



Australian Government

Australian Institute of Family Studies

NSW Government

Request for feedback and input on:
*Issues Paper: Establishing an
Institute of Open Adoption*

RFT ID FACS.15.58 notice

**Response by the
Australian Institute of Family Studies**

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July 2015

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AIFS knowledge and experience

The Australian Institute of Family Studies (AIFS) has extensive understanding of and experience in undertaking adoption research, including past adoptions in Australia, the resulting impacts on affected individuals, and their current service and support needs. Further, the links between adoption and other forms of family separation and formation, past and present, their effects, and broader service delivery implications continue to be a key focus of AIFS' core research activities.

Through undertaking a number of seminal pieces of research in the field of adoptions in Australia—including the recently released *Forced Adoption Support Services Scoping Study* (Higgins, Kenny, Sweid, & Ockenden, 2014), the national study of the effects of past closed adoption practices (Kenny, Higgins, Soloff, & Sweid, 2012), and a review of the previous literature summarising key issues regarding past adoption practices (Higgins, 2010)—AIFS has not only developed a sophisticated understanding of the issues facing mothers, fathers, sons and daughters, adoptive parents and wider family members, but has also developed strong and effective working relationships with the diverse and often divergent stakeholder groups, many of whom have differing perspectives on past events, and different expectations of current services. This places AIFS in a unique position to provide comment in this highly sensitive field, taking into consideration all viewpoints in an impartial and independent manner.

The following is a summary of the key pieces of research outlined above.

- **Impact of Past Adoption Practices: Summary of Key Issues From Australian Research (2010)**—This project comprised a review of existing research literature about past adoption practices in Australia. The report was commissioned by the then Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)—now the Department of Social Services (DSS)—to understand the quality of research available about past adoption practices, and to assess its adequacy as an evidence base for policy and service development. Although there is a wealth of primary materials, there has been little systematic research on the experiences of past adoption practices in Australia. The review found that relinquishing a child to adoption has the potential for lifelong consequences for the lives of these women and their children, as well as others. As part of the project, AIFS consulted with stakeholders to identify relevant research literature to include in the review, and then conducted a structured review that classified the literature and critiqued the strengths and weaknesses of different types of information.
- **Past Adoption Experiences: National Research Study on Services Responses to Past Adoption Practices (2011–12)**—This research project built on the earlier literature review project, described above, and was also commissioned by the then FaHCSIA (now DSS). Council of Australian Governments (COAG) family services ministers agreed to a joint national research study into past adoption experiences, to be conducted by AIFS. The aims of the project were to: examine the experiences of past adoption, as they related to the current support and service needs of affected individuals; consider the extent to which affected individuals had sought support and services, and the types of support and services that have been sought; and present information from the study that could be used in the development of best practice models or practice guidelines for the delivery of supports and services for

individuals affected by their adoption experiences. More than 1,500 individuals took part in the study, including over 50 service providers. The final report released on 17 August 2012 was well received by persons affected by their past adoption experiences and the broader stakeholder community.

- **Forced Adoption Support Services Scoping Study (2013–14)**—The Australian Government response to the recommendations of the Senate Inquiry regarding the Commonwealth Contribution to Former Forced Adoption Policies and Practices requested a scoping study to be conducted to provide guidance in relation to: the establishment of specialist support and counselling services; the availability of peer support groups; the extension of current family tracing and support services; and the extension of state and territory Find and Connect information services to include adoption service providers. In July 2013, the then FaHCSIA (now the DSS) commissioned AIFS to undertake this study. The purpose of the scoping study was to develop options for service models that will enhance and complement the existing service system to improve support for people affected by forced adoption and removal policies and practices. AIFS undertook the following activities: a literature review to synthesise previous research on forced adoptions and the effects they have had on people, including long-term effects, and their current service and therapeutic needs, as well as reviewing best practice models for meeting those needs; mapping the services currently available for people affected by forced adoption, and analysing the strengths or promising practices, weaknesses, barriers and gaps; an environmental scan of service delivery in other related welfare/human service areas; consultations with service providers across all states and territories, both adoption-specific and generalist health and welfare providers; and development of evidence-based national service model options that will complement and enhance the existing services and fill gaps to better meet the needs and expectations of those affected by forced adoption practices.
- **Forced Adoption Communities of Practice (2015–16)**—This current DSS project is building on the previous work conducted by AIFS in the area of past adoptions, including forced adoption and family separation. It will produce two resources: *Forced Adoption Support Services: Establishing and Building Networks*, and *Good Practice Principles in Providing Services to Those Affected by Forced Adoption and Family Separation*. The most significant piece of work, however, will be the development of national practice standards, which will produce consistent standards for delivering support services, by a range of professional groups and organisations, to those affected by the policies and practices of forced adoption.

AIFS project staff are highly regarded for their knowledge and expertise in the area of adoptions (past and present), and have provided expert advice regarding adoption and other forms of family formation to a number of government and non-government committees, including:

- the Reference Committee for the National Apology for Former Forced Adoptions;
- the Australian Government’s Past Forced Adoptions Implementation Working Group;
- the VANISH Expert Group of the Forced Adoption Practices Workforce Development and Capacity Building Initiative;
- the Standing Committee on Social Policy and Legal Affairs (Roundtable on Surrogacy, February 2015); and

- the Expert Reference Group for the Commonwealth Department of Health’s project to develop and implement national training and resources designed to support health professionals working with people affected by past forced adoptions policies and practices (being delivered by the Australian Psychological Society).

Further information about our work in this field can be accessed at: aifs.gov.au/our-work/research-expertise/past-adoption-and-forced-family-separation.

AIFS’ qualitative and quantitative primary research on family formation and functioning means it is also well placed to understand the factors that may affect the desire for—and access to—adoption. Examples of AIFS credibility and up-to-date research in this area include its *Family Matters* journal, which provides current research on the trends in Australian families. Adoption and other methods of family formation were also a key focus of a monograph published by AIFS in 2014 (Hayes, & Higgins, 2014).

In addition, AIFS has strong socio-legal research experience, enabling it to examine the complexities and challenges of the current legal framework governing adoptions; for example, the difficulties in upholding the principle of the “best interests of the child” (United Nations, 1990) to ensure it is the paramount consideration in decision-making for any adopted child. AIFS’ experience in social, policy and legal research, particularly in the area of family formation and family law, the best interests of the child, and child protection law enables it to examine the available evidence regarding adoption (which comprises studies from various academic disciplines) and reflect on the implications for open adoption in Australia.

AIFS response to the Institute of Open Adoption issues paper

Introductory comments

Thank you for the opportunity to provide input into the NSW Government’s *Issues Paper: Establishing an Institute of Open Adoption*. The context in which we do so is not to comment on either current or proposed policy or legislation, but rather to present implications from research that we have conducted or are aware of that relate to matters that pertain either directly or indirectly to the subject of open adoptions in Australia. It is within this context also that our submission on the issues paper is of a general nature, and does not specifically address each of the 13 issues for decision by the NSW Department of Families and Community Services (FaCS).

AIFS firmly supports the position that the principle of the “best interests of the child” is of paramount importance in considering permanency planning (including adoption), and should be interpreted and applied through a lens that is informed by a strong evidence base. As an overarching comment, although actions might have been made with the best of intentions (and certainly from an historical analysis of past adoption practices, some of the very public arguments that were made about removing children from “unfit” mothers made reference to the best interests of the children), that does not prevent hindsight from giving us a very different view. One of the

lessons from the available research is that it is very important to be able to try and predict what might be otherwise unanticipated consequences of policies and laws that are put in place today.

It is imperative for all research-based organisations established to guide policy and practice, that they start with a neutral position and look for evidence that supports or contradicts a particular policy direction or practice, as well as look at how research can inform and suggest alternatives that may not have been anticipated. The Issues Paper identifies the need for drawing on evidence on open adoption within Australia from which “best practice” can be distilled. However, whether such a concrete evidence-base already exists about best-practice specifically relating to open adoption is contestable, and philosophical arguments, international treaty obligations, and broader research evidence of which we are aware, particularly the evidence from adopted persons in our national study of past adoption practices are also of high relevance to the questions posed.

AIFS has conducted a number of studies that have looked specifically at the issue of past adoption practices, and there are a number of parallels that can be drawn in terms of the implications for those who are affected by such practices in this current context. In our publication on contemporary issues relating to families, policy and the law in Australia (Hayes, & Higgins, 2014), a number of those chapters relate directly to the subject of family formation, which goes to the issues of identity and connection of young people as they grow into adulthood, with parents biological and otherwise.

One of the other very clear messages that has emerged from AIFS research around past adoption practices is that for many who are affected (not just mothers, but also fathers, other family members and adult adoptees themselves), there is a common view that, within those practices of forced adoption and other family separation practices, **there has in fact been a strong focus on the needs of prospective parents at the expense of the needs of the vulnerable birth parents** (there are parallels that might be able to be drawn with people who have involvement with current child protection systems in terms of vulnerability). There has also been less focus on the **identity and connection needs of children** who grow up under such conditions of family formation or family creation. AIFS would therefore argue that the issue that requires further consideration is actually about how **a long-term view can be taken of what might be in the best interests of the child**, and the regulatory and policy framework that sits around what will drive or shape the behaviour of potential adoptive parents.

The issue of consent

One of the key messages we would put forward for consideration is the issues related to prospective parents wanting to be able to create a family, and the degree to which, as a society, there may be some limits on this due to potential unintended consequences. It is therefore of extreme importance that the biological parents and their wellbeing are also considered in any future adoption research, and their potential vulnerability within society, such as the newly established timeframes in NSW regarding biological parents being able to address the underlying issues that have placed their children in vulnerable positions in terms of their safety and wellbeing in the first place. In this light, force can present itself in many different ways and is often quite subtle. (For example, these timeframes may be unrealistic for the biological parent/s to

access support programs such as alcohol and other drug rehabilitation and establish longer-term stability such as appropriate housing. Subsequently, parent/s may feel pressure to consent to the adoption of their child/ren if it appears that they will be unable to meet the expectations that these short timeframes place upon them. As well as potential constraints on the capacity of parents to provide realistic, legally informed consent, under current NSW legislation, there are still adoption orders that are made without the consent of the child's parents. While they may be able to participate in the selection of the prospective adoptive parents, in some instances their consent to the adoption is not required.

While there is acknowledgement in the Issues Paper of the formal apology for forced adoption practices made by NSW in 2012, the Issues Paper did not provide any detailed analysis of what were the key elements of those past practices (particularly relating to coercion and lack of choice for biological parents, and the prioritisation of the needs of prospective parents), and how these elements would be central to the work of the proposed Institute of Open Adoption in order to prevent a re-occurrence of the mistakes of the past.

Open adoption

The shift from the practice of closed adoptions to open adoption is a matter of recognising the need for the child to have a connection to family and culture, which is not just to their biological parents, but also to siblings, extended family, and their broader community. However, the evidence to suggest that there are positive longer term outcomes for children and young people who have been adopted from out-of-home care (OOHC), and for their families of origin, is not established. Further, adoptive parents are often given primary consideration as to the type, frequency and setting of contact between their adopted child(ren) and the child's family of origin. These arrangements rarely remain in place in the longer term. This is again a point requiring further examination regarding the longer term outcomes for all parties to an open adoption.

Adoption in essence changes the identity of the child/young person. Where there are permanency arrangements (e.g., a number of jurisdictions have the legal frameworks in place that grant carers the same rights as biological parents), there does not appear to be the same desire for considering adoption as an alternative. Care needs to be taken that this is not an issue driven by the desire of parents to have "ownership" of children, rather than to create safe and supportive care environments that support their connection to family and community.

The issues are complex; while attachments formed at a younger age, and placement stability, of course are of paramount consideration, the need to change a child's identity in the process (in the form of a legal document, such as a birth certificate that does not tell the truth about a person's genetic history) is of major concern for AIFS. Choices can be presented to young people, when they are old enough to make informed decisions themselves, about whether or not they wish to alter their identification documentation. We are still hearing from participants in our research about the difficulties they are faced with in obtaining passports and other formal documents because they do not have adequate/correct proof of identity.

Another highly relevant point is the reluctance of many prospective adoptive parents to adopt older children from OOHC. Such children do, of course, tend to have more complex issues and support needs that will not be supported financially or otherwise by the state once an adoption order is in place, therefore increasing the risk of adoption placement breakdown. Any push for increasing open adoptions needs to address this issue. It may be much more in the best interests of a child who has serious behavioural issues or other support needs that have not been able to be managed within short-term placements to be given the opportunity for stability and care through permanency arrangement (such as adoption), than it is for younger children without complex needs. Again, the motivations of prospective adoptive parents need to be examined if they only wish to form a family with babies/young children, rather than those children and young people who are arguably in most need of secure, stable and loving homes. Likewise, prospective parents may not consider adopting children unless they receive adequate support from the state to provide long-term safe and secure environments for those children.

Contact with biological families

The issue of maintaining contact with parents after adoption is, of course, fraught. There are families of origin where this will not be easy for a plethora of reasons.

This area requires further research into “what works and why”, by examining “successful” long-term contact with families of origin.

Adult adoptees in our research describe the issue of having “divided loyalties” once contact has been made with their families of origin. Many wait until their adoptive parents have passed away before even embarking on the journey of searching. This should speak volumes to the complexity of open adoptions, particularly as the child grows older. The adoption in and of itself does not take away the complex issues faced by all parties with regard to children in care when they visit their families of origin. The push therefore for offering a permanent change of identity as the “solution” requires a very clear evidence base to support such action within the child protection system, namely the encouragement of child protection workers to more frequently consider adoption as a solution to acquiring permanent placements for children in care. Surely, it should be the individual child/young person’s choice as to whether an adoption takes place or not, provided they are old enough to make an informed decision – as well as their views on the possibility of other permanency arrangements that do not involve severing of biological parental rights and their legal connection to their parents?

Presumably, contact arrangements are already in place for children and young people in the OOHC system, so children who are the target for open adoptions are primarily babies under the age of 12 months, and children under the age of five.

Concluding remarks

The primary concern for AIFS with regard to the varying ways in which families can be formed in today’s society, is for any policy change or practice enhancements to reflect what is truly in the best interests of the child. Notwithstanding that, these children will one day grow into adults, and

will have the right to question the decisions that were made for them “in their best interests”. It is therefore of paramount importance that the proposed Institute of Open Adoption is forward-thinking in its focus, and that can only be achieved by examining the past.

An honest and realistic discussion is therefore required in the context of the age-driven rates of children who are “available” for adoption from the OOHC system in NSW (i.e., babies/infants), and any prospective adoptive parents who are willing to provide “stable and loving homes for life” for those children with less likelihood of having more complex needs.

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