



THE UNIVERSITY OF
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INSTITUTE OF OPEN ADOPTION STUDIES

SHAPING A BETTER CHILD PROTECTION SYSTEM
DISCUSSION PAPER – OCTOBER 2017

SUBMISSION: INSTITUTE OF OPEN ADOPTION STUDIES
UNIVERSITY OF SYDNEY

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30 November 2017

The Hon. Pru Goward MP

Minister for Family and Community Services

Dear Minister Goward,

I would like to thank the NSW Government and the Department of Family and Community Services (FACS) for the opportunity to comment on the *Shaping a Better Child Protection System – Discussion Paper*.

This response is made on behalf of the Institute of Open Adoption Studies (the Institute). The Institute is an independent centre formed by a consortium from the University of Sydney and Barnardos Australia. The Institute is the first of its kind in Australia to be publicly funded and is being hosted by the Sydney School of Education and Social Work in the Faculty of Arts and Social Sciences.

The Institute's objectives, first and foremost, are about children and their best interests, with a focus on matters relating to open adoption (involving contact between birth and adoptive families) for children and young people in out-of-home care (when reunification with their family is not appropriate).

The NSW Government investment in the Institute acknowledges the need for local evidence about best practice in achieving safety and permanency for children. To date, Australia has largely relied on international studies, which have limited generalisability given the substantial differences in legislative and service systems.

This investment is timely given the major reforms being led by FACS to implement the permanency placement principles, under the *Their Futures Matter* reform plan. The recontracting of out-of-home care services in NSW, which is currently in progress, will hold non-governmental organisations accountable for achieving permanency for children in out-of-home care, through intensive efforts at restoration and, if children cannot be safely restored to their birth parents, through kinship placements, guardianship or open adoption. It is vital that we embed research and evidence into the roll-out of these reforms to understand the impact of these once-in-a-generation changes and build the evidence for what works and for whom. The timely and effective translation of research to inform policy and practice decision making will be a core deliverable for the Institute. To achieve this, the Institute is building a collaborative, applied research program in partnership with FACS, NGOS and families.

This submission prepared by the Institute does not attempt to address all of the questions posed by the *Shaping a Better Child Protection System – Discussion Paper*. The response focuses on the available literature and research evidence that may help to inform the consultation.

Sincerely,

Amy Conley Wright

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GENERAL COMMENTS

The Discussion paper poses a number of questions to which the Minister and the Department are seeking responses. It is important first to outline some general principles that guide the Institute's approach and responses. Critical to our concerns are the need for:

- (1) sustained support for parents *before* children are permanently removed
- (2) longer-term support for children and parents *when children are returned home*
- (3) support for birth parents *after children are permanently removed*, that is, not leaving parents abandoned in grief and in limbo and expected to 'play nicely' and 'share' on contact
- (4) availability of long-term support for all carers – in foster care, guardianship, adoptive parents.

The other key general issue is the importance of ensuring that children, their birth parents, and carers have an opportunity to have their views taken into account in decisions that affect them. Section 10 of the *Children and Young Persons (Care and Protection Act)* provides some guidance in principle but there is little or no evidence as to how this works in practice. A review of how birth parents' views are heard and considered at various stages in the process also needs to be implemented.

The Institute is committed to using child-centred methods in our research, and to involving birth and caring families in the design and conduct of research. In 2018 we plan to conduct a series of semi-structured interviews with birth parents, caregivers, children and young people, exploring their experience of contact. The aim is to develop more respectful and inclusive ways of working together to achieve sustainable contact in the best interests of children, given the importance of birth family connection and its impact on other relationships and aspects of the child's life.

Early support for children and families

While the evidence regarding the long-term adverse impacts of child neglect and maltreatment is well established, there is limited evidence on the efficacy of programs aimed at addressing the risk factors for abuse and neglect. In 2012, the UK Department for Education commissioned the *Safeguarding Children Research Initiative* to examine interventions targeting children and young people at risk of maltreatment and report on the evidence for which approaches are the most effective at achieving positive long-term outcomes¹. Davies and Ward reviewed the evidence for 15 programs, and found that programs that identify and address underlying family issues, such as domestic violence and substance misuse, are most effective, and that continued support, albeit at a lower intensity, may be necessary to sustain the changes made by families. Other studies^{2 3} that have explored the outcomes of children returned home from care concluded that families are more likely to sustain positive changes and have better outcomes and stability if they receive ongoing support after reunification.

The *Safeguarding Children Research Initiative* review by Davies and Ward⁴ found that there is a relatively short window to intervene in families where children are at risk of maltreatment. The authors also highlighted the importance of practitioners having adequate training and capacity development in the fields

¹ Davies, C. & Ward, H. (2012). *Safeguarding children across services: Messages from research*. London: Jessica Kingsley Publishers.

² Farmer, E. & Lutman, E. (2012). *Working effectively with neglected children and their families – Understanding their experiences and long-term outcomes*. London: Jessica Kingsley Publishers.

³ Wade, J., Biehal, N., Farrelly, N., & Sinclair, I. (2011). *Caring for abused and neglected children: Making the right decisions for reunification or long-term care*. London: Jessica Kingsley Publishers.

⁴ Davies & Ward, *Ibid*

of child development, attachment and the impact of maltreatment, so as to assist them with identifying abuse (particularly neglect), taking action and precipitating earlier interventions.⁵

The research reviewed by Davies and Ward indicated that abuse and neglect needs to be addressed at an early stage and that children benefited less from specialist interventions, and from removal from abusive homes, as they get older.^{6 7} If children are to safely remain at home there needs to be proactive early engagement with services. That is to say, very young children are not only more likely to suffer maltreatment, they are also highly vulnerable to its consequences. There is now a compelling evidence base which shows that abuse and neglect have severe negative consequences for all aspects of children's future learning, behaviour and health, and that these impacts may persist into adulthood.⁸⁹

In 2013, the Parenting Research Centre reviewed the evidence for interventions for parents at risk of maltreating their children, and concluded that the majority of effective interventions were programs delivered by professionals, and were typically provided in the home.¹⁰ The outcomes targeted most frequently by the interventions were child behaviour, parent-child relationships and child development. There is evidence that intensive interventions may also be used to address the issues faced by children and to help them cope with the adverse impact of maltreatment and maladaptive attachment. For example, Montgomery and colleagues¹¹ identified the *Therapeutic Pre-school programme* as an effective intervention intended to support the healthy growth and development of children aged 1–24 months who have been, or are at risk of maltreatment. Through this program children were provided with medical, developmental, psychological and educational services.

Two UK studies which explored data from cohorts of neglected children returning home from care found that when parents had been unable to address the problems that had originally led to concerns about the children's welfare, children fared better by remaining in care. These studies showed a high proportion of parents either unable or unwilling to access appropriate, specialist support, leading to children being returned to, or remaining in very damaging family circumstances.^{12 13}

⁵ McDermid, S., Hyde-Dryden, G. & Ward, H., 2015. Looking for long-term outcomes: what early interventions are needed for children and young people at risk of maltreatment in England? *Irish Journal of Applied Social Studies*, 15(2), 36-49.

⁶ Montgomery, P., Gardner, F., & Bjornstad, G. (2009) *Systematic Reviews of Interventions following Physical Abuse: Helping Practitioners and Expert Witnesses Improve the Outcomes of Child Abuse*. London: Department for Children, Schools and Families.

⁷ Davies, C. & Ward, H. (2012) *Safeguarding Children across Services: Messages from Research on Identifying and Responding to Child Maltreatment*. London: Jessica Kingsley Publishers.

⁸ Brown, R., & Ward, H. (2012). *Decision-making within a child's timeframe*. London: Childhood Wellbeing Research Centre (Available at: <http://www.cwrc.ac.uk/resources/773>).

⁹ Davies & Ward, *ibid*

¹⁰ Macvean, M. et al. (2013) *Evidence review: Analysis of evidence for parenting interventions for parents of vulnerable children*. Parenting Research Centre; commissioned by the Families Commission of New Zealand.

¹¹ Montgomery, P. et al., *Ibid*.

¹² Farmer, E., & Lutman, E. (2012). *Effective working with neglected children and their families: Linking interventions with long-term outcomes*. London: Jessica Kingsley Publishers.

¹³ Wade, J., Biehal, N., Farrelly, N., & Sinclair, I. (2011). *Caring for abused and neglected children: Making the right decisions for reunification or long-term care*. London: Jessica Kingsley Publishers.

Support for birth families when children are removed

In the UK several studies have found that providing support for birth families, to help them cope with their sense of loss and grief after the removal and permanency placement of their child, may contribute to their welfare and also to the well-being of their children.¹⁴ This support can help birth families adjust and maintain positive contact with their child and the family caring for them. The *Adoption Act 2002* in England and Wales provides birth relatives with the right to request an assessment for post-adoption support.¹⁵ This includes assistance with understanding the legal process and their rights, having access to a worker independent from the child's social worker, who can help them participate in discussions about contact plans, and support them to fulfil those plans. The research is discussed in more detail in the response to the discussion paper questions.

In a series of focus groups conducted by the Institute in October and November 2017, across four sites in New South Wales (Newcastle, Parramatta, Sutherland and Shellharbour), foster carers also recommended that support should be available for birth families, particularly in relation to contact and maintaining healthy boundaries. Some foster carers indicated that birth parents need support in understanding the child protection system and the implications of the change to legal status for open adoption or guardianship. Foster carers commented on how difficult it was for some birth families, usually birth mothers, to maintain appropriate boundaries during contact, and that they needed strategies for how to relate to their child in a positive way:

“One of the things that kind of broke my heart in this whole process was that the birth mother had no support. She would come and she clearly didn't know how to engage with him. And she just couldn't manage it. It was really difficult. She did some things to him that were unacceptable to him, and his eldest brother too. Because they don't know how to behave. We asked if a caseworker could drive her to visits and talk to her. It's very difficult for the child so we need to be there to support the child. We need support, we need the buffer. But also, the birth parents in many cases have lost their rights to parent the child because they don't know how to. And here they are in this environment where they're bereaved, they're afraid, angry, being watched, and here's someone who they carried in their bodies and is no longer there. And they have to go it alone. And I think it's heartbreaking and traumatising for me to see the pain that she has. I think very often that support for birth parents is completely obviated.”

Foster carer views on support needs

During the focus groups conducted by the Institute in 2017, we asked current foster carers (n= 30) about their potential interest in pursuing permanency through guardianship or open adoption with the child or children in their care. Questions included potential challenges or barriers and the need for supports.

Overall, many foster carers indicated that they would need some level of support to pursue permanency. In some cases, concern about the lack of post-permanency support presented a barrier to foster carers for pursuing guardianship or adoption: “Do we wave them goodbye? That's where I'm shouting no.” Some foster carers expressed a conflict between pursuing permanency to be a ‘forever family’ and the need for support to meet the child's needs.

Foster carers identified the main support priorities as psychological and educational supports for the children. For example:

“The majority of children who come into care need something down the track. There's not too many kids who I've had in my care that, down the track, they haven't needed some sort of support. To go

¹⁴ Neil, E., Cossar, J., Lorgelly, P., & Young, J. (2010). *Helping birth families: Services, costs and outcomes*. London: British Association of Adoption and Fostering (BAAF).

¹⁵ Neil et al., *ibid*

to a psychologist cost me \$333 the other week because all these things are starting to come out. Now there's no support. You do get a bit back from Medicare. Not everyone goes through trauma, they brings their kids up normal, they don't need to see psychiatrists – not to say it won't happen, but most children who come into care, somewhere down the track, it's going to affect them in some way. So I think you've just got to have some support that if the child needs it, that you can afford to do it."

"We also need resources for training later on in trauma. Because it might be different from when you first get the child. It's looking into the future, not just the immediate. Having training that is easily accessible about different things that might happen when they are older."

In the focus groups, a few foster carers expressed an expectation that support would be available if they pursue guardianship or adoption and understood they could contact their current agency, the Regional Adoption Caseworker, or the Post Adoption Resource Centre for support (after receiving brochure at the Preparation to Adopt seminar). At the same time, several foster carers noted they would prefer to seek support on their own terms and as needed, rather than have oversight by agencies. As one foster carer commented: "we just want permanency and to be a normal family without caseworkers".

It is important to consider how families access post-permanency support. Adoptive families may be reluctant to contact their adoption agencies when they are struggling, for fear of being judged as inadequate parents.¹⁶ Likewise, best practices recommend against requiring adoptive families to come through the child protection system. As part of the preparation for adoption, adoptive families can be informed about available information and support services, and encouraged to reframe help-seeking behaviour as a strength rather than a sign of inadequacy. Strategies for outreach include home visits to new adoptive families, hosting educational events for parents on popular topics and distributing videos that show parents talking about the benefits of support groups and other services.¹⁷ Beyond an "open door" policy, post adoption services often take measures to actively "keep the door open," such as newsletters, ongoing training and support groups for adoptive parents, adopted young people and birth relatives.¹⁸

Supporting families through the permanency placement continuum

As the permanency reforms are rolled out across New South Wales, it will be important to track the outcomes associated with the reforms. It will also be critical to introduce new supports for families across the permanency pathways of restoration, kinship care, guardianship and open adoption.

As noted in *Their Futures Matter*, children in the out-of-home care system can experience greater challenges on their pathways to successful adulthood, due to their history of adverse childhood experiences. As part of the current reforms, it is essential that the New South Wales government invest in post-permanency support, for children – in their birth, foster or adoptive families, including longer term support for children and their families when children are restored home.

The United Kingdom (UK) provides an instructive model for post-permanency support. The *UK Adoption and Children Act 2002* establishes a duty for adoption support services to be offered by every local authority with social services responsibilities, through an 'Adoption Support Services Adviser.' This Act also requires provision of support services for birth relatives of adopted children, acknowledging the lifelong impact and the support needs they may have, including an independent worker from the time adoption becomes the

¹⁶ McKay, K. & Ross, L.E. (2011). Current practices and barriers to the provision of post-placement support: A pilot study from Toronto, Ontario, Canada. *British Journal of Social Work*, 41, 57-73.

¹⁷ Smith, S.L. & Donaldson Adoption Institute staff (2014). *Facilitating adoptions from care: A compendium of effective and promising practices*. London: British Association of Adoption and Fostering.

¹⁸ Rushton, A., Dance, C., & Argent, H. (2002). *Adoption support services for families in difficulty: A literature review and UK survey*. London: British Association of Adoption and Fostering.

plan for the child; help in understanding the adoption process; support services; and involvement in processes related to the child such as planning contact.

The Adoption Support Fund was established in England in 2015 to provide post-adoption therapeutic support to families. It was initially established for children adopted from care, and was expanded to serve children on special guardianship orders and children adopted from overseas. Since its inception, the fund has expended over £45 million on services for 22,000 children and 18,000 families. Families may access services up to the 'Fair Access Limit' of £5,000 per year; additional expenditure may be approved in exceptional circumstances. The fund supports a range of services, including:

- Play therapies
- Therapeutic parenting training
- Conduct problem therapies
- Cognitive and Behavioural Therapies
- Overarching categories¹⁹

Families can access funding for assessment and therapeutic services, at any point from the time of placement until the child is 21 years of age, and in some cases, up to 25 years of age. Timing and ongoing access to services is significant. Most post-adoption supports are delivered around the time of placement.²⁰ Early intervention services for young children may prevent negative behaviours from becoming entrenched and destructive. Early adolescence can also be a triggering time for the appearance or escalation of behaviours.²¹

Overseas studies suggest that a substantial proportion of families who adopt children from foster care are likely to seek counselling services for adjustment issues and children's emotional and behavioural issues.²² ²³ An evaluation of the Adoption Support Fund noted that children who received services through the fund and participated in the evaluation study showed improved behaviour and mental health, a small reduction in the predicted prevalence of mental health disorders and a small decrease in aggressive behaviours.²⁴

For the Institute of Open Adoption Studies, we see this as a critical area where we could contribute to the evidence base to support the permanency reforms around what works for children and. We are interested in working with organisations to develop, deliver and evaluate service models. The NSW permanency reforms are an opportunity to look at more holistic responses to families to support children's wellbeing over time.

¹⁹ King, S., Gieve, M, Iacopini, G., Hahne, A.S., Stradling, H. (2017, August). *The evaluation of the Adoption Support Fund*. London: Tavistock Institute of Human Relations. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/634685/The_Evaluation_of_the_Adoption_Support_Fund.pdf

²⁰ Wijedasa, D. & Selwyn, J. (2017). Examining rates and risk factors for post-order adoption disruption in England and Wales through survival analyses. *Children and Youth Services Review*, 83,179-189.

²¹ Smith, S.L. & Donaldson Adoption Institute staff (2014). *Facilitating adoptions from care: A compendium of effective and promising practices*. London: British Association of Adoption and Fostering.

²² Vandivere, S., Malm, K., & Radcl, L. (2009). *Adoption USA: A chartbook based on the 2007 National Survey of Adoptive Parents*. Washington, D.C.: U.S. Department of Health and Human Services.

²³ Rees, C. & Selwyn, J. (2009). Non-infant adoption from care: Lessons for safeguarding children. *Child: Care, Health and Development*, 35 (4), 561-567.

²⁴ King et al., *ibid*

SECTION 2 – EARLIER FAMILY PRESERVATION AND RESTORATION

Question 2.1

3. **If the Care Act was amended to better reflect the breadth of family systems and structures within our community, what additional safeguards should be required to ensure children and young people are protected?**

Response

It should be acknowledged that it is challenging to measure the contributions of different types of support and interventions to child outcomes, particularly in the context of a child's journey through a range of support agencies and services.²⁵ The systematic review by Davies and Ward found that one of the obstacles to developing a robust evidence base about the efficacy of programs aimed at safeguarding children is the degree of variability in the definitions and measures of maltreatment used across studies, the needs and circumstances of the children and families concerned, and the ways in which individual interventions are implemented in different localities.²⁶ This has hampered reliable comparisons and assessment of efficacy.

Most of the literature, based on research and statistical analysis relating to out-of-home care, has been undertaken and published in the United Kingdom (UK) and United States of America (USA). Given the considerable variation in the welfare systems and legislation across jurisdictions in Australia, the findings from international studies may have limited applicability to the service system in the NSW context. Pawson and Tilly (1997) caution that careful consideration needs to be given to the extent to which interventions developed in another country will translate adequately into the Australian context.²⁷

The *Pathways of Care Longitudinal Study* (POCLS), funded by the NSW Department of Family and Community Services (FACS), is the first large-scale prospective longitudinal study of children and young people in out-of-home care in Australia. This study provides linked data on more than 4,000 children's experience in out-of-home care, their health, education and offending held by multiple government agencies; matched to survey data collected from children, caregivers, caseworkers and teachers.

This landmark study provides a detailed understanding of children's experiences and outcomes, prior to the introduction of legislative and service system reforms by the NSW Government from 2014. To build on this study, and to understand both the impact of the 2014 reforms, and the current reforms being led by NSW Family and Community Services, under the '*Their Futures Matter*' approach, further prospective longitudinal research is needed.

The Institute of Open Adoption Studies is currently conducting a scoping study to develop a framework and measures to analyse the outcomes for children in out-of-home care in NSW across different permanency pathways, including restoration, guardianship, open adoption and long-term foster care. The project will define the core questions, test the methodology and negotiate access to the relevant government and agency data. This will be used to develop a model for tracking the outcomes achieved for children across the various placements since the introduction of the permanency reforms. The research team will use the POCLS data to provide the comparison cohort for the study. The Institute will submit an ethics amendment to enable access to the POCLS data, which is now in the SURE repository at the Sax Institute, to develop and test an outcomes model that could be applied to a prospective cohort. Building on the *Pathways of Care*

²⁵ McDermid, S. & Holmes, L. (2013). *The cost effectiveness of Action for Children Intensive Family Support Services*. Retrieved from: <http://www.lboro.ac.uk>

²⁶ Davies, C. & Ward, H. (2012). *Safeguarding children across services: Messages from research*. London: Jessica Kingsley Publishers.

²⁷ Pawson, R. & Tilly, N. (1997). *Realistic evaluation*. London: Sage.

study, there will be significant value and learning from continuing to invest in longitudinal research to observe the outcomes of children in different permanency pathways over time.

SECTION 2.4 SERVICE PROVISION

Question 12 - How can FACS more effectively access the capabilities of other government agencies and funded NGOs to provide services to vulnerable children and families?

Response

In 2014-15, 1 in 35 Australian children received child protection services, 73 per cent of whom had at least one previous child protection involvement (AIHW, 2016); this highlights the sustained nature of abuse and/or neglect in the overwhelming majority of cases. Infants (under the age of one) were the most likely age group to receive child protection services, together with children who live in the most disadvantaged areas of Australia.²⁸

The recent NSW permanency reforms are aimed at providing children with stable, secure family-based care, but this does not mean an end to the responsibilities of either society or the various agencies who have some duty of care for meeting the needs of vulnerable children in relation to their health and education. Promoting guardianship, kinship care and adoption should be accompanied by evidence-based post-placement support services.²⁹

The evidence surrounding the lifelong negative impacts of adverse early life experiences is substantial.^{30 31} The National Scientific Council on the Developing Child (2010) found a significant increase in the number of health risk factors as a result of prolonged exposure to one or more adverse childhood experiences (ACEs).³² These impacts significantly increase the risks of adult morbidity and mortality through high-risk behaviours such as smoking, obesity, high-risk sexual behaviours, unintended pregnancy, alcohol and drug abuse, and perpetration of violence.^{33 34} Evidence also shows that prolonged exposure to traumatic experiences in childhood is associated with an increased risk of self-destructive behaviours such as self-mutilation and

²⁸ AIHW 2016. *Child protection Australia 2014–15*. Child welfare series no. 63. Cat. no. CWS 57. Canberra: AIHW.

²⁹ Wrobel, G.M. & Neil, E. (2009). Connecting Research to Practice. *International Advances in Adoption Research for Practice*, (pp. 317-326). John Wiley & Sons Ltd.

³⁰ Thousand Days (2016). *The First 1,000 Days: Nourishing America's Future*. Washington, DC: Thousand Days. <http://thousanddays.org/resource/nourishing-americas-future/>

³¹ Mersky, J.P., Topitzes, J. & Reynolds, A.J. (2013). Impacts of adverse childhood experiences on health, mental health, and substance use in early adulthood: A cohort study of an urban, minority sample in the U.S. *Child abuse and Neglect*, 37(11): 917–925.

³² Fortin, M., Haggerty, J., Almirall, J., Bouhali, T., Sasseville, M. & Lemieux, M. (2014). Lifestyle factors and multimorbidity: a cross sectional study. *BMC Public Health*, 14:686.

³³ Fortin et al., *ibid*

³⁴ Brown, D.W., Anda, R.F., Tiemeier, H., Felitti, V.J., Edwards, V.J., Croft, J.B., & Giles, W.H. (2009). Adverse childhood experiences and the risk of premature mortality. *American Journal of Preventive Medicine*, 37 (5), 389–396.

suicide attempts.^{35 36} It can therefore be argued that the true response to child protection should be a tiered public health investment in child well-being.

Many children placed in care have experienced painful, fragmented, unstable and chaotic beginnings to their lives, and a high proportion, as many as 72%, have experienced abuse or neglect.³⁷ These children have often suffered from psychological, sexual or physical abuse, neglect and malnutrition, exposure to drugs and alcohol, parental mental health problems and domestic violence.³⁸ This often results in a range of emotional and behavioural challenges, leading to some children being more likely to experience physical, emotional, cognitive, educational and social development needs,³⁹ and being at greater risk of poor mental health throughout their life span.⁴⁰

In both the UK and USA, there is growing recognition of the need to improve the therapeutic support for adopted children, as highlighted by Pennington,⁴¹ in order to address and reverse the emotional, psychological and developmental traumas they may have suffered in their early lives. For example, the UK response included the launch of the national Adoption Support Fund (ASF) in May 2015, which provided funds of £19.3 million over two years to improve adopted families access to therapeutic support, including growing local markets of therapeutic providers. This program was extended in January 2016 to provide support to families over the next 4 years.⁴² The need for post placement support is equally relevant for children in other permanency placements, such as guardianship and kinship care.

In 2015, the UK Department of Education commissioned a review of available evidence relating to 15 therapeutic interventions for adoption support, and the report of the main findings was released in June 2016.⁴³ The overall aims of the review were to better understand key post-adoption therapeutic interventions for children and families; to examine the extent of the existing evidence on their effectiveness in achieving successful outcomes for adopted children and their families; and to identify gaps and make recommendations on what future research is needed.

In the USA, a four-year, nationwide prospective study was conducted by McRoy and colleagues (2009) of 161 adoptive families, in order to identify factors associated with their successful outcomes. When families were asked about the post-adoption support they were receiving, financial support and adoption subsidies were most commonly reported. Assistance with routine medical and dental care was also highly rated. The most common services sought by families were psychological and educational therapies, to address the

³⁵ Corcoran, P., Gallagher, J., Keeley, H.S., Arensman, E. & Perry, I.J. (2006). Adverse childhood experiences and lifetime suicide ideation: a cross-sectional study in a non-psychiatric hospital setting. *Irish medical journal*, 99(2):42-5.

³⁶ Read, J., Agar, K., Barker-Collo, S., Davies, E. & Moskowitz, A. (2010) Assessing suicidality in adults: integrating childhood trauma as a major risk factor. *Professional Psychology Research and Practice*, 32(4): 367–372.

³⁷ Selwyn, J., Wijedasa, D., and Meakings, S. (2014). *Beyond the adoption order: Challenges, Interventions and adoption disruptions*. London: HM Government.

³⁸ Lewis, J. & Ghate, D. (2015). *Adoption Support Fund Market Review and Implementation. Working Paper 1: Rapid Evidence Review: Adoptive Families' Needs and Experiences of Adoption Support Services*. London: HM Government and The Colbrooke Centre.

³⁹ Richardson, J. & Lelliott, P. (2003). Mental health of looked after children, *Advances in Psychiatric Treatment*, 9, 249–51.

⁴⁰ Saunders, L. and Broad, B. (1997). *The health needs of young people leaving care*. Leicester: De Montfort University.

⁴¹ Pennington, E. (2012). *It takes a village to raise a child*. London: Adoption UK.

⁴² *Children's social care reform: a vision for change* (2016) Department of Education, UK

⁴³ Stock L., Spielhofer T., & Gieve M. (2016). *Independent evidence review: Post adoption services*. The Tavistock Institute of Human Relations (TIHR), UK.

child's needs. In addition to post-adoption supports for their children, more than half of these families identified supports for themselves. This included support from other adoptive parents; 47% reported using family therapy. Only three per cent of families indicated that they did not use any post adoption services.⁴⁴

Preliminary findings from the Institute's focus groups with authorised foster carers in NSW, suggest that the availability of post-permanency support is particularly important in carers' consideration to adopt or pursue guardianship for the child in their care. For example, in addition to financial supports post-adoption or guardianship, carers indicated their desire for educational and psychological support. In particular, carers noted the value of being guided during the transition period from foster carer to adoptive parent or guardian and understanding what supports were available:

“The case worker and adoption team would need to make sure that whatever services are out there that are available that a) you know about them, b) they've hooked you up with them, and c) there is some possibly ongoing supports say 6-12 months afterwards if you need. That you're not going to be thrown to the sharks. That there is a period of transition making sure that whatever supports are out there in the community. It's a lot of navigation, and they can help you navigate it, make sure it's set up and all working, and you and the child are getting what you need to continue that.”

Carers also raised their need for post-permanency supports as their child matured. Carers acknowledged that, while young children may not require immediate intervention, older children and adolescents may require therapeutic support as they begin to make sense of their history and experiences, which are often traumatic. The need for support did not cease upon permanent placement, but needs to acknowledge the child's longer term health and wellbeing, and the various costs of not providing for such support:

“The majority of children who come into care need something down the track. There's not too many kids who I've had in my care that, down the track, they haven't needed some sort of support. To go to a psychologist cost me \$333 the other week because all these things are starting to come out. Now there's no support. You do get a bit back from Medicare. Not everyone goes through trauma, they brings their kids up normal, they don't need to see psychiatrists – not to say it won't happen, but most children who come into care, somewhere down the track, it's going to affect them in some way. So I think you've just got to have some support that if the child needs it, that you can afford to do it.”

“We also need resources for training later on in trauma. Because it might be different from when you first get the child. It's looking into the future, not just the immediate. Having training that is easily accessible about different things that might happen when they are older.”

Despite their preference for post-permanency supports, carers want a degree of individual control over the timing and type. In other words, they would be satisfied if support services were in place, but they wanted to be able to seek and utilise such services for their child as they saw fit.

“They want you to function as a family unit so the caseworker is able to step out so you can function independently. Having said that, if something happened, I know I could call and people would help, but there's not an arrangement that they come and visit. But rather they try to enable you to be independent.”

“If there are resources and information, but not ‘you must attend these 2 training session a year and send us a certificate to tell us’. Give us a bit more credit. If we need help, we'll seek it out.”

“It'd be nice if it was offered so if people did need it. But it's not for everybody either. It's just nice to have a support there. If you find your child struggling down the track, you can go to these people and they can support you through this.”

⁴⁴ McRoy, R.G., Lynch, C.J., Chanmugam, A., Madden, E., & Ayers-Lopez, S. (2009). Children from care CAN be adopted. *International Advances in Adoption Research for Practice* (pp. 317-326). John Wiley & Sons Ltd.

Finally, carers were concerned about the lack of adequate support provided to birth families, and suggested that they needed assistance with understanding the child protection system and the implications of changes to legal status for open adoption or guardianship:

“My caseworker’s role is to contact the birth family and go through what it all means and she has done that already. She sat down with them and explained what this is will mean; about how the birth certificate will change. And just about the contact. Verbally, they are okay with it, but when it comes to signing it, it may change, and I understand that. Their understanding is that it doesn’t change anything as far as contact goes. And they are comfortable about that. But then, rightly so, what about once this family adopts? What if they change their mind?”

Carers also noted that birth families, usually birth mothers, often were not able to maintain appropriate boundaries during contact, and needed strategies for how to relate to their child in a positive way:

“One of the things that kind of broke my heart in this whole process was that the birth mother had no support. She would come and she clearly didn’t know how to engage with him. And she just couldn’t manage it. It was really difficult. She did some things to him that were unacceptable to him, and his eldest brother too. Because they don’t know how to behave. We asked if a caseworker could drive her to visits and talk to her. It’s very difficult for the child so we need to be there to support the child. We need support, we need the buffer. But also, the birth parents in many cases have lost their rights to parent the child because they don’t know how to. And here they are in this environment where they’re bereaved, they’re afraid, angry, being watched, and here’s someone who they carried in their bodies and is no longer there. And they have to go it alone. And I think it’s heartbreaking and traumatising for me to see the pain that she has. I think very often that support for birth parents is completely obviated.”

Taplin and colleagues note (2015) that, with supervised contact in place for two thirds of the children in long-term foster care in Australia, the absence of empirically-based guidelines to gauge the quality of contact or to evaluate interactions between the parties is notable. There is no research on how to minimise distress to children, birth family members and caregivers caused by contact and to promote positive contact encounters.⁴⁵ A review of the small number of interventions to improve parent-child interactions during contact reported that individual family support and group-based programs can improve the quality of contact.⁴⁶ Guided by this, a randomised control trial, *KContact*, is currently underway in three jurisdictions to improve the quality of supervised contact between parents and children.⁴⁷

⁴⁵ Taplin, S., Bullen, T., McArthur, M., Humphreys, C., Kertesz, M., & Dobbins, T. (2015) *KContact*, an enhanced intervention for contact between children in out-of-home care and their parents: protocol for a cluster randomised controlled trial. *BMC Public Health* 15:1134

⁴⁶ Bullen, T., Taplin, S., McArthur, M., Humphreys, C., & Kertesz, M. (2017). Interventions to improve supervised contact visits between children in out of home care and their parents: a systematic review, *Child and Family Social Work*, 22, 822–833, doi:10.1111/cfs.12301

⁴⁷ Taplin et al., *ibid*

SECTION 3 STREAMLINING COURT PROCESSES AND ORDERS

Again, first some general comments about the proposed approaches to streamlining court processes and orders:

The legal and social nature of adoption has changed significantly over the past few decades. It has shifted from being a private law construct, a ‘solution’ for childless couples and young women who were not able to raise their children themselves, to an option for meeting the needs of children in the child protection system, by placing them with new ‘private’ carers. In Australia, only a very small number of children are adopted from the care system, compared to rates in the US and UK.⁴⁸

Broadly speaking, adoption initiatives as now proposed in NSW are aligning more closely with those in both the US and UK in relation to:

- the passing of new legislation,
- emphasis on the safety and wellbeing of children as paramount,
- the goal to significantly increase the number of foster care adoptions,
- ‘middle-ground’ permanency in the form of guardianships, and
- timescales for permanency.⁴⁹

With the greater focus on achieving permanent homes after it is determined that the child will not be restored, it is important that NSW policies and legislation consider the lessons learnt from other jurisdictions that have made similar attempts. In committing to streamline and speed up the adoption process in NSW, the discussion paper outlines a number of proposals, including transferring jurisdiction for adoptions from out-of-home care to the Children’s Court. Even though the actual process of adopting from foster care in NSW is unlike that of the US and UK, some tentative conclusions can be put forward regarding the risks of streamlining adoption processes.

In the US, the *Adoption and Safe Families Act* has been criticised for its bias towards termination of parental rights and adoption over reunification, and timeframes that are not long enough to allow the benefits of support services to take effect for birth parents, who are often disadvantaged in terms of finance, housing, and employment.⁵⁰ In the UK context, a small sample of social workers interviewed by Sagar and Hitchings (2008) expressed concerns about goals to have more children from care adopted quickly.⁵¹ These social workers indicated that the *Adoption and Children Act* would be useful in preventing cases from being ‘sat on’ for too long, but the rushed process may result in prospective adoptive parents having insufficient time to process the information, higher caseloads for workers, and lack of quality work due to a narrow view of targets. Such findings indicate the potential pitfalls of overemphasising the goal of increasing adoption

⁴⁸ The proportion of kin and non-kin adoptions of all exits from foster care in the United States has been very consistent, at approximately 21%, since FY 2009 ‘Trends in Foster Care and Adoption: FFY 2002–FFY 2013’ AFCARS data, U.S. Children’s Bureau, Administration on Children, Youth and Families, accessed on 18.4.15 at http://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption2013.pdf; Gov. UK: Children in Care and Adoption Performance Tables 2014 (England) show an average of 13% of children were adopted from out-of-home care between 2011–2013, accessed on 8.4.15 at <https://www.gov.uk/government/publications/children-in-care-and-adoption-performance-tables-2014>.

⁴⁹ Sargent, S. (2003). Adoption and looked after children: A comparison of legal initiatives in the UK and the USA. *Adoption & Fostering*, 27(2), 44–52.

⁵⁰ Wulczyn, F. (2005). From anticipation to evidence: Research on the Adoption and Safe Families Act. *Virginia Journal of Social Policy & the Law*, 12, 371–399.

⁵¹ Sagar, T., & Hitchings, E. (2008). ‘More adoptions, more quickly’: A study of social workers’ responses to the Adoption and Children Act 2002. *Journal of Social Welfare and Family Law*, 29(3–4), 199–215.

numbers. Streamlining the adoption process might have benefits of providing children with permanency earlier, but it is essential that the impetus to swifter decision making does not jeopardise longer-term outcomes for both the children and parents involved.

Of course, while NSW provisions do not indicate specific targets for adoption and other permanency outcomes, streamlining the adoption process by transferring the decision out of a superior court is not without potential adverse consequence. For example, certain US jurisdictions combine court hearings for child protection cases with other legal matters (e.g., criminal cases), and it has been argued that this may prevent judges from focusing on neglect and abuse issues and result in judges making difficult decisions without good understanding of child welfare issues.⁵² That being said, the discussion paper proposes that adoption orders would only be made by specialist Children’s Magistrates. However, there is currently little research evidence to suggest the merits of having either separate or combined courts to grant adoption orders. Decisions to modify court processes should be backed by research insofar as possible and it is unclear as to what the evidence base is for the proposal to transfer power from the Supreme Court to the Children’s Court, other than a preference to simplify the adoption process.

Adoption is a powerful, arguably the most powerful, intervention available for children in foster care who are unable to be restored to their birth families. Adoption is defined as the permanent severing of legal ties to the birth parents and establishment of new legal ties to adoptive parents.⁵³ The New South Wales Supreme Court provides a degree of independence in this process as it has not been directly involved in the legal decisions made by the Children’s Court about child protection and out-of-home care. The decision to dispense with parental consent and to make an order in the best interests of the child ensures thorough consideration of the evidence that is presented, which is important given the finality of an adoption order.

The discussion paper also suggests that only contentious questions of law should be dealt with by a superior court. It may be argued that adoption is indeed a contentious matter: that is, it involves the legal severance of the relationship between child and biological parents. Even though open adoption in the proposed NSW context allows for contact, an adoption order alters the relationship between all parties for life (i.e., the child, biological parents, and adoptive parents).⁵⁴ Further, there is much international research to show the far-reaching impacts of adoption on children’s physical growth, cognitive development, attachment, school achievement, self-esteem, and behaviour problems.⁵⁵

The discussion paper provides a number of other suggestions for streamlining the adoption process, including additional grounds for dispensing with parental consent, limiting a parent’s right to be advised of an adoption, and providing clear grounds for birth parents to rely upon when contesting an adoption. A number of scenarios are presented as examples throughout the paper to outline why such proposals have been made (e.g., additional grounds to dispense with parental consent if the parent cannot be located, or specifying the grounds in which birth parents contest an adoption). In making changes to legislation, it is vital that decisions are backed by statistics and evidence where possible. For instance, the number of

⁵² Moye, J. & Rinker, R. (2002). It's a hard knock life: Does the Adoption and Safe Families Act of 1997 adequately address problems in the child welfare system? *Harvard Journal on Legislation*, 39, 375-394.

⁵³ Barth, R. (2008). Adoption. In *Encyclopedia of Social Work*.

⁵⁴ Ross, N., & Cashmore, J. (2016). Adoption reforms New South Wales style: A comparative look. *Australian Journal of Family Law*, 30(1), 51-75.

⁵⁵ Van IJzendoorn, M. H., & Juffer, F. (2006). The Emanuel Miller Memorial Lecture 2006: Adoption as intervention. Meta-analytic evidence for massive catch-up and plasticity in physical, socio-emotional, and cognitive development. *Journal of Child Psychology and Psychiatry*, 47(12), 1228–1245.

adoption processes that are hampered by difficulty in locating birth parents, compared with those being contested by birth parents. Consideration of the existing statistics should be given to each of the various proposals and scenarios presented in the discussion paper. In addition, after the amendments to the legislation, it is critical that the outcomes of these decisions are monitored to provide an evidence base for the effectiveness or shortcomings of the provisions. The Institute is currently engaged in such research.

Question 3.1.5 Contact orders and guardianship

32. How could the current contact order provisions be enhanced to better support guardianship?

Response

The latest reforms in England and Wales aim to limit the disruption that ‘inappropriate’ contact can cause to placements by changing the arrangements for contact between children in care, and for adopted children, with their birth parents, former guardians and relatives.⁵⁶ There has been some criticism of this approach on the basis that it is an effective presumption against post-placement contact. In the UK, ‘letterbox’ is a common form of contact and there is a reluctance to consider direct contact. Studies in the UK investigating face-to-face contact have found that there needs to be case-by-case decision-making about the needs for individual children.⁵⁷ The question that is being asked in all jurisdictions concerns the purpose of contact for children who are placed in long-term guardianship and adoptive homes, and what that means for the frequency and type of contact with parents and relatives.⁵⁸

The nature and purpose of contact changes at different points on the permanency continuum. Where reunification remains likely, contact is supervised with the aim of observing and assessing parent-child interactions and maintaining attachment.^{59 60} In long-term foster or kinship care and open adoption, contact may be supervised to ensure child safety but is more typically facilitated independently by families.

The permanency reforms underway in NSW emphasise that children in all permanency pathways need to have lifelong relationships with their birth families, including siblings and extended family members – unless this is deemed as not being in the child’s best interests. Face-to-face contact is an expectation in guardianship and open adoption in NSW. Most long-term foster and kinship carers, not to mention guardians and adoptive parents, are expected to make arrangements for contact with birth family. Foster carers may never have met birth family, and kinship carers may have complex dynamics with birth parents. For their part, birth parents will be experiencing grief, loss and other complex emotions, in addition to the

⁵⁶ *Explanatory Memorandum to the Children and Families Act 2014* (England), Chapter 6, Part 1 (received royal assent on 13 March 2014).

⁵⁷ Neil, E., Beek, M., & Ward, E. (2015) Contact after adoption: A longitudinal study of post adoption contact arrangements, *Coram BAAF*; Cossar, J., & Neil, E. (2013). Making sense of siblings: connections and severances in post-adoption contact, *Child and Family Social Work*, 18, 67-76.

⁵⁸ Moyers, S., Farmer, E., & Lipscombe, J. (2006). Contact with family members and its impact on adolescents and their foster placements, *British Journal of Social Work*, 36, 541–559; Neil, B., Beek M., & Ward, E. (2014). *Contact after adoption: A longitudinal study of adopted young people and their adoptive parents and birth relatives*. London: British Association for Adoption and Fostering; Sen, R. & Broadhurst, K. (2011). Contact between children in out-of-home placements and their family and friends network: A research review, *Child and Family Social Work*, 16, 298–309.

⁵⁹ Biehal, N. (2007). Reuniting children with their families: Reconsidering the evidence on timing, contact and outcomes. *British Journal of Social Work*, 37: 807–823.

⁶⁰ Bullen, T., Taplin, S., McArthur, M., Humphreys, C., & Kertesz, M. (2017). Interventions to improve supervised contact visits between children in out of home care and their parents: a systematic review, *Child and Family Social Work*, 22, 822–833, doi:10.1111/cfs.12301

issues that precipitated their child's removal. These factors will inevitably influence the capacity of adults to build relationships with one another.

These current reforms for out-of-home care providers will require practitioners to develop the skills for transitioning birth and caring families from supervised contact arrangements to managing contact independently. Practice implications include establishing consensus about the frequency and purpose of contact, and promoting positive interactions between birth families, carers, guardians and adoptive parents. At present, there is no guidance on how to achieve positive direct birth family contact for children who cannot be restored to their parents.⁶¹ Emerging NSW evidence suggests that caseworkers need new skills to build connections between family members⁶² and that current approaches are not viewed favourably by birth parents or permanent carers.^{63 64}

The reforms underway in NSW calls for the urgent development of evidence-informed guidance. The Institute is developing an application for an Australian Research Council Linkage Grant to implement an action research project to build sector capacity in maintaining birth family contact for children in permanent placements and evaluate the impact of the changes as they unfold in real time. This project will adapt, develop and implement practice tools to support permanency for children who cannot be safely restored to their birth parents. The study builds on international research and practices in contact and communication, as well as practices developed within the New South Wales context. Driven by recognition that practices need to address the needs and rights of children and their families, the voices of children and families and their accounts of their contact experiences and ideas for changes will drive the practice initiatives to be trialled. The objective of the project is to improve practitioner skills and confidence in facilitating relationships between birth and caring families so that families are able to manage unsupervised contact.

⁶¹ Taplin, S., Bullen, S., McArthur, M., Kertesz, M., & Dobbins, T. (2015). KContact, an enhanced intervention for contact between children in out-of-home care and their parents: protocol for a cluster randomised controlled trial. *BMC Public Health*, 15(1), 1134-1134.

⁶² NSW Family and Community Services. (2014). *OOHC Adoption Strategy – FACS Strategic Conversation*, 1 February 2014. NSW Government.

⁶³ Ross, N., Cocks, J., Johnston, L., & Stoker, L. (2017). *'No voice, no opinion, nothing': Parent experiences when children are removed and placed in care*. Research report. Newcastle, NSW: University of Newcastle. Available at <http://www.lwb.org.au/assets/Parent-perspectives-OOHC-Final-Report-Feb-2017.pdf>

⁶⁴ NSW Family and Community Services 2016. *The gap between knowing and doing: Developing practice in open adoption in NSW*. NSW Government.

Question 3.1.5 Contact orders and guardianship

33. Should the Children’s Court be empowered to make contact orders for the life of a guardianship order?

A systematic review conducted by Boyle, published in 2017, examined literature on contact plans for children who had been adopted or were in long term foster care.⁶⁵ The review considered a broad range of outcomes including sibling relationships and birth family restorations.⁶⁶ Boyle’s review found there was evidence that contact helped some children to resolve attachment difficulties and feelings of loss; however, for others, it had a detrimental effect. In some cases, contact entrenches patterns of emotional abuse, and in more serious cases, children were subjected to covert physical abuse and sexual grooming.^{67 68} This review highlights both the lack of quality evidence to inform policy and practice, as well as the need to avoid prescriptive approaches. In general, the research consensus is that the impact of contact depends on a number of factors and should be considered on a case-by-case basis.

The UK Government green paper (2012) that proposed the presumption of ‘no contact’ received widespread opposition and calls for evidenced based research on the impact of contact orders.⁶⁹ One of the key challenges for making long-term contact orders is the difficulty of predicting the impact of contact on all of the three parties (children, caring families and birth families). The nature of these interactions are also subject to change over time.

As well as children’s needs, the support needs of birth families should also be considered.⁷⁰ Not surprisingly, birth families are likely to be isolated and lack community support, which may have contributed to the reasons for their children’s removal, as well as to their ability to cope with contact.⁷¹ The limited studies available suggest that the availability of support and opportunities to talk about the adoption of their children may be related to better adjustment of the children and mitigation of loss for the birth parent. Better outcomes for birth relatives can ultimately benefit children, as they remain members of their kin networks through open adoption.⁷² Birth relatives may require long-term non-judgemental support to come

⁶⁵ Boyle, C. (2017). ‘What is the impact of birth family contact on children in adoption and long-term foster care?’ A systematic review. *Child and Family Social Work*, 22, 22–33.

⁶⁶ Gustavsson, N.S. & MacEachron, A.E. (2010) Sibling connections and reasonable efforts in public child welfare. *Families in Society: The Journal of Contemporary Human Services*, 91 (1), 39–44; Haight, W.L., Kagle, J.D., & Black, J.E. (2003). Understanding and supporting parent-child relationships during foster care visits: attachment theory and research. *Social Work*, 48 (2), 195–207; Scott, D., O’Neill, C., & Minge, A. (2005). *Contact between children in out-of-home care and their birth families*. Sydney: Centre for Parenting & Research, NSW Department of Community Services.

⁶⁷ Howe, D. & Steele, M. (2004). Contact in cases in which children have been traumatically abused or neglected by their birth parents. In E. Neil & D. Howe (eds.) *Contact in Adoption and Permanent Foster Care* (pp. 203–223). BAAF, London.

⁶⁸ Neil, E. (2010). The benefits and challenges of direct postadoption contact: Perspectives from adoptive parents and birth relatives. *Aloma: Revista de Psicologia, Ciències de l’Educació i de l’Esport*, 27, 89–115.

⁶⁹ Great Britain Department for Education (2013). *Call for views: Adoption contact arrangements and sibling placements Summary of Feedback and Government Response*. London: The Stationary Office.

⁷⁰ Gustavsson, N.S. & MacEachron, A.E. (2010) Sibling connections and reasonable efforts in public child welfare. *Families in Society: The Journal of Contemporary Human Services*, 91 (1), 39–44.

⁷¹ Perl, L. & McSkimming, J. (1997). *No longer ashamed and alone: The experience of a birthmother’s weekend group*. *Australian Social Work*, 50, 45-49.

⁷² Neil, E., Cossar, J., Jones, C., Lorgelly, P., & Young, J. (2011). *Supporting direct contact after adoption*. London: British Association of Adoption and Fostering.

to terms with the circumstances of their children's adoption and deal with grief and sadness.⁷³ The birth parents in Neil et al.'s (2011) study used a range of services, including emotional support through counselling, advice and information, help with contact, advocacy and liaison with agencies and peer support. Flexible service delivery with a range of supports that meet different individual needs were seen to be most helpful.

In England and Wales, the *Adoption Act 2002* provided birth relatives with the right to request an assessment for post-adoption support.⁷⁴ This includes assistance to understand the legal process and their rights, to have access to a worker independent from the child's social worker, and to help them participate in discussions about contact plans, and support to fulfil those plans. (UK Department of Health, 2001, p. 23).

SECTION 3.5 – CARE RESPONSIBILITY FOR CHILDREN OF GUARDIANS WHO HAVE PASSED AWAY

Question 47. Should care responsibility for a child vest in the Secretary on the death of a guardian/s, or the death of a carer who has been allocated all aspects of parental responsibility? If not, what other legal arrangements might be in the best interests of a child whose guardian or carer has passed away?

Response

The discussion paper notes that, when a child's guardian passes away, the guardianship order ceases and parental responsibility for the child will revert by common law to the child's parents. As raised, this may place the child at risk if the Children's Court cannot rescind its finding that there is no realistic possibility of restoration. Hence, it would be reasonable for care responsibility to be vested in the Secretary on the death of a guardian or carer allocated parental responsibility while assessment of the most suitable care arrangements for the child is undertaken.

Based on the preliminary findings from focus groups we have conducted with authorised NSW foster carers, some have raised concerns about their ability to make decisions for children for whom they have parental responsibility should they pass away before the child turns 18. These concerns are expressed in the various quotes below. Permanent carers/guardians often referred to the child in their care as "one of their own", so they would prefer to have input in what should happen to the child in their care if they pass away.

For instance, foster carers stated they would like to choose where the child should live, whom should care for the child, and whether the child would still be able to see relatives of the carer/guardian with whom they may have formed a close relationship:

"For permanency as well. For guardianship. Realising that now I'm divorced or separated, that if I were to die, that the children would live permanently with their foster dad and his partner. There would be no way I could enforce my kids to see their poppy and aunties, and that is distressing to me."

As one carer notes below, being placed back in care and separated from family again is likely to be a traumatic experience for the child:

⁷³ Oakswater, H.W. (2003). A wish list. In H. Argent (Ed.). (2003). *Models of Adoption Support: What works and what doesn't* (pp. 26-47). London: British Association of Adoption and Fostering.

⁷⁴ Sellick, C., Neil, E., Lorgelly, P., Healey, N., & Young, J. (2006). *Supporting the birth relatives of adopted children and supporting post-adoption contact in complex cases: A study of service provision, costs and outcomes-Stage one report to Department for Education and Skills–Service mapping*. Norwich: Centre for Research on the Child and Family, University of East Anglia.

“For me, I am a single carer. My greatest fear is if I die before [child] turns 18, I have no rights to say where he’s going to go. I can’t put in my will that he will be looked after by my brother or my parents. He would just go back into care with some random stranger and how traumatising that would be. I mean it’s obviously traumatic if you die anyway, if you lose a parent, but to not be staying with family would just be so devastating. That’s the biggest thing for me. Not being able to put anything in my will about what happens to him.”

The discussion paper notes that, if the order allocates parental responsibility jointly to two guardians, then the surviving guardian will hold sole parental responsibility. However, this may be potentially problematic for single carers/guardians. Further, as a holder of sole guardianship notes below, it is possible that she could find a way around by having her parents be joint guardians. However, she views this as risky as birth parents can lodge a Section 90 to vary orders (i.e., request reallocation of parental responsibility) in the event she passes away:

“If you’ve got sole guardianship, if I died, the child would go back to birth family. They wouldn’t even go back into care because they are not under guardian of the Minister. You’re the legal guardian. The way around that they said I could be is to be a joint guardian with my parents, even though they don’t live with us. But even so, they [birth parents] can lodge a Section 90. So no way, too risky.”

Based on such results, assessments to determine the most suitable care arrangements for the child could take into account the stated wishes of the deceased carer/guardian.