jurisdictions adoption also results in the creation of an amended birth certificate that removes the names of birth

The level of contention and the depth of feelings expressed, indicates many believe there are problems with the currently available models of permanency.

ONLY **147**
ADOPTIONS FROM OUT-OF-HOME CARE ACROSS AUSTRALIA IN 2017-18

parents and substitutes them with adoptive parents' names. The original birth certificate is no longer a legal identity document, as the person named no longer exists in law. This change in identity via amended birth certificates has been identified as being "in direct contrast to the openness of current adoption work" (Bretherton et al., 2016, p4).

Some overseas jurisdictions, including France, Ethiopia, Thailand and Belgium have another legal framework termed 'simple adoption'. Simple adoption provides for creation of a new legal relationship between children and adoptive parents while retaining legal recognition that the child is still a member of the family into which they were born (O'Halloran, 2015). Conceptually, simple adoption is somewhat like a marriage. It allows for a legal connection to be created between the child and adoptive parents and extended adoptive family without the removal of the legal connection the child has to their birth parents and extended birth family (Dumaret and Rosset, 2007; O'Halloran, 2015). In this context, the adoptive parents can be granted ongoing legal parental responsibility and authority for the child, the child is made a full legal member of their adoptive family, while birth parents retain their filial position as parents and extended birth family remain legally related to the child. For this reason, simple adoption may be an improvement on plenary adoption (Ouellette, 2009).

There are a diversity of views about how children should be cared for when it is determined they cannot live with their birth family. Discussion of long-term foster care, guardianship and adoption in public fora (e.g. parliaments and media) is common and reflects the contentious and highly emotive nature of this subject. The level of contention and the depth of feeling expressed, indicates many believe there are problems with the currently available models of permanency. However, most research in this area exclusively examines the outcomes for individuals who grow up under these frameworks. While such research is useful, it does not provide a picture of what it is like for individuals (i.e. the children, their birth parents, their caregiving parents and broader extended families) to live within these frameworks, nor does it provide insight from professionals working with all these groups.

This research aimed to consider the perceived strengths and weaknesses of long-term foster care, guardianship, plenary open adoption and simple open adoption. The goal was to provide an opportunity for people with a lived or professional experience with OOHC or adoption to provide their views on the strengths and weaknesses of these legal frameworks and to consider how the care arrangements for children who cannot live within their birth family may be improved.

METHODS

The study survey was developed in consultation with a variety of advisors including adult adoptees, adoptive parents, foster and kinship carers, birth parents whose children had resided in OOHC or were adopted, professional adoption and OOHC workers, and legal and social work researchers.

This study grew out of discussions the researchers had over many years with those impacted by OOHC and adoption. In developing the study, the goal was to provide individuals, regardless of whether they were foster or kinship carers, care leavers, adopted people, adoptive parents, birth parents of children in OOHC or who had been adopted, professionals working with these groups, or those with any other connection to OOHC or adoption, with the opportunity to provide their views on the strengths and weaknesses of foster care, guardianship, plenary open adoption and simple open adoption, based on their own experiences. The researchers made significant efforts to gather perspectives from all involved parties.

The study survey was developed in consultation with a variety of advisors including adult adoptees, adoptive parents, foster and kinship carers, birth parents whose children had resided in OOHC or were adopted, professional adoption and OOHC workers, and legal and social work researchers. The aim of this consultation was to ensure the survey addressed all aspects of these legal frameworks that might be considered important by any stakeholder group. In addition, given the emotive and highly personal nature of the subject, researchers wanted to ensure the questions asked and the language used was such that any distress to participants would be minimised. This was considered a high priority and was a specific area of inquiry in consultations.

The survey required participants to read a plain language description of long-term foster care, guardianship, plenary open adoption and simple open adoption in terms of a variety of aspects of caring for children under these legal frameworks. This included explanations of the legal relationship children have with their birth family and with the family caring for them, who makes decisions for children, oversight of the care being provided, contact with birth family, inheritance issues, stability of the placement, legal names and birth certificates, and what supports are available to those parenting children. It was noted these descriptions described what is usually involved in each option, recognising there is some variation between each state and territory and in individual circumstances. Participants were asked to rank each aspect of care as a strength, a weakness, both a strength and a weakness or neither a strength nor a weakness. Participants were then given the opportunity to provide information on their personal experiences with OOHC and adoption. The researchers acknowledge it was a demanding and lengthy survey.

After receiving ethics approval from Western Sydney University Human Research Ethics Committee, the study survey was published online using the Qualtrics platform which enabled completion using a computer, tablet or smart phone. While anyone over the age of 18 and living in Australia was eligible to participate in the study, recruitment targeted individuals with personal or professional experience with OOHC or adoption. Recruitment was primarily through social media, the professional networks of the researchers and via online support groups for those impacted by adoption or foster care.

Survey data was collected nationally between June and September 2018.

Statistical analysis was carried out using STATA software.

RESULTS

50%

OF PARTICIPANTS SURVEYED WITH A
CONNECTION TO OOHC OR ADOPTION
WERE FOSTER OR KINSHIP CARERS

46%

OF PARTICIPANTS BELONGED TO MORE
THAN ONE GROUP

Demographic characteristics

Survey responses from 1,019 individuals were
included in the study analysis. Participants came
from all Australian states and territories but NSW
was by far the most common state of residence
with 488 individuals undertaking the survey. Study
participants were overwhelmingly female (92%) and
the majority (54%) were 46 years of age or older.
Most participants held university qualifications
(53%). Demographic characteristics are summarised
in Table 1.

Study participants were able to nominate their
connection to OOHC or adoption and 793
individuals did so. Foster or kinship carers were the
most common group represented, with 394 (50%)
of participants in this group, followed by health or
child welfare professionals (206, 26%), adoptive
parents (128, 16%), adopted persons (124, 16%)
and prospective adoptive parents (95, 12%). Smaller
numbers of guardians (74, 9%), care leavers (45, 6%),
birth family members of foster children (35, 4%),
birth family members of adopted people (32, 4%),
birth parents of children in OOHC (26, 3%), and

birth parents of adoptees (24, 3%) represented in the
study sample. Those in the "other" category, which
included 110 individuals (14%), were most commonly
the extended family and friends of adoptees, care
leavers and foster and kinship carers. However, this
cohort also included lawyers; journalists; social work,
OOHC and adoption researchers; a policy advisor to
the Family Court; an actuary who forecasts OOHC
requirements; the chair of a foster care agency, and
a member of a state parliament. Respondents were
able to nominate if they belonged to multiple groups
and 365 (46%) did so with 188 belonging to two
groups, 50 to three groups, 53 to four groups and the
remaining 74 people belonging to 5-11 groups. For
example, 70 out of 95 (74%) prospective adoptive
parents were also foster or kinship carers, 29 adopted
people were also health or child welfare professionals
(14%), and 7 out of 26 birth parents of children in
care were care leavers themselves (27%). Table 2
summarises the connection of participants to OOHC
or adoption.

1,019

INDIVIDUALS WERE INCLUDED IN THE STUDY ANALYSIS

Table 1: Demographic characteristics of study participants

Characteristic	No (%)
State of residence	
New South Wales	489 (47.9)
Victoria	179 (17.6)
Queensland	142 (13.9)
Western Australia	81 (8.0)
South Australia	59 (5.8)
Tasmania	28 (2.8)
Australian Capital Territory	37 (3.6)
Northern Territory	4 (0.4)
Sex	
Male	73 (7.2)
Female	941 (92.4)
Age	
18-25	30 (2.9)
26-35	148 (14.4)
36-45	291 (28.6)
46-55	343 (33.7)
56-65	158 (15.5)
65+	49 (4.8)
Highest educational level	
Primary School	22 (2.2)
High School	125 (12.3)
TAFE	269 (26.3)
University	536 (52.7)
Other	67 (6.6)
Total	**1,019**

Table 2: Proportion of participants within each category of experience

Category	No
Foster/Kinship carer	394
Health or child welfare professional	206
Adoptive parent	128
Adopted person	124
Prospective adoptive parent	95
Guardian	74
Former foster child/care leaver	45
Birth family member of foster child	35
Birth family member of adopted child	32
Birth parent of foster child	24
Natural parent of an adopted person	24
Other	110
Total	**793**

Strengths and weaknesses of the legal frameworks for caring for children
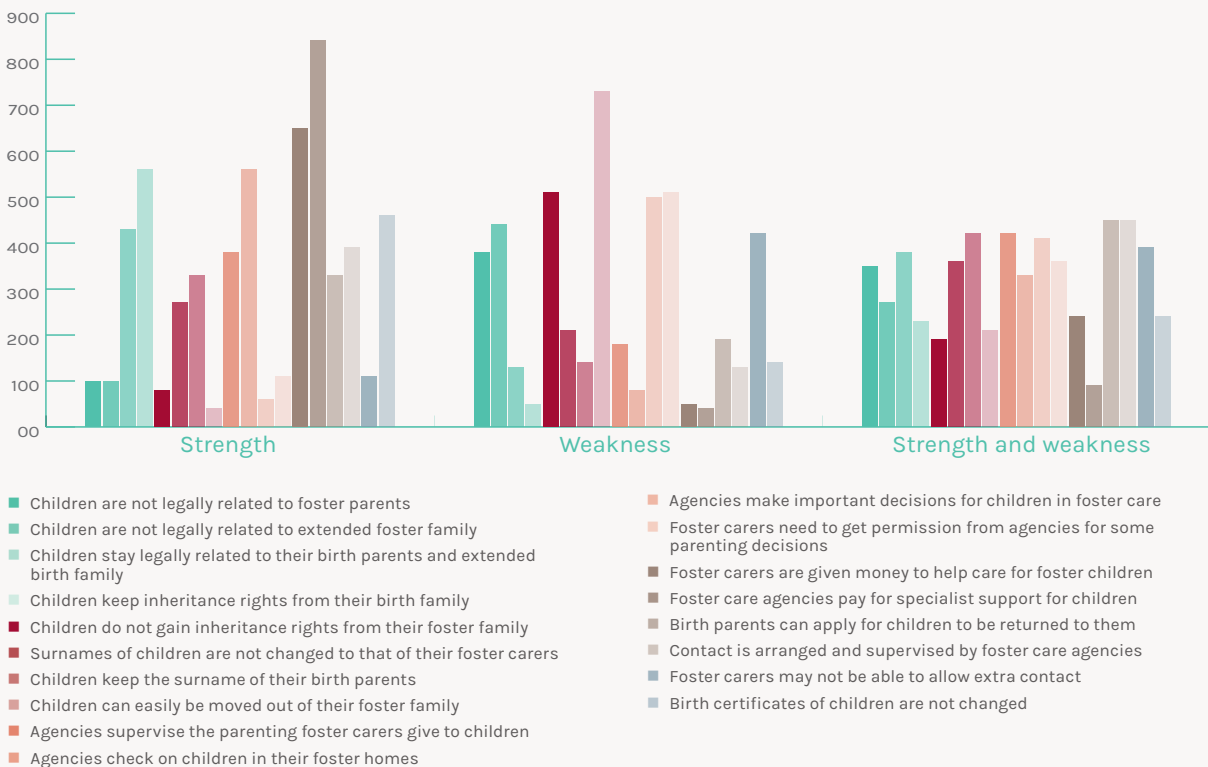
Long-term foster/kinship care

Study participants were provided with the following description of long-term foster care and asked to evaluate each aspect of foster care in terms of whether it was a strength or a weakness.

"In long-term foster care, children live with foster carers. They may call their foster carers mum and dad but there is no legal relationship between children and their foster carers. Even though they no longer live with their birth parents, children in foster care are still legally related to their mother and father and their extended family (brothers and sisters, grandparents, aunts and uncles). Children have no inheritance rights from foster parents but have inheritance rights from their birth parents. Foster carers are able to make day-to-day decisions for the child but may not be able to make long-term decisions such as for medical treatment or choice of school. Foster carers must

get permission to take the child interstate or overseas for holidays. Foster carers look after children under the supervision of foster care agencies. Foster care agencies visit the child at home to check on them. Foster care agencies also have meetings with the foster carers, birth family and other people like school staff or therapists, when making decisions about the child. Money is provided by agencies to foster carers to help pay for the costs of caring for the child. Other support such as assistance with access to specialists like psychologists and physical resources for children with a disability like wheelchairs may be paid for by agencies. Contact between the child and their birth family is usually organised by the agency and according to a court ordered fixed timetable. Foster carers are not always able to allow extra contact with birth family outside of this timetable. Children in long-term foster care sometimes stay in the one foster family until they are adults but many foster children live in many different foster families through their childhood. If a birth family's circumstances change, they can apply to the Court for their child to be returned to their care and this sometimes happens."

Figure 1. Frequency of evaluations of the strengths and weaknesses of long-term foster care over all participant experience groups

- ■ Children are not legally related to foster parents
- ■ Children are not legally related to extended foster family
- ■ Children stay legally related to their birth parents and extended birth family
- ■ Children keep inheritance rights from their birth family
- ■ Children do not gain inheritance rights from their foster family
- ■ Surnames of children are not changed to that of their foster carers
- ■ Children keep the surname of their birth parents
- ■ Children can easily be moved out of their foster family
- ■ Agencies supervise the parenting foster carers give to children
- ■ Agencies check on children in their foster homes

- ■ Agencies make important decisions for children in foster care
- ■ Foster carers need to get permission from agencies for some parenting decisions
- ■ Foster carers are given money to help care for foster children
- ■ Foster care agencies pay for specialist support for children
- ■ Birth parents can apply for children to be returned to them
- ■ Contact is arranged and supervised by foster care agencies
- ■ Foster carers may not be able to allow extra contact
- ■ Birth certificates of children are not changed

A total of 1,019 individuals provided their views on the strengths and weaknesses of each aspect of care in long-term foster care. As can be seen in Figure 1 and Table 3, long-term foster care had aspects that were viewed primarily as a strength as well as many aspects that were viewed primarily as a weakness while individuals also commonly viewed aspects of long-term foster care as both a strength and a weakness. The characteristics most frequently identified as a strength were that foster care agencies pay for specialist support for children (nominated as a strength by 84% of participants), carers are given money to help care for children (65%), agencies check on children in their homes (56%) and children keep inheritance rights from their birth family (56%). The most common weaknesses of foster care identified were that children can easily be moved out of their foster family (73%), children do not have inheritance rights from their foster family (51%), carers need to gain permission from agencies for some important decisions (51%), and agencies make important decisions for children (50%). Aspects most commonly viewed as both a strength and a weakness were that birth parents can apply to have children returned to their care (45%), contact is arranged and supervised by foster care agencies (45%), agencies supervise the parenting provided to children (42%), and children keep the surname of their birth family (42%).

Table 3. Percentage of evaluations of the strengths and weaknesses of long-term foster care over all participant experience groups

Aspect of long-term foster care %	Strength	Weakness	Strength and weakness
Children are not legally related to foster parents	10	38	35
Children are not legally related to extended foster family	10	44	27
Children stay legally related to their birth parents and extended birth family	43	13	38
Children keep inheritance rights from their birth family	56	5	23
Children do not gain inheritance rights from their foster family	8	51	19
Surnames of children are not changed to that of their foster carers	27	21	36
Children keep the surname of their birth parents	33	14	42
Children can easily be moved out of their foster family	4	73	21
Agencies supervise the parenting foster carers give to children	38	18	42
Agencies check on children in their foster homes	56	8	33
Agencies make important decisions for children in foster care	6	50	41
Foster carers need to get permission from agencies for some parenting decisions	11	51	36
Foster carers are given money to help care for foster children	65	5	24
Foster care agencies pay for specialist support for children	84	4	9
Birth parents can apply for children to be returned to them	33	19	45
Contact is arranged and supervised by foster care agencies	39	13	45
Foster carers may not be able to allow extra contact	11	42	39
Birth certificates of children are not changed	46	14	24

Guardianship

Study participants were provided with the following description of guardianship and asked to evaluate each aspect of guardianship in terms of whether it was a strength or a weakness

"In all states and territories of Australia, a foster parent is able to apply for court orders that give them legal responsibility for their foster child until they reach 18 years of age. In NSW, Queensland, Western Australia, South Australia and Tasmania these court orders are called guardianship orders. In Victoria and the Northern Territory, they are called permanent care orders and in the ACT they are called enduring parental responsibility orders. Guardianship/ permanent care orders can be applied for after children have been in foster care with a family for a period of time. Guardians are able to make all parenting decisions for the child without needing the agreement of anyone else (including for medical treatment and obtaining a passport). When a foster carer applies for guardianship/permanent care orders, the care they are providing to their foster child is assessed by social workers. However, once a guardianship/permanent care order is granted, agencies no longer supervise the parenting the child is receiving. How often birth family contact must occur is described in the guardianship/permanent care court order. Agencies may provide assistance with arranging and supervising birth family contact under some circumstances. Guardians can arrange extra contact if they want to. In some states/territories guardians are given money to help pay for the costs of caring for the child after the granting of a guardianship/permanent care order. In other states/territories, support payments stop when a guardianship/permanent care order is made. Access to agency supports such as specialists like psychologists and physical resources for children with a disability is reduced or removed once a guardianship/permanent care order is made. Guardianship/ permanent care orders do not make a legal relationship between a child and any extended family of their guardian (brothers, sisters, grandparents, aunts and uncles). The legal relationship between a child and their guardians ends when the child turns 18. Children remain legally related to their birth family after a guardianship/permanent care order is granted. They are still legally the child of their birth parents and related to their birth brothers and sisters, grandparents, aunts and uncles. Children's surnames and birth certificates are not changed by the granting of a guardianship/ permanent care order. If the circumstances of the birth family change, they can apply to have their child returned to their care but this occurs only rarely. It is also rare for a child to move families after the granting of a guardianship/ permanent care order."

Figure 2. Frequency of evaluations of the strengths and weaknesses of guardianship over all participant experience groups

Legend:
- Children are legally connected to their guardians
- Legal relationship between children and guardians ends at 18
- No legal relationship is made between children and their guardianship extended family
- Children stay legally related to their birth family
- Children keep inheritance rights from their birth family
- Children do not get inheritance rights from guardians
- Children don't have surname changed to their guardians
- Children keep the surname of their birth parents
- Children cannot be easily moved out of their guardian family
- Parenting of foster carers is assessed before a guardianship order is made
- Agencies do not supervise the parenting that guardians give to children
- Agencies do not check on children in their home
- Agencies do not make decisions for children
- Guardians are able to make all decisions for their children
- Agencies may not pay for specialist support
- Guardians may not be given money to help care for children
- Birth parents can apply for their child to be returned to them but this almost never happens
- Contact is usually arranged and supervised by guardians
- Guardians are able to allow extra contact
- Children's birth certificates are not changed

A total of 877 individuals provided their views on the strengths and weaknesses of each aspect of care in guardianship. As can be seen in Figure 2 and Table 4, more participants indicated that guardianship had more strengths and fewer weaknesses than long-term foster care. The characteristics most commonly identified as strengths of guardianship were the parenting of foster carers is assessed before a guardianship order is made (nominated as a strength by 87% of participants), children have a legal connection to their guardians (78%), guardians are able to make all decisions for their children (77%), and children cannot be easily moved out of their guardian family (74%). The most common weaknesses of guardianship identified were agencies may not pay for specialist support for children under guardianship orders (67%), the legal relationship between children and their guardians ends when children turn 18 (66%), guardians may not be given monetary support to care for children (62%), and no legal relationship is made between children and their extended guardian family (59%). Aspects most commonly viewed as both a strength and a weakness were contact with birth family is usually arranged and supervised by guardians (41%), children keep the surname of their birth parents (40%), children don't have their surname changed to that of their guardians (35%), agencies do not check on children under guardianship orders (34%), and children stay legally related to their birth family (34%).

Table 4. Percentage of evaluations of strengths and weaknesses of guardianship over all participant experience groups

Aspect of guardianship %	Strength	Weakness	Strength and weakness
Children are legally connected to their guardians	78	5	14
Legal relationship between children and guardians ends at 18	9	66	18
No legal relationship is made between children and their guardianship extended family	10	59	18
Children stay legally related to their birth family	47	12	34
Children keep inheritance rights from their birth family	60	6	21
Children do not get inheritance rights from guardians	8	54	23
Children don't have surname changed to their guardians	25	30	35
Children keep the surname of their birth parents	29	23	40
Children cannot be easily moved out of their guardian family	74	6	18
Parenting of foster carers is assessed before a guardianship order is made	87	3	9
Agencies do not supervise the parenting that guardians give to children	45	19	31
Agencies do not check on children in their home	35	26	34
Agencies do not make decisions for children	69	8	20
Guardians are able to make all decisions for their children	77	7	15
Agencies may not pay for specialist support	7	67	21
Guardians may not be given money to help care for children	10	62	19
Birth parents can apply for their child to be returned to them but this almost never happens	25	44	26
Contact is usually arranged and supervised by guardians	41	15	41
Guardians are able to allow extra contact	70	4	23
Children's birth certificates are not changed	40	22	27

Plenary open adoption

Study participants were provided with the following description of plenary open adoption and asked to evaluate each aspect of plenary open adoption in terms of whether it was a strength or a weakness.

"Plenary open adoption is the type of adoption used in Australia. In plenary open adoption, a child becomes a full legal member of their adoptive family. Adopted children are legally the child of their adoptive parents and legally related to the extended family of their adoptive family such as brothers, sisters, grandparents, aunts and uncles. This is a legal arrangement that is made by the courts. Adoption lasts for the whole of a child's life. When a child is adopted they have all the rights that they would have if they had been born into their adoptive family. This includes inheritance rights. Foster parents can apply to adopt their foster children after the children have lived with them for a period of time. Adoptive parents are able to make all parenting decisions for the child without needing the agreement of anyone else (including for medical treatment and getting a passport). As a part of the adoption process, the care that foster parents are giving to the child is assessed. However, once a child is adopted, agencies no longer supervise the parenting the child is receiving. Agencies are not involved with organising birth family contact after an adoption is completed but how often contact with their birth family must occur is described in the adoption plan court order. Adoptive parents can arrange extra contact if they want to. In some states/territories, adoptive parents are given money to help pay for the costs of caring for the child after an adoption. In other states/territories, support payments stop when a child is adopted. Access to agency supports such as specialists like psychologists and resources for children with a disability is often reduced or removed once an adoption order is made. Adoption cuts the legal ties that children have with their birth family. This means that children are no longer legally recognised as related to their birth parents or their extended family such as brothers and sisters, grandparents, aunts and uncles. Adopted children lose inheritance from their birth family. An adopted child's surname is usually changed to that of their adoptive parents when they are adopted and their birth certificate is changed to name their adoptive parents as parents. If the circumstances of the birth family change, they cannot apply to have their child returned to their care."

Figure 3. Frequency of evaluations of the strengths and weaknesses of plenary open adoption over all participant experience groups

- ■ Children are legally related to adoptive parents
- ■ Legal relationship between children and their adoptive parents does not end at 18
- ■ Adopted children are legally related to extended adoptive family
- ■ Adoption cuts the legal ties between children and their birth family
- ■ Children lose inheritance rights from their birth parents
- ■ Children gain inheritance rights from their adoptive parents
- ■ Children's surname is usually changed to that of their adoptive parents
- ■ Children do not usually keep the surname of their birth parents
- ■ The parenting of foster carers is assessed before a child is adopted
- ■ Agencies do not supervise the parenting that adopted children receive
- ■ Agency workers do not check on adopted children in their home
- ■ Agencies do not make decisions for children
- ■ Adoptive parents are able to make all decisions for their children
- ■ Birth parents cannot apply for their adopted children to be returned
- ■ Children cannot be moved out of their adoptive family unless there is abuse
- ■ Contact is usually arranged by adoptive parents
- ■ Adoptive parents are able to allow extra contact
- ■ Birth certificates of adopted children are changed

A total of 840 individuals provided their views on the strengths and weaknesses of each aspect of care in plenary open adoption. As can be seen in Figure 3 and Table 5, overall plenary open adoption had more participants indicating more strengths and fewer weaknesses than guardianship. The characteristics most commonly identified as a strength of plenary open adoption were the parenting of foster carers is assessed before a child is adopted (88%), the legal relationship between children and their adoptive parents does not end at 18 years (83%), adoptive parents are able to make all decisions for their children (82%), and adopted children are legally related to their extended adoptive family (79%). The most common weaknesses of plenary open adoption identified were that children lose inheritance rights from their birth family (39%), adoption cuts the legal ties between children and their birth family (35%), and agency workers do not check on adopted children in their home (22%). Aspects most commonly viewed as both a strength and a weakness were that children do not usually keep the surname of their birth parents (37%), plenary open adoption cuts the legal ties between children and their birth family (35%), and contact between an adopted child and their birth family is usually arranged by adoptive parents (33%),

Table 5. Percentage of evaluations of strengths and weaknesses of plenary open adoption over all participant experience groups

Aspect of plenary open adoption %	Strength	Weakness	Strength and weakness
Children are legally related to adoptive parents	76	9	13
Legal relationship between children and their adoptive parents does not end at 18	83	5	9
Adopted children are legally related to extended adoptive family	79	8	11
Adoption cuts the legal ties between children and their birth family	25	35	35
Children lose inheritance rights from their birth parents	15	39	26
Children gain inheritance rights from their adoptive parents	74	4	14
Children's surname is usually changed to that of their adoptive parents	49	18	28
Children do not usually keep the surname of their birth parents	36	20	37
The parenting of foster carers is assessed before a child is adopted	88	2	7
Agencies do not supervise the parenting that adopted children receive	56	19	21
Agency workers do not check on adopted children in their home	51	22	22
Agencies do not make decisions for children	75	8	13
Adoptive parents are able to make all decisions for their children	82	6	11
Birth parents cannot apply for their adopted children to be returned	64	17	16
Children cannot be moved out of their adoptive family unless there is abuse	78	8	12
Contact is usually arranged by adoptive parents	50	15	33
Adoptive parents are able to allow extra contact	72	4	20
Birth certificates of adopted children are changed	43	24	31

68%

OF PARTICIPANTS VIEWED IT AS A STRENGTH CHILDREN WOULD STILL BE LEGALLY RELATED TO THEIR EXTENDED BIRTH FAMILY

66%

VIEWED IT A STRENGTH CHILDREN COULD RETAIN INHERITANCE RIGHTS FROM THEIR BIRTH FAMILY

Simple open adoption

Study participants were provided with the following description of simple open adoption. This description outlined how simple open adoption would likely be different from guardianship and plenary open adoption if it were legislated in Australia. Participants were asked to evaluate each aspect of simple open adoption in terms of whether it was a strength or weakness.

"No Australian state or territory has simple open adoption but it exists in other countries. Simple open adoption makes a new legal relationship between a child and their adoptive family but it does not cut the legal ties that children have with their birth families. It means that adopted children are legally related to both their birth family and their adoptive family at the same time. This includes the extended families of their birth family and adoptive family (brothers, sisters, grandparents, aunts and uncles). Even though children are related to both of their families, it is only the adoptive parents who have parental responsibility for children and can make decisions for them in simple open adoption. We do not know exactly what simple open adoption would look like if it were used in Australia. However, simple open adoption could allow children to have inheritance rights from both their adoptive and birth families. Simple open adoption could also allow children to have two legal identities with birth and adoptive names both being legal (like married women sometimes do with their maiden and married names)."

A total of 807 individuals provided their views on the strengths and weaknesses of each aspect of care in simple open adoption. As can be seen in Figure 4 and Table 6, all aspects of the changes in adoption that would likely occur if Australia legislated for simple open adoption were viewed primarily as a strength, while no aspects were view primarily as a weakness or primarily as both a strength and a weakness. The characteristics of simple open adoption that had the highest proportion of participants nominating as a strength were that the legal relationship between children and adoptive parents would not end when children turn 18 (nominated by 84% of participants), a legal relationship would be made between children and their extended adoptive family (82%), a legal relationship would be made between children and their adoptive parents (81%) and children could gain inheritance rights from their adoptive parents (81%). Weaknesses with simple open adoption were identified by relatively few individuals, but most frequently identified included that children could keep the surname of their birth parents and also have the surname of their adoptive parents (12%), legal ties that children have with their birth family would not be cut (9%), and children would still be legally related to their extended birth family (7%). Aspects most commonly viewed as both a strength and a weakness were that the legal ties that children have with their birth family would not be cut when they are adopted (27%), children could keep the surname of their birth parents and also have the surname of adoptive parents (24%), and children would still be legally related to their extended birth family after adoption (23%).

Figure 4. Frequency of evaluations of strengths and weaknesses of simple open adoption over all participant experience groups
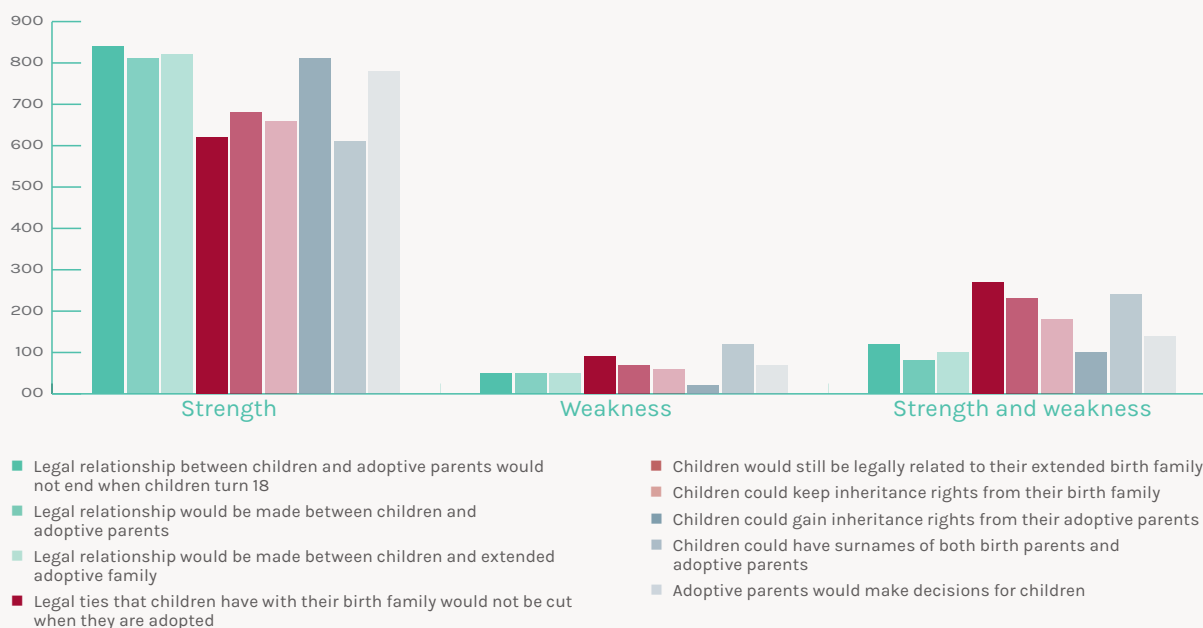

- ■ Legal relationship between children and adoptive parents would not end when children turn 18
- ■ Legal relationship would be made between children and adoptive parents
- ■ Legal relationship would be made between children and extended adoptive family
- ■ Legal ties that children have with their birth family would not be cut when they are adopted
- ■ Children would still be legally related to their extended birth family
- ■ Children could keep inheritance rights from their birth family
- ■ Children could gain inheritance rights from their adoptive parents
- ■ Children could have surnames of both birth parents and adoptive parents
- ■ Adoptive parents would make decisions for children

Table 6. Percentage of evaluations of strengths and weaknesses of simple open adoption over all participant experience groups

Characteristic of simple open adoption %	Strength	Weakness	Strength and weakness
Legal relationship between children and adoptive parents would not end when children turn 18	84	5	12
Legal relationship would be made between children and adoptive parents	81	5	8
Legal relationship would be made between children and extended adoptive family	82	5	10
Legal ties that children have with their birth family would not be cut when they are adopted	62	9	27
Children would still be legally related to their extended birth family	68	7	23
Children could keep inheritance rights from their birth family	66	6	18
Children could gain inheritance rights from their adoptive parents	81	2	10
Children could have surnames of both birth parents and adoptive parents	61	12	24
Adoptive parents would make decisions for children	78	7	14

Simply put, foster care was found to be the least favoured option, and simple open adoption was found to be the most favoured option overall.

Statistical analysis

In order to compare the views of study participants on the strengths and weaknesses of long-term foster care, guardianship, plenary open adoption and simple open adoption, a scoring system was devised. Strength scores were calculated by assigning one point to every characteristic for which the participant said it was a strength or a strength and a weakness and then averaging the score for each option. Weakness scores were calculated by assigning one point to every characteristic for which the participant said it was a weakness or a strength and a weakness and then averaging the score for each option. Average strength and weakness scores for every participant were calculated and statistical tests applied to determine how the strengths and weaknesses scores for long-term foster care, guardianship, plenary open adoption and simple open adoption compared with one another overall.

Adjustment of scoring was necessary for simple open adoption since the strengths and weaknesses evaluation of simple open adoption only included aspects of adoption that would likely change if simple open adoption were legislated in Australia. Therefore, in order to directly compare simple open adoption to the other permanence options, the evaluation of aspects of adoption permanency that would likely not change if simple open adoption were instituted needed to be added in for analysis. These aspects were: parenting of foster carers is assessed before adoption, agencies do not supervise the parenting adoptive parents provide to children, agencies do not check on adopted children, agencies do not make decisions for adopted children, adopted children cannot be returned to the care of birth parents, adopted children cannot be moved unless there is abuse or neglect, contact with birth parents is usually arranged by adoptive parents, and adoptive parents can allow additional contact with birth parents.

Figure 5. Strengths and weakness scores for long-term foster care, guardianship, plenary open adoption and simple open adoption.


Strength   Weakness
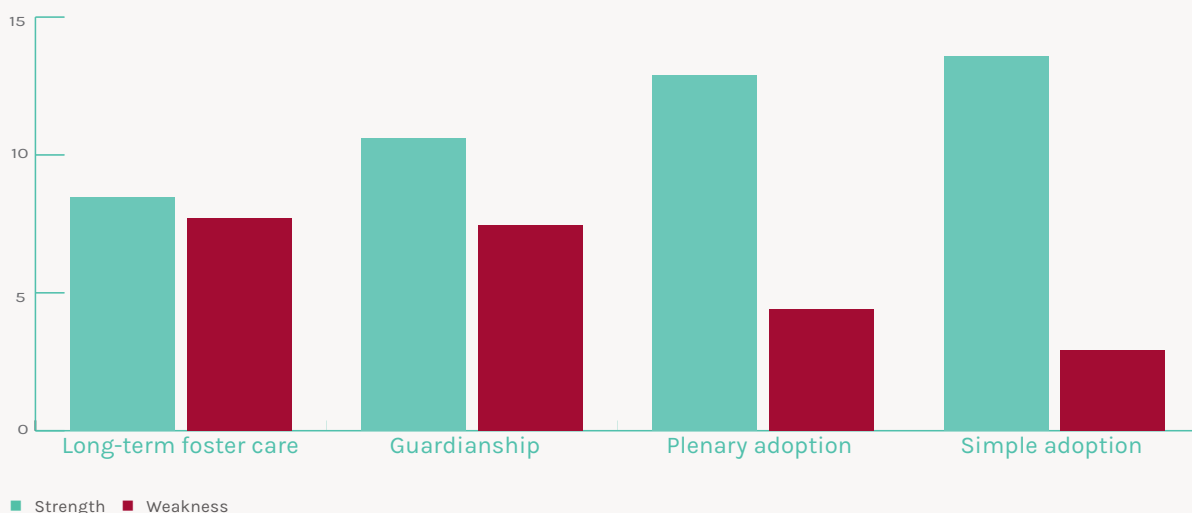
As shown in Figure 5, the strength scores for the legal frameworks follow a pattern whereby long-term foster care has the lowest strength score, guardianship had a higher score than foster care, plenary open adoption had a higher score than guardianship, and simple open adoption had the highest strength score. Conversely, long-term foster care had the highest weakness score, guardianship had a lower weakness score than foster care, plenary open adoption had a lower weakness score than guardianship and simple open adoption had the lowest weakness score. Simply put, foster care was found to be the least favoured option, and simple open adoption was found to be the most favoured option overall.

Different experience groups views of long-term foster care, guardianship, plenary open adoption, and simple open adoption

It was important to consider how different groups viewed each of the legal frameworks of long-term foster care, guardianship, plenary open adoption, and simple open adoption as individuals' experiences of these frameworks would impact their views. This importance was magnified considering the over representation of some experience groups (e.g. foster and kinship carers and health/child welfare professionals) as compared to others (e.g. birth parents of children in care and care leavers) in the study sample.

Strength and weakness scores for each legal framework could be calculated for each experience group and are presented in Figures 6 and 7. As can be seen in Figure 6, the strength scores overall as well as the relative ranking of each legal framework varied depending upon the experience group. Adopted people, care leavers, health/child welfare professionals, and birth family members of adoptees and children in OOHC provided the highest strength score for simple open adoption. Adoptive parents and prospective adoptive parents provided the highest strength scores for plenary open adoption. Foster/kinship carers and guardians provided equally high scores for plenary and simple open adoption. Birth parents of adoptees and birth parents of children in OOHC provided the highest strength scores for long-term foster care. When it came to the lowest strength scores, care leavers, foster/kinship carers, adoptive parents, prospective adoptive parents, guardians, health and welfare professionals, and birth family members of adoptees and children in OOHC provided the lowest scores for long-term foster care. In contrast, adoptees, birth parents of adoptees and children in care provided the lowest strength scores for plenary open adoption.

Figure 6. Strength scores for long-term foster care, guardianship, plenary open adoption, and simple open adoption according to experience group of study participants.
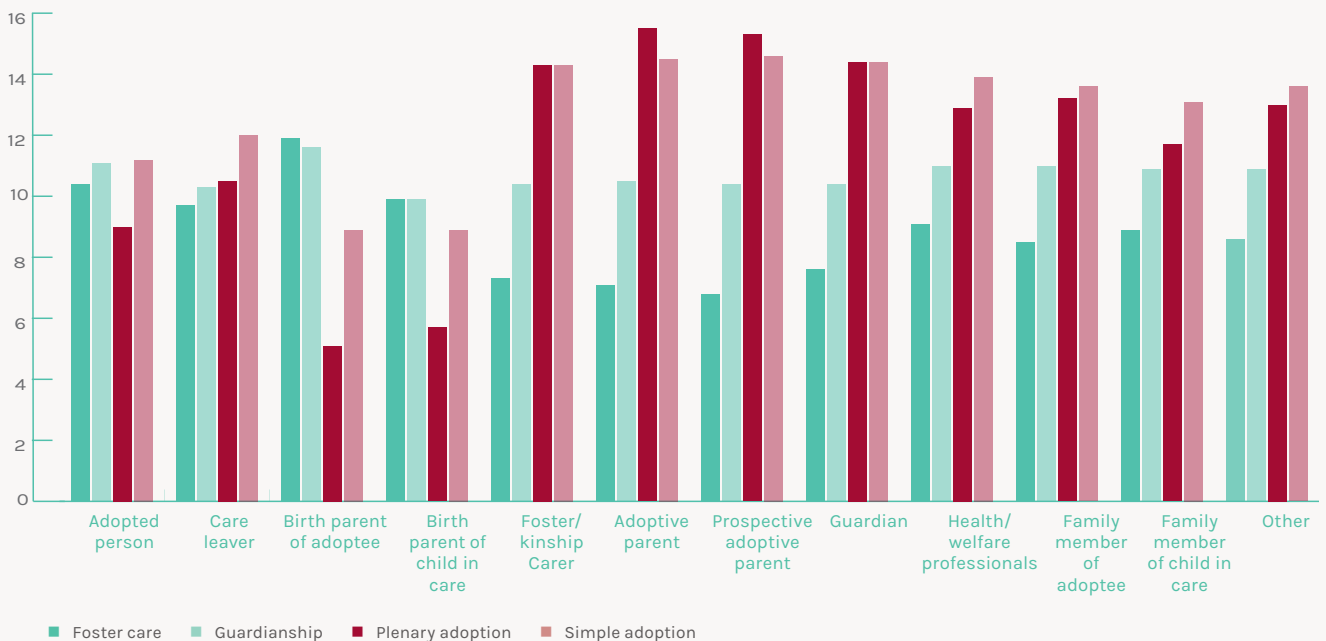
Birth parents of adoptees showed the highest weakness score for plenary open adoption.

In regards to weakness scores, it can be seen in Figure 7, that foster/kinship carers, adoptive parents, prospective adoptive parents, guardians, and birth family members of adoptees provided the highest weakness score for long-term foster care. Adopted people, birth parents of adoptees and birth parents of children in OOHC provided the highest weakness scores for plenary open adoption. Birth family members of children in OOHC provided the highest weakness score for guardianship, health/child welfare professionals provided equally high weakness scores for long-term foster care and guardianship and care leavers provided the highest weakness score for guardianship.

The lowest weakness scores for adoptees, care leavers, foster/kinship carers, prospective adoptive parents, guardians, health/welfare professionals, and birth family members of adoptees and children in care were for simple open adoption. Birth parents of children in OOHC and adoptees provided the lowest weakness score for long-term foster care and adoptive parents provided the lowest weakness score for plenary open adoption.

The differential evaluations of long-term foster care, guardianship, plenary open adoption, and simple open adoption by different groups highlights the issues that are important to each group and how aspects of these legal frameworks can be viewed as protective or harmful to children depending upon individuals' experiences.

Figure 7. Weakness scores for long-term foster care, guardianship, plenary open adoption, and simple open adoption according to experience group of study participants.
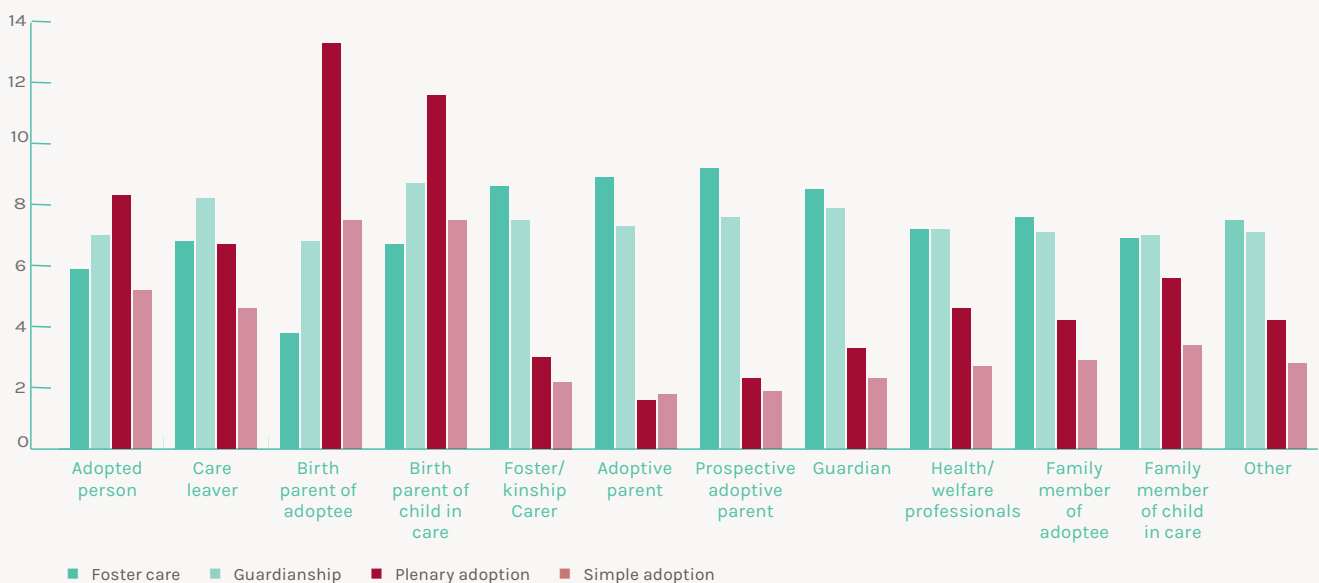
"Agencies make important decisions without even meeting or speaking with the carer or child. I've had important decisions made by very inexperienced caseworkers who have never met or spoken to and don't know the child's history" [Foster carer].

What did people say about the options?

Survey participants were provided with the opportunity to comment on their personal experience with, and views on each legal framework and these comments provide insight into both the level of importance individuals placed on aspects of these models of care and why particular aspects were viewed as important.

Long-term foster care

The strengths of long-term foster care which were most often commented on were the availability of support from foster care agencies and that the placement is monitored. Agency support was described as enabling carers to meet the needs of children who may be difficult to care for, particularly by foster and kinship carers and child welfare professionals.

"I have access to ongoing support from my fantastic caseworker and the department psychologist. Plus, ongoing training. I would struggle with my kids on my own without FACS support" [Foster carer].

The fact children's needs often change over time and more support may be required as children grow and develop was also recognised.

"There are benefits [to foster care] in that carers/children can access support and assistance, which isn't available through other permanency options. This can be important for children who have experienced trauma, as often the impacts and support needs don't emerge until years later" [Case work manager in OOHC].

Monitoring of foster care placements was described as protective of the wellbeing of children, with such comments commonly made by adopted people and care leavers.

"Foster care gives supervision. This helps if there is a problem" [Adopted person], and *"Foster carers always need checking on. State wards are very vulnerable"* [Care leaver].

When it came to the weaknesses of foster care, the lack of stability and the ease with which children can be moved were the issues most commonly noted. Foster carers in particular, spoke frequently and emotively of the insecurity of long-term foster care and of the impact of this insecurity on children.

"Fear and uncertainty is always in the background... " [Foster carer], and *"Foster care in the one family is rarely long term- the title is therefore misleading and should be restated as long-term multiple-homes foster care. It is this instability and lack of certainty which is more adverse on the child's social-emotional development- impacting attachment and a sense of belonging"* [Foster carer].

Other weaknesses of long-term foster care were the inability of carers to make important decisions for children and that the placement is monitored. Carers spoke of the difficulty of having decision making vested in people who did not know or understand the child.

"Agencies make important decisions without even meeting or speaking with the carer or child. I've had important decisions made by very inexperienced caseworkers who have never met or spoken to and don't know the child's history" [Foster carer].

"Foster Parents are often undermined or overridden by the dept, the kids are left confused and uncertain because their parent cannot make decisions important to them" [Foster carer].

Foster carers described how not being able to make decisions for children had negative impacts, including delays in obtaining necessary medical treatment and access to therapies.

"Decision making is so slow e.g. Medical. With my biological children I would never make them wait so long with easily curable pain" [Foster carer], *"I requested approval to commence psychology sessions... I am not asking for funding... I was told last February that I was not permitted to get him this assistance"* [Foster carer].

Lack of decision-making capacity was also described as undermining children's security and belonging.

"Foster Parents are often undermined or overridden by the dept, the kids are left confused and uncertain because their parent cannot make decisions important to them" [Foster carer], and *"We are expected to raise these kids like our own (rightly so) but must remember that they are not ours and we are just babysitters (as told to us regularly by the ngo) it is hard for the kids to feel normal when we can't even sign permissions slips for school, or get haircuts or take holidays etc"* [Kinship carer/Adoptee].

The monitoring of placements was described as an experience that both carers and children hated. Foster carers spoke of the pressure this monitoring placed on them.

"In 7 years we've had 12 case managers ... The high turnover and sometimes minimal skills and practical understanding of both the carer and child are a huge weakness... The level of care and attention I have given my foster child has been the same for the past 7 years, but at times I've been reprimanded and other times applauded, I even been threatened to have the child removed... To live at the mercy of a case manager is not a fun way to live" [Foster carer].

They also described how monitoring prevented children from having a normal life and feeling like they were safe and belonged in their foster family.

"Long term foster care is unstable and intrusive on children. Being visited every month by case workers, support agency staff and the community visitor and having to have the children there for every appointment is not normal. These children are reminded nearly every month that they are different and that they don't really belong to their foster family" [Foster Carer].

Foster carers often provided voice to their children's experiences of monitoring in their comments.

"My oldest children do not like the monthly home visits by caseworkers. My eldest son has asked them to stop visiting him. My eldest daughter has told them it makes her feel uncomfortable in her tummy... it seems to act as a reminder each month that we aren't the same as other families" [Foster Carer], and *"My foster daughter last year then aged 13 said, "I just want to be like everyone else. My friends don't have strangers checking in on them acting like they know what is best for them... I just want to be a normal kid, not a foster kid""* [Foster carer].

A middle aged care leaver described her experience of monitoring which occurred more than forty years ago, *"Intrusion, anxiety, visits by welfare officers at home or school causing immense emotional upheaval."* This reflects the potential longevity of the impact of monitoring in foster care.

Guardianship

The most commonly noted strengths of guardianship were its provision of stability and a permanent family for children and that guardians have decision making capability for children.

Stability was described by foster carers as something they wanted for the children and they believed would be of benefit to the children.

"My kids have a place with me forever, but sometimes their attachment fears are triggered and they question their permanence in my life. I feel that having guardianship would be my clear statement to them that I stand with them no matter what" [Foster carer].

Guardians' comments reflected these views have merit, as they described the positive impact of guardianship orders being granted, for both them and the children.

"Our daughter's bond and attachment changed considerably once we gained permanent care and began calling us mum and dad. This impact cannot be under estimated" [Guardian].

The positive impact on children of the ability of guardians to make decisions was also described by child welfare professionals.

"Guardianship orders give carers a greater degree of autonomy and frees them from the passing parade of caseworkers who all have different values, experience and attitudes...The child has a greater degree of freedom from departmental intervention, and is exposed to less stigma associated with being "in care"" [Social worker in OOHC and adoptions] and *"gives carers autonomy and allows them to feel like a real family which in turn helps the child with their sense of belonging"* [Caseworker in OOHC].

The most frequently commented on weaknesses of guardianship were the lack of financial support, the lack of agency support, that guardianship ends when the child turns 18 years of age, there is no monitoring or welfare checks for children under guardianship orders, and that guardians organise and supervise contact visits with the children's birth family.

Many foster carers spoke of being unable to apply for guardianship for their child because of the lack of financial support.

"I would not be able to afford all the services my foster child requires. I've reduced my work days from 5 to 2 days a week to provide level of care needed. I often can't work at all as she is hospitalised frequently. Without ongoing financial support, I would not be able to apply for a permanent care order...I want her to have a permanent home with me" [Foster carer].

Similarly, foster carers described being unable to apply for guardianship because agency supports would be removed.

"I was asked to take a guardianship over the 3 children in my care but they had very challenging behaviours and all extra help I received e.g. Youth work support, respite, school support would have stopped and I would not have been able to manage without it" [Foster carer].

Child welfare professionals also expressed concern about the lack of agency support to children after the granting of guardianship orders.

"Many children in the OOHC system have experienced some form of trauma which may result in long lasting physical, emotional, social or mental health concerns which need ongoing treatment or support. Some of these issues may not arise until after a guardianship/ permanent care order has been made. However, there may not be funding available to assist carers in accessing these services and ensuring that child has the early and ongoing interventions they need" [Social worker in OOHC].

The cessation of the legal relationship at 18 years of age under guardianship was described as problematic by individuals from a variety of experience backgrounds. Child welfare professionals repeatedly stated that individuals not being legally related to their guardians after 18 years of age was of concern to them.

"My main concern with guardianship orders is that they end at 18, so there is then no legal relationship between the young person and their permanent family" [Caseworker manager in OOHC].

"Legal relationship between child and guardian ends when child turns 18. This may not be of concern to the foster family who will always love and support the child, but some young adults will feel an emotional need for that security" [Kinship carer].

Foster and kinship carers spoke of the emotional impact of the legal relationship ending at 18 years of age.

"Need some legal bond beyond 18. Describing a loved young adult as my previous foster child is demeaning to both of us" [Foster carer], *"Legal relationship between child and guardian ends when child turns 18. This may not be of concern to the foster family who will always love and support the child, but some young adults will feel an emotional need for that security"* [Kinship carer].

Finally, others imagined how not having a legal relationship to their guardianship family could have practical implications in adulthood.

"There is the potential for children raised in these situations to be left with nothing and no one. If there was an argument or a split in the family the most likely person to end up discarded on the sidelines is the person with the least connection, so you turn 18 and potentially lose all familial connections and responsibilities. I think this is a dangerous practice that leave the vulnerable potentially in the worst possible situation, having no family." [Adopted person] and, *"Who is their next of kin in an emergency? The family who have loved and cared for them for a significant part of their life or the birth family who they may not be so connected to?"* [Foster carer].

The lack of welfare checks or monitoring after the granting of guardianship orders was frequently described as a disadvantage of guardianship, particularly by adopted people. Eighteen adoptees who completed the survey, described abuse in their adoptive families. Naturally, such experiences led many adopted people to be very concerned about children not being monitored.

"If children are no longer monitored under these orders abuse is easier to occur" [Adoptee] and *"Children get placed into families who can be abusive and it gets undetected / unreported. We should not be leaving children without any follow-up"* [Adoptee].

Child welfare workers also made comments regarding monitoring of children after guardianship.

"Weakness is lack of monitoring sometimes can lead to long term problems if carers have not been assessed appropriately" [Child protection case worker].

Finally, guardians being responsible for arranging and supervising contact was viewed as a weakness of guardianship orders. Foster carers and guardians spoke of how difficult managing contact could be.

"Birth families can sometimes be volatile, and relationships that start out positive can quickly and suddenly deteriorate. Having the carers responsible for contact and supervision can put the carer in a dangerous situation" [Foster carer], and *"Having to supervise access with a complex parent can be hard. One of my kids' parents is on armed robbery charges at the moment. That has completely changed my sense of how safe it is to meet"* [Guardian].

A few professionals also referred to issues with guardians not maintaining contact *"I have had concerning cases where, once a special guardianship order is made, the carer cuts off all contact with the birth family...I find that lack of accountability very concerning"* [Lawyer working in child protection].

Plenary Open Adoption

The most commonly noted strengths of plenary open adoption were its provision of a permanent family and stability for children, that it enables children to have full legal membership of the family caring for them, and it facilitates belonging. The comments provided by study participants revealed these strengths were connected to one another with the legal membership of the adoptive family providing children with permanence, stability and security, leading to feelings of belonging.

The legal permanence of plenary open adoption meaning that children could not be moved to another placement or returned to the care of their birth family was something viewed as having great value.

"I just think it would give permanency for child and carers, living with the stress everyday worrying about the child we've raised as our own since a baby that it might be moved or returned to birth family after so many years worries us every day." [Foster carer/Prospective adoptive parent] and, *"The child legally becomes a part of the family. The child has the assurity that they will not have to move placement and there will be no more s90's or court processes. It is a lifelong order"* [Adoptions Caseworker].

That such security could have an impact in terms of the care being provided and in child feeling like they belonged, was also noted.

"This option gives parents who are committed to the child in their care the ability to truly claim the child and give of their whole hearts. Guardianship/PCO does not and the child has no legal certainty moving forward where adoption allows for them to feel truly connected to their family and they do not need to be concerned that the birth parent/parents will take them back to court. It is real permanence!" [Adoptee/Guardian].

That the creation of a legal connection via adoption is considered meaningful and communicative of commitment and love was expressed by a care leaver.

"Being adopted by a family that loves me has been a dream of mine since I was little. Sadly I'm now 18 and spent all my 16 years out of home in foster care, would've been nice to be considered legally related to my "parents"... They were my "real" parents. I wanted proof of their love to me. I wanted a real family" [Care leaver].

Some adoptees described their experience of adoption as providing them with love, certainty and belonging.

"Children feel they belong, wanted, loved and should feel no different to any other family. That is how I was raised and am thankful for how my life has turned out. Would hate to think I felt uncertainty or that I didn't belong somehow" [Adoptee].

However, other adoptees were adopted by people who were described as abusive or incapable of meeting their needs. That the opportunity to feel belonging and security in an adoptive family may only occur when adoptive parents have the right motivation and skills came through in comments that described the need for a proper assessment of adoption applicants.

"Adoption is an extreme measure. However, experiences of developmental trauma through abuse and neglect are also extreme. Adoption (where careful assessment and preparation is done with regards to prospective adopters) gives the opportunity for healing through unconditional love / permanence / belonging to a family" [Adoptive parent/Health professional].

The most commonly noted weaknesses of plenary open adoption were the severance of the legal relationship between children and their birth family, the change of children's birth certificates and identity, the lack of post-adoption support, and the onus on adoptive parents to organise and supervise contact.

The issues of severance of the legal relationship with birth family, change of identity and changing birth certificates were related to one another in comments and were frequently described as a weakness of plenary open adoption, particularly by adopted people. They spoke of the lifelong significance of these issues and their view that this should not happen.

"Loss of identity, heritage and false birth certificates are huge issues for adoptees. Forever into the future my genealogy has changed. I can never be legally related to my family" [Adoptee], *"Severing a child's identity, family, family history and culture is too great a price for permanency of care"* [Adoptee], *"No human being deserves to have their identity heritage name and family tree falsely removed"* [Adoptee] and, *"Changing a child's name, changing birth certificates of the child and severing all ties to the child's actual heritage is NEVER in the best interests of any child"* [Adoptee].

"Being adopted by a family that loves me has been a dream of mine since I was little. Sadly I'm now 18 and spent all my 16 years out of home in foster care, would've been nice to be considered legally related to my "parents"...They were my "real" parents. I wanted proof of their love to me. I wanted a real family" [Care leaver].

Concern the implications of this might not be realised until adulthood was expressed.

"It is often only when an adopted person reaches adulthood that the ramifications of their adoption begin to become clear to them, and is also often when the grieving process starts for an adopted person" [Adoptee/Counsellor].

That the permanence of adoption came at the cost of the severance of the legal relationship between a child and their birth family was noted.

"The loss of identity, birth certificate and legal connection to family is something that is lifelong and inter-generational. It is a very high price to pay for care as a child" [Adoptee/Counsellor], *"The permanent belonging that adoption provides a child or young person is a strength...The challenge of this kind of adoption is the need to severe legal ties with one family in order to belong to another family"* [Social worker in child protection].

Some adoptees commented that prospective adoptive parents may find the legal severance from birth family in plenary open adoption attractive. However, comments by foster carers who were wanting to adopt showed they often saw this legal severance as a significant drawback.

"We shouldn't need to eradicate the child's connection to their birth family" [Foster carer/Prospective adoptive parent], and *"I disagree with the ties to the birth family being severed at adoption and believe that the adoptive family should be added to the birth certificate with legal responsibility placed with adoptive parents - but not the erasing of birth family"* [Foster carer/Prospective adoptive parent].

As with guardianship, foster carers often spoke of lack of agency support post adoption as being a weakness. *"Due to the significant challenging behaviour of one of our foster children due to her multiple diagnoses as well as trauma, we require significant support to provide a stable home for her. We would like to adopt all three children but worry that we cannot sustain safe and stable care for her without the continuation of support including regular respite"* [Foster carer/Prospective adoptive parent].

As with guardianship, difficulties regarding the organising and supervising of contact and in contact being maintained were noted as weaknesses of plenary open adoption.

"We would love to adopt our boy. The only concern would be the supervision of contact. The father is dangerous. It would be much better for the child though" [Foster carer] and, *"Adopted parents may not be able to supervise contact appropriately and or may stop or increase without sufficient evidence of benefit or otherwise"* [Foster and kinship carer/Social worker in OOHC].

Simple open adoption

Although study respondents were not specifically asked to provide an overall opinion on any of the permanence options, when it came to simple open adoption individuals very commonly expressed their approval of it stating that it was something that was "good", "needed", "better than the other options" or calling for it to be instituted. In fact, 44% of comments included such sentiments. These comments came from individuals from a large variety of experience backgrounds including adopted people, care leavers, foster carers, guardians, prospective adoptive parents, adoptive parents, and child welfare professionals. Individuals often used repetition, capitalisation and exclamation marks to emphasise their enthusiasm for simple open adoption.

 "*Simple open adoption sounds fabulous! Please bring it to Australia*" [Foster carer/Guardian], "*This needs to be legalised in Australia ASAP*" [Foster carer/Guardian], "*Why doesn't this exist already!!*" [Foster carer/Guardian], "*Bring in simple adoption!*" [Foster carer/Guardian], "*This would be an amazing option!* '[Foster carer], "*Please, please, please make this an option in Australia quickly!*" [Foster carer], "*I wish we could get an order like this. Would be better than a lotto win!*" [Foster carer], "*Yes yes yes please and soon*" [Guardian], "*Totally think this should be available in All states of Australia*" [Foster carer/Care leaver], "*Sounds really good. Would've loved to experience simple adoption*" [Care leaver], "*Sounds too good to be true! In a perfect world...MAKE IT HAPPEN!*" [Care leaver/Adopted person], "*Bring it on! and soon*" [Adopted person], "*This is such a brilliant idea*" [Adoptee], "*This is a MUCH better option*" [Adopted person], "*Yes please!*" [Adopted person], "*Wish they had this when I was adopted*" [Adopted person], "*Outstanding option*" [Foster carer/Adoptive parent/Counsellor], "*Sounds like the perfect adoption situation*" [Adoptive parent/Birth family member of adoptee], "*This sounds wonderful*" [Manager permanency support program], "*This makes so much more sense*" [Case manager OOHC], "*Wish we has the option!*" [Adopted person/Adoption Assessor], "*It seems to be the best bits of everything*" [Caseworker OOHC], "*I think this option would be ideal*" [Foster carer/Child protection worker].

Foster carers often provided detailed descriptions regarding why simple open adoption would be of value to the children in their care.

"*I have 3 permanent care daughters - simple adoption would suit our case perfectly. They want to belong to me, to carry my name and inheritance rights and they want to know they can stay with me forever even past 18. But they also want to stay in contact with birth families as part of their heritage*" [Foster carer/Guardian], and "*This sounds fantastic and would solve a lot of problems so the child aka my son would still be recognised as a brother to his siblings and other birth relatives but also my son and my other children's brother. No lost connections or lost identity or sense of belonging*" [Foster carer].

Lifelong implications were also considered in comments.

"*If this option were available now I would much prefer it over either guardianship or plenary adoption. Although my oldest child is 12 and legally able to make a decision herself about what she wants, she is not able to understand the complexities and differences between guardianship and adoption. Simple adoption would mean that she would not be losing anything by making a choice to be adopted by me. She wants permanency very much but I am not convinced that she understands the implications of adoption enough for us to go down that path. I don't see any weaknesses in this form of adoption. It is about leaving choices for children as they grow into adulthood*" [Foster carer].

The strength of simple open adoption most frequently specifically commented on was that the legal connection with birth family is maintained when a child is adopted. The comments by adopted people, foster carers, prospective adoptive parents, adoptive parents and child welfare professionals were remarkably similar in seeing value in children having legal membership in their birth and adoptive family simultaneously.

This value was expressed in terms of protection of the child's rights.

"*Simple adoption seems to protect everyone, the child is not displaced, does not feel like an item trafficked between 2 worlds, the child belongs to everyone but is safest with the adoptive parents. To me, this option protects the child's right to identity, family and safety, the right to flourish*" [Adopted person].

"I think this is a much better option as the child has full access to their birth family and their identity. They do not "lose" a relationship to gain another. Much better option than what exists now in Australia" [Adoptee]

It was also expressed as being beneficial to children's psychological wellbeing.

"I think this is my most preferred option for adoption for foster children. I think it is important for them to maintain their legal connection to their birth family and to have one with their adoptive family... I think this is psychologically the best for the child" [Foster carer].

And as a means of minimising loss for children.

"I think this is a much better option as the child has full access to their birth family and their identity. They do not "lose" a relationship to gain another. Much better option than what exists now in Australia" [Adoptee] and, *"Simple adoption as described would be ideal, children would keep their links and rights to birth family and also to adopted family. My adopted son ...in some ways I feel he was denied his heritage"* [Foster carer/Guardian/ Adoptive parent].

One birth parent of children in the process of being adopted by their foster parents, described her concerns about consent in the adoption process. However, she also expressed support for simple open adoption with reasoning focused on the maintenance of the legal relationship with their birth family.

"It seems that from the adoptee (especially those in OOHC) that this could give them the stability of permanent place that adoption provides these kids whilst maintains ties with their birth family" [Birth parent of children in care].

The only weakness of simple open adoption addressed in comments with any regularity was that legal belonging in two families could be confusing for children. Study participants with these concerns came from a variety of experience backgrounds. Some concerns appeared to be related to a belief that a legal connection to birth and adoptive families would encourage some sort of competition between the families.

"Simple adoption isn't simple at all, it's totally confusing for the child. Children are not commodities and should not be raised in such a toxic environment, which pits natural mother against adoptive mother and all of the harm that causes" [Care leaver/Natural parent of adoptee].

Similarly, there were suggestions that simple open adoption would increase feelings of insecurity for children, adoptive and birth parents.

"I think this would be highly confusing for everyone involved and provide lots of insecurity for the birth parents, carers and child. Adoption is a worldwide recognised practice of changing the legal relationship of child with their foster carers. I don't see how this can be the same thing" [Adoptions caseworker], and *"I think this would play with the kids minds. They would stop feeling like they truly belonged somewhere. It's like having your cake and eating it too.... puts doubts in kids minds"* [Adopted person]

RECOMMENDATIONS

The research results indicate strong support for the implementation of simple open adoption in the Australian context.

When the three existing legal frameworks of long-term foster care, guardianship and plenary open adoption as permanency options for children in OOHC in Australia are compared in this study to the system of simple open adoption, results indicate strong support for the introduction and implementation of simple open adoption in the Australian context.

Child protection and adoption legislation is state and territory based in Australia. However, the Inquiry into Local Adoption by the Federal House of Representatives Standing Committee on Social Policy and Legal Affairs (2018) recommended in their report Breaking barriers: a national framework for Australia's children "that the Commonwealth work with state and territory governments to achieve agreement, through the Council of Australian Governments, to develop and enact a national law for adoption" indicating a role for the Federal government in this area.

While the law may need to remain within the existing structure with each jurisdiction enacting its own permanency laws, a national approach to this is recommended.

Recommendation 1:

Due to the complex nature of adoption and permanency orders, it is recommended each state and territory seek review and independent legal advice on

1. The introduction of the new Simple Adoption legal order, and;

2. The introduction of policies surrounding and implementating the practice of simple adoption.

3. The introduction of Birth/Identity Certificates that recognise both families.

It is recommended the practice of simple open adoption is not put forward as a replacement for plenary open adoption, rather as a further option on the continuum of care in relation to permanency for children in OOHC.

Recommendation 2:

This study indicates support for the implementation of simple open adoption to be national in scale. While it is not suggested the practice of implementing permanency options for children in OOHC be conducted at a federal level, it is recommended that

1. A national framework for adoption, which includes simple open adoption as part of the permanency continuum be developed, and;

2. Each state and territory reflect the national framework in aligning current state-based adoption and permanency practices.

Recommendation 3:

It is strongly recognised that children in care who have typically experienced trauma before, and sometimes after coming into statutory care, will require supports during their childhood and/or in later life. A national approach to post-permanency support that serves the child or young person, across their life, be developed and enacted across jurisdictions.

CONCLUSION

Study participants, from a wide variety of backgrounds, largely agreed that children and their families should receive continuing support after guardianship or adoption orders were granted in order to ensure children recover from the trauma they have experienced.

This study is the first in Australia to consider the views of people with a lived experience of OOHC and adoption on the currently available legal frameworks for providing children with permanency. It is also the first study to consider views on simple open adoption in the Australian context. While there were areas of significant disagreement between individuals who had different experiences of OOHC and adoption, it was a suprising finding there was also broad agreement between groups on many issues. Study participants, from a wide variety of backgrounds, largely agreed that **children and their families should receive continuing support after guardianship or adoption orders were granted in order to ensure children recover from the trauma they have experienced. In addition, very strong support for the proposition that legislative reform be considered to institute simple open adoption in the Australian context was identified.**

Areas of contention regarding OOHC and adoption included concerning **birth certificates** for adopted people, post-guardianship and post adoption support, ensuring the safety of children after guardianship or adoption orders are granted, and managing and **supporting birth family contact**. These issues and the detailed views of individuals with different experiences of OOHC and adoption are being considered in qualitative interviews currently underway. More than 400 individuals indicated a willingness to be interviewed for the study which demonstrates a high level of interest in improving the care of children in long-term OOHC.

Many adoptees in the survey were part of the "forced adoption" period, and described the pain and trauma of unnecessary separation from their birth parents. This is a strong reminder the mistakes of previous forced adoption practices must not be ignored. Regardless of the improvements in permanency options which may be implemented, providing adequate support to both birth and adoptive families to enable the best care of the children and young people involved must have the highest priority.

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GLOSSARY OF TERMS

Aboriginal and Torres Strait Islander Placement Principle:
a guide of priorities which must be considered for Aboriginal and Torres Strait Islander children not able to remain in the care of their birth parents

Adoptee/adopted person:
a person who has been the subject of a legal adoption order

Adoption:
the permanent transfer of all legal parenting rights and responsibilities from the child's birth parents (or anyone with parental responsibility) to the adoptive parents

Birth parent:
a parent who has conceived (mother) or sired (father) a child

Care leaver:
a person who has spent time living in out-of-home care as a child (under the age of 18)

Foster care:
A form of out-of-home care where the caregiver (who, prior to this arrangement is unknown to the child) is authorised and reimbursed by the state/territory for the care of the child

Foster child:
a child or young persons living in foster care

Guardianship:
An order granting guardianship and custody of a child to a third party. Unlike adoption orders, these orders do not change the legal status of the child, and they expire when the child turns 18 or marries. An application may be made to revoke or amend these orders.

Inheritance rights:
the right of a decedent's survivors to inherit property

Long-term foster care:
Children who have been continuously in foster care for two or more years. Generally, these children have long-term orders transferring their legal guardianship and custody to the relevant state or territory department or non-government agency.

Open adoption:
when children who are adopted grown up with an understanding that they have been adopted and, where possible, , are supported to have a relationship with or knowledge of their family of origin and cultural heritage

Out-of-home care (OOHC):
Overnight care for children aged 0–17 years, where the state makes a financial payment or where a financial payment has been offered but has been declined by the carer.

Placement disruption:
an unplanned change in foster care placement

Plenary adoption:
a form of adoption that terminates the legal relationship between birth parent and adopted child

Simple adoption:
a form of adoption that allows some legal bonds between the birth parent and adopted child

List of Abbreviations

ACT Australian Capital Territory
AIHW Australian Institute of Health and Welfare
NSW New South Wales
OOHC Out-of-home care
PCO Permanent Care Order
UK United Kingdom

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Dr Stacy Blythe is a mother, foster carer, and Senior Lecturer in the School of Nursing and Midwifery at Western Sydney University.

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Contributor

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Renée Carter was appointed to lead the organisation in working towards all children having access to a safe, nurturing and permanent family home, and for their families to be supported to thrive. Renée has a strong background in communications and executive management, along with board level experience in corporate and not-for-profit sectors and is a member of Australian Institute of Company Directors.

Her experience includes three years as Chair of charity Child Abuse Prevention Service (CAPS), an organisation focused on early intervention, education and support of families and communities.

Renée is also a member of the Institute Advisory Group for the independent research centre Institute of Open Adoption Studies (The University of Sydney) and is Vice Chair of the NSW Committee on Adoption and Permanent Care (COAPC). Renée is passionate about influencing policy and practice to deliver timely and effective outcomes for children, by garnering community, sector and government support.

Editor

Michelle Stacpoole, Adopt Change

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