



**Australian
Human Rights
Commission**

Inquiry into local adoption

**Australian Human Rights Commission Submission to the
Standing Committee on Social Policy and Legal Affairs**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Standing Committee on Social Policy and Legal Affairs in its inquiry into local adoption.
2. The Commission is established by the *Australian Human Rights Commission Act 1986* (Cth). The Commission is an ‘A status’ national human rights institution, established and operating in compliance with the Principles relating to the Status of National Institutions (Paris Principles).¹
3. The Commission notes that the Committee will inquire into ‘approaches to a nationally consistent framework for local adoption in Australia, with specific reference to:
 - stability and permanency for children in out-of-home care with local adoption as a viable option; and
 - appropriate guiding principles for a national framework or code for local adoptions within Australia’.²
4. The Commission understands that the inquiry will consider both types of adoption within Australia, including: ‘known child adoptions’, being adoptions of children born or permanently residing in Australia before the adoption, who have a pre-existing relationship with the adoptive parent/s, and are generally not able to be adopted by anyone other than the adoptive parent/s;³ and ‘local adoptions’, being adoptions of children born or permanently residing in Australia before the adoption who are legally able to be placed for adoption, but generally have had no previous contact or relationship with the adoptive parent/s.⁴
5. This submission relates to both types of adoption within Australia, including ‘local adoptions’ and ‘known child adoptions’.
6. The Commission is supportive of a nationally consistent framework for adoptions within Australia. This submission discusses, at a high level:
 - the relevant international human rights framework, in particular the best interests of the child as the paramount consideration
 - the number of children in out-of-home care in Australia and measures to reduce the number of children in out-of-home care
 - the importance of stability and permanency for children, particularly in the first few years of a child’s life
 - adoption as one option for achieving stability and permanency when children are not able to be reunified with their birth family or that would not be in their best interests
 - distinct issues relating to the adoption of Aboriginal and Torres Strait Islander children, that necessitate rigorous efforts to ensure connection to culture

- guiding principles for a national framework for adoptions within Australia.

7. This submission is not a comprehensive consideration of matters that would need to be addressed when developing a national framework for adoptions. It does not discuss, for example, current state and territory legislative provisions on adoption; individuals who might legitimately be excluded from being eligible to adopt a child, for example, because of criminal convictions for offences related to abuse or mistreatment of a child; or particular considerations for children from diverse backgrounds or circumstances, such as children with disability, children from culturally and linguistically diverse backgrounds, and lesbian, gay, bisexual, transgender and intersex children and young people.

2 Summary

8. All children have a right to be safe from all forms of abuse and neglect, and to be provided with the care and protection needed to ensure their physical and emotional wellbeing. Ideally, all children in Australia would have safe and stable home environments and the opportunity to thrive, grow and develop with the care of family.
9. All children also have a right to enjoy their culture. This is an integral factor that impacts on their emotional and social wellbeing.
10. In Australia, there are almost 48,000 children living in various forms of out-of-home care. The number is increasing, and Aboriginal and Torres Strait Islander children continue to be overrepresented. Some children in out-of-home care experience multiple placements over time, and many children leaving the out-of-home care system experience poor outcomes. Coordinated and strategic national investment in early intervention and prevention initiatives is critical to minimise the extent to which children need to be placed in out-of-home care or other forms of substitute care.
11. Adoption is one option for improving the life experiences of children in out-of-home care when it is not possible for them to be reunified with their birth family or that would not be in their best interests.
12. Adoption is one way to create stability and permanency in a child's life. Stability and permanency are critical for children – particularly in their early years – being fundamental to their secure attachment and bonding, their health and wellbeing, and their successful transition to adulthood. Planning for a permanent care option – whether that be through reunification with the child's birth family or another option such as guardianship, a permanent care order or adoption – should begin early in a child's engagement with the out-of-home care system.
13. While adoption can provide positive outcomes for children, it is not a step to be taken lightly. Lessons must be learned from previous inquiries into Australia's past damaging practices of forced removal and forced adoption. Adoption must always be conducted in the context of sufficient legal and

practical safeguards to ensure that children's rights and wellbeing are protected.

14. Further, adoption should not be seen as a solution to the significant problems of the existing out-of-home care and child protection systems operating nationally. Adoption is one option to be considered among many forms of intervention.
15. The *Convention on the Rights of the Child* provides that a child should not be separated from their parents against their will, unless it is necessary for the best interests of the child, and that the best interests of the child must be the paramount consideration in all adoption matters. Assessment of a child's best interests must include respect for the child's right to express their views on matters affecting them, including adoption decisions.
16. The *Convention on the Rights of the Child* also recognises that children have the right to preserve their identity, and that alternative care options for a child separated from their family should be considered with due regard for the desirability of continuity in a child's upbringing and for the child's ethnic, religious, cultural and linguistic background. Contemporary adoption should be 'open' and should ensure continuing connection to children's culture and family.
17. A number of inquiries have noted the vulnerability of Aboriginal and Torres Strait Islander children and the need for specific safeguards when adoption is being considered. For example, the *Bringing them Home* report in 1997 recommended that adoption should be an option of last resort. This and other inquiries have also emphasised the importance of the Aboriginal and Torres Strait Islander Child Placement Principle. This recognises the importance of enhancing and maintaining the connections of Aboriginal and Torres Strait Islander children to their family, community and culture, as well as the vital role of Aboriginal and Torres Strait Islander families and communities participating in decisions about the safety and wellbeing of their children.
18. The Commission urges the engagement of relevant Aboriginal and Torres Strait Islander child welfare and family service agencies in the development of any national framework for adoptions, as well as the direct involvement of affected Aboriginal and Torres Strait Islander families in all decisions about adoption.
19. The Commission is supportive of a national framework for adoptions within Australia. Ideally, a national framework would result in the standardisation of legal and regulatory provisions relating to adoptions across Australia and would facilitate adoptions where they are in the best interests of the child.
20. Guiding principles should be included in a national framework to ensure that children's human rights and best interests are prioritised and protected. Suggested guiding principles are outlined in section 8 of this submission.

3 Recommendations

21. The Commission recommends the following:

Recommendation 1: A national framework for adoptions within Australia should be developed by all Australian governments and implemented nationally in order to standardise legal and regulatory provisions relating to adoptions across Australia and to facilitate adoptions where they are in the best interests of the child.

Recommendation 2: The following guiding principles, further outlined in this submission, should be included in the national framework for adoptions within Australia to ensure that the framework reflects human rights protections for children:

- The rights of the child will be respected and protected.
- The best interests of the child will be the paramount consideration in all adoption matters.
- Children’s rights to culture and identity will be respected.
- Children’s rights to be heard will be respected and facilitated.
- Children’s consent will be sought.
- There will be a presumption for open adoption.
- All parties will have access to ongoing support services.

Recommendation 3: The national framework should be developed in close consultation with Aboriginal and Torres Strait Islander peoples, including specialist Aboriginal and Torres Strait Islander family and child welfare agencies, in a manner consistent with the principle of free, prior and informed consent.

Recommendation 4: The national framework should particularly recognise the specific vulnerability of Aboriginal and Torres Strait Islander children, given their over-representation in the care and protection system and the history of forced removal of children. Accordingly, the national framework should ensure that a human rights based approach is applied to Indigenous child welfare, including adoption, and that any approach is consistent with the United Nations Declaration on the Rights of Indigenous Peoples, in particular the principle of free, prior and informed consent, the right to culture and the right to self-determination.

4 International human rights framework

22. The *Convention on the Rights of the Child* (CRC) is the major international treaty setting out the human rights of all children.⁵ The CRC, which Australia is a party to, includes a number of articles relevant to adoptions within Australia.

23. Under article 2, the rights recognised in the CRC are to be ensured for all children without discrimination of any kind, irrespective of the child’s or their

parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁶

24. Article 3 of the CRC requires that the best interests of the child be a primary consideration in all actions concerning them.⁷ In respect of adoption, the best interests of the child are not simply to be a *primary consideration*, but **the paramount consideration**, according to article 21.⁸ This means that the best interests of the child are to be the determining factor when making a decision on adoption.⁹
25. The United Nations (UN) Committee on the Rights of the Child has provided guidance on how to assess and determine a child's best interests in specific situations, which would include adoption proceedings.¹⁰ According to the Committee:
 - Assessing a child's best interests is a 'unique activity that should be undertaken in each individual case, in light of the specific circumstances of each child or group of children or children in general'.¹¹
 - It is 'useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests'. All elements of the list must be taken into consideration and balanced in light of each situation. The list should provide 'concrete guidance, yet flexibility'.¹²
 - The elements may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements should be weighed against each other in order to find the solution that is in the best interests of the child.¹³
 - In weighing the various elements, 'one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child'.¹⁴
 - The right of the child to preserve their cultural identity must be taken into consideration when determining their best interests.¹⁵ There may also be a distinction 'between the best interests of the individual child, and the best interests of children as a group'.¹⁶
26. Assessment of a child's best interests must include respect for the child's right to be heard – that is, the child's right to express their views freely and to have their views given due weight in accordance with their age and maturity, in all matters affecting them.¹⁷ This applies to judicial and administrative proceedings affecting a child, including those relating to custody, care and adoption.¹⁸ The fact that a child is very young or in a vulnerable situation does not deprive them of their right to be heard.¹⁹

27. Article 8 of the CRC requires state parties to respect the right of the child to preserve their identity, including family relations, without unlawful interference.²⁰ This right must be respected and taken into consideration when assessing the child's best interests.²¹ The UN Committee on the Rights of the Child has indicated that the identity of a child includes characteristics such as their sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality.²²
28. Article 9(1) of the CRC provides that a child should not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.²³ Under article 9(2), in any proceedings pursuant to article 9(1), all interested parties are to be given an opportunity to participate and to make their views known.²⁴ Article 9(3) requires that state parties respect the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.²⁵
29. The UN Committee on the Rights of the Child has indicated that, given the gravity of the impact on the child of separation from their parents, separation should only occur as a last resort, when the child is in danger of experiencing imminent harm or when otherwise necessary; and that separation should not take place if less intrusive measures could protect the child. Before resorting to separation, state parties should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child.²⁶
30. Article 19 of the CRC requires state parties to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parents, legal guardians or any other person who has care of the child.²⁷
31. Article 20 of the CRC provides that a child temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, is entitled to special protection and assistance provided by the state party. It requires the state party to ensure alternative care for such a child, including options such as foster care or adoption. When considering options, due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.²⁸
32. The UN Committee on the Rights of the Child has indicated that decision-makers must take this context into account when assessing a child's best interests in cases of adoption or separation from parents. Furthermore, the Committee has stated that due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their family of origin, and the opportunity to access information about their biological family.²⁹

33. At the same time, the Committee has made it clear that, while preservation of religious and cultural values and traditions must be taken into consideration, practices that are inconsistent with the rights set out in the CRC are not in the child's best interests, and that cultural identity cannot justify the perpetuation by decision-makers of traditions or cultural values that deny the rights guaranteed by the CRC.³⁰
34. As noted above, article 21 of the CRC requires that the best interests of the child be the paramount consideration in adoption matters.³¹ Article 21(a) requires state parties to ensure that a child adoption is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption.³²
35. The UN Committee on the Rights of the Child has recommended that state parties introduce minimum legal age limits, including with respect to a child providing consent to their adoption, consistent with respect for the evolving capacities of adolescents.³³ The Committee has also stated that the right of any child below the minimum age and able to demonstrate sufficient understanding to be entitled to give or refuse consent should be recognised.³⁴
36. In its most recent concluding observations on Australia's implementation of the CRC, issued in 2012, the UN Committee on the Rights of the Child expressed concern that 'only three out of eight jurisdictions in the State party require the consent of the adopted child (as of 12 years of age) prior to adoption'; and that 'adoption proceedings are not undertaken with the best interests of the child as the paramount consideration'.³⁵
37. The Committee recommended that Australia undertake measures to ensure that all states and territories amend legislation on adoption, as required, in order to comply with its obligations under the CRC to give full effect to the provisions on consent, and to ensure that adoption proceedings are decided upon with the best interests of the child as the paramount consideration.³⁶
38. In the Australian Government's joint fifth and sixth report under the CRC, lodged with the Committee in January 2018, it indicated that:
 - Adoption legislation in Australia 'specifies that the welfare, wellbeing and/or best interests of the child are the main object or paramount consideration'.³⁷ An appendix to the government's report outlines the different ways this principle is reflected in state and territory legislation.³⁸
 - In all but two jurisdictions, adoption legislation entitles children to legal or other separate representation.³⁹
 - Consent of the adopted child (from 12 years) prior to adoption is required in four jurisdictions,⁴⁰ and the 'child's views, wishes or feelings must be considered before the making of an adoption order in all jurisdictions'.⁴¹

39. Article 30 of the CRC specifically recognises the right of an Indigenous child, in community with other members of their group, to enjoy their own culture, practise their own religion, and use their own language.⁴² The UN Committee on the Rights of the Child has stated that this right ‘is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures’.⁴³
40. The Committee has emphasised that children are ‘not a homogenous group’ and that ‘diversity must be taken into account when assessing their best interests’.⁴⁴ The right of the child to preserve their identity, including their cultural identity, must be respected and taken into consideration when assessing the child’s best interests.⁴⁵ In the Australian context, this is particularly important for Aboriginal and Torres Strait Islander children, who are overrepresented in the out-of-home care system.
41. The Committee has stated that, in jurisdictions where Indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with Indigenous communities in order to reduce the number of Indigenous children in alternative care and prevent the loss of their cultural identity. If an Indigenous child is placed in care outside their community, the state party should take special measures to ensure that the child can maintain their cultural identity.⁴⁶ Furthermore, maintaining the integrity of Indigenous families and communities is a primary consideration in adoption processes affecting Indigenous children.⁴⁷
42. The Committee has also indicated that state parties should, in cooperation with Indigenous families and communities, collect data on the situation of Indigenous children in foster care and adoption processes. This information should be used to design policies relating to the family environment and alternative care of Indigenous children in a culturally sensitive way.⁴⁸

5 Children in out-of-home care

5.1 *Number of children in out-of-home care*

43. According to the Australian Institute of Health and Welfare, as of 30 June 2017, there were 47,915 children in out-of-home care in Australia, at a rate of 8.7 per 1,000 children.⁴⁹ This rate has increased from 7.7 per 1,000 children in 2013.⁵⁰ Overall, 7,366 more children were in out-of-home care as of 30 June 2017 compared with 30 June 2013, an 18% increase.⁵¹
44. Aboriginal and Torres Strait Islander children are disproportionately represented in the out-of-home care system. As of 30 June 2017, there were 17,664 Aboriginal and Torres Strait Islander children in out-of-home care, at a rate of 58.7 per 1,000 children. This was **ten times the rate for non-Indigenous children**.⁵²
45. Of the 47,915 children in out-of-home care in Australia as of 30 June 2017, most of them (83%) had been continuously in out-of-home care for one year or

more. This included 27% who had been in out-of-home care for 2 to 5 years, and 41% who had been in out-of-home care for 5 years or more.⁵³

5.2 Measures to reduce the number of children in out-of-home care

46. In its 2012 concluding observations on Australia's compliance with the CRC, the UN Committee on the Rights of the Child raised concerns about the significant increase in the number of children in out-of-home care in Australia and the absence of data documenting the criteria and decisions leading to out-of-home care placements.⁵⁴
47. The Committee also expressed concerns about 'widespread reports of inadequacies and abuse' occurring in out-of-home care in Australia, including: inappropriate placements; inadequate screening, training, support and assessment of carers; shortage of care options; poor outcomes for children in care; abuse and neglect of children in care; inadequate preparation for children leaving care; and placement of Aboriginal and Torres Strait Islander children outside their communities and the need for more Aboriginal carers.⁵⁵
48. The Committee urged Australia to examine the root causes of the extent of child abuse and neglect, and to provide data on the reasons children are placed in out-of-home care, with a view to reducing the number of such children. It also recommended measures to strengthen programs for family support, and measures to improve the situation of children in out-of-home care.⁵⁶
49. The increase in the number of children in out-of-home care and the lack of comprehensive early intervention services for vulnerable families are issues that the National Children's Commissioner raised in her 2013 *Children's Rights Report*⁶⁷ and with the Senate Community Affairs References Committee in its 2015 inquiry into out-of-home care.⁵⁸
50. The National Children's Commissioner has argued that building and supporting safe, resilient families where children can grow and thrive is fundamental to stemming further growth in the number of children in out-of-home care.⁵⁹ Coordinated and strategic national investment in early intervention and prevention must be a major focus under the National Framework for Protecting Australia's Children.⁶⁰
51. Early intervention and prevention initiatives are especially important for Aboriginal and Torres Strait Islander children and families. As recently stated by the Special Rapporteur on the Rights of Indigenous Peoples following her country visit to Australia in 2017: 'Community-led early intervention programmes that invest in families would prevent [Indigenous] children from being in contact with the child protection system in the first place'.⁶¹
52. It is vital that efforts address the structural disadvantage facing Aboriginal and Torres Strait Islander peoples, including the need for healing and trauma informed practices. This must include investment in Aboriginal and Torres

Strait Islander child welfare organisations in order to provide a full spectrum of care to Indigenous families.⁶²

53. Reforms in other countries such as the United Kingdom and the United States of America might provide examples when considering further measures to reduce the number of children in out-of-home care in Australia.
54. For example, the United States has implemented measures to reduce the number of children in out-of-home care and to improve the quality of their care. These include changing national model child welfare legislation to reflect principles that specify that:
 - the safety of children is the paramount concern that must guide child welfare services
 - foster care is a temporary setting and not a place for children to grow up
 - permanency planning should begin as soon as the child enters the welfare system
 - the child welfare system must focus on results and accountability, and
 - innovative approaches are needed to achieve the goals of safety, permanency and wellbeing.⁶³
55. Between 1998 and 2012 there was a 30% decrease in the number of children in out-of-home care in the United States. A number of policy changes contributed to this. These included:
 - performance-based contracting with non-government organisations which rewarded permanent stable placements, including adoption, achieved outside the care system
 - standardisation of removal criteria, such that a court must be satisfied that every effort has been made to support the birth family to provide effective care to children
 - subsidised adoption and guardianship, and
 - investment in the therapeutic recovery of children who have been abused or neglected or suffered trauma, including through educational and community connectedness, relationship-building and life stability.⁶⁴
56. These reforms are, however, not without their critics. For example, the Institute of Open Adoption Studies at the University of Sydney has highlighted the 'potential pitfalls of overemphasising the goal of increasing adoption numbers', noting that reforms in the United States have been criticised for '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'.⁶⁵

5.3 The importance of stability and permanency

57. Stability and permanency are critical for children's optimal development as they grow up. They provide a fundamental platform for a child's health, wellbeing and successful transition to adulthood. Research suggests that feeling secure and cared for, feeling a sense of belonging, and having a strong sense of personal identity are critical to how well young people fare as adults.⁶⁶ Safe and stable environments are particularly important for children with a history of trauma or abuse.⁶⁷
58. Stability and proper attachment with carers, particularly in a child's first few years of life, are especially important for a child's positive development.⁶⁸ Ideally, stability and attachment would occur in the context of a child's birth family. Where it is not possible or not in the child's best interests for them to remain with their birth family, stability and attachment with carers may also be achieved through permanent arrangements such as guardianship, permanent care orders or adoption, or through long-term kinship care or foster care with the same carer/s.
59. Having said this, the Commission also acknowledges that research emphasises that a focus on dyadic attachments between a child and a single set of carers is not necessarily appropriate for all children and that it is important to consider the possibility of multiple attachments.⁶⁹
60. This is particularly the case for Aboriginal and Torres Strait Islander children,⁷⁰ where permanence and stability can also be drawn from a broader communal sense of belonging that spans extensive family networks where children are a part of a system of care which is the basis for their identity, culture and spirituality.⁷¹ When assessing the best interests of the Indigenous child, the UN Committee on the Rights of the Child has also noted the importance of considering the cultural rights of the Indigenous child and their need to exercise such rights collectively with members of their group.⁷²
61. This more expansive definition demonstrates that the socio-structural pattern of attachment is not universal across cultures and also allows for attachment with multiple caregivers such as grandparents, and other relatives and caregivers.⁷³
62. The UN Committee on the Rights of the Child has encouraged state parties to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families.⁷⁴
63. The Committee has also emphasised that, when assessing the best interests of the child, state parties should consider the care and protection necessary for their wellbeing. This includes emotional care, a basic need of children. The Committee has stated: 'If parents or other primary caregivers do not fulfil the child's emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.'⁷⁵

64. In Australia, some children in the out-of-home care system do not experience stable or permanent care. Children often experience multiple placements.⁷⁶ Instability of care can exacerbate trauma and inhibit young people's ability to form secure, safe attachments.⁷⁷ Improving placement stability is among the key reforms needed to improve outcomes for young people leaving the out-of-home care system. According to the Australian Institute of Family Studies, research has consistently suggested that stability of care and emotional security are significant predictors of young people's outcomes after leaving care, with placement stability identified as a key element associated with positive outcomes on leaving care.⁷⁸
65. Improving the quality of out-of-home care and outcomes for care leavers are priorities under the National Framework for Protecting Australia's Children.⁷⁹ The National Framework states that:
- Out-of-home care is viewed as an intervention of last resort, and the preference is always for children to be reunited with their natural parents if possible. Many children can be safely reunited with their families when their families receive appropriate supports and interventions. Research highlights the need for children to have stable and secure placements, whether that be with their natural parents or in out-of-home care. The quality of relationships with carers is also critical. A sense of security, stability, continuity and social support are strong predictors of better outcomes for young people's long-term outcomes after leaving care.⁸⁰
66. Under the 2011 National Standards for out-of-home care, standard 1 indicates that: 'Children and young people will be provided with stability and security in care'. This means that children in out-of-home care are to 'experience security, stability, continuity of relationships and social support', which are 'vital to healthy emotional development' and 'provide strong predictors of better outcomes for children'. Children are to be 'matched with the most suitable carers and the care environment according to their assessed needs'.⁸¹

6 Adoptions within Australia

6.1 Number of adoptions within Australia

67. For adoptions relating to children who were born or permanently resided in Australia before adoption, the Australian Institute of Health and Welfare distinguishes between:
- the adoption of children who have a pre-existing relationship with the adoptive parent/s and who are generally not able to be adopted by anyone other than the adoptive parent/s ('known child adoption'), and
 - the adoption of children who are legally able to be placed for adoption but who generally have had no previous contact or relationship with the adoptive parent/s ('local adoption').⁸²
68. According to the Australian Institute of Health and Welfare, in 2016-2017 there were 315 child adoptions finalised in Australia.⁸³ Of these, 69 were adoptions from overseas and 246 were adoptions within Australia – including 204 known child adoptions and 42 local adoptions.⁸⁴ Overall, the number of adoptions

within Australia (including known child adoptions and local adoptions) has decreased by 56% over the last 25 years, from 556 in 1992-1993 to 246 in 2016-2017.⁸⁵

69. In 2016-2017, only four Indigenous children had adoption orders finalised in Australia, of whom one was adopted by Indigenous Australians and three were adopted by other Australians. Over the last 25 years, 125 Indigenous children have been adopted in Australia, with 50% adopted by Indigenous Australians and 50% adopted by other Australians.⁸⁶

6.2 Adoption as a stable and permanent alternative to out-of-home care

70. Children in the out-of-home care system should be provided with a stable and permanent care outcome that best suits their individual needs and best serves their interests.
71. Ideally, children would be safely reunified with their birth families, with the provision of appropriate support services. Where that is not possible or would not be in the child's best interests, an alternative permanent care option should be sought at an early stage.
72. As discussed above, stability and permanency are critical for children, particularly in their early years. Adoption is one option for creating stability and permanency, and for improving the life experiences of children who cannot be reunified with their birth families. Other options include permanent care orders such as those used in Victoria, and guardianship orders such as those used in New South Wales (NSW). Stable and long-term kinship care or foster care with the same carer/s are also options, if an appropriate permanent care option cannot be secured.
73. Delayed decision making, during which a child may experience a number of out-of-home care placements, is not in a child's best interests. Planning for a permanent outcome – whether that be through reunification with the child's birth family, adoption or another option – should begin early in a child's engagement with the out-of-home care system.
74. Research in the United Kingdom has suggested that adoption arrangements may be more likely to break down in cases where a child is adopted after the age of four, where a child has experienced placement instability prior to adoption, or where the adoption process has been lengthy.⁸⁷
75. While early and timely decision-making should be prioritised, care should be taken to ensure that in aiming to streamline or more readily facilitate adoption processes, the long-term needs and interests of children and their families are not compromised. Sufficient time should be allowed for appropriate options to be explored, key parties to be fully informed, and counselling and support services to be accessed.
76. The permanency planning approach used in NSW provides one possible model. In the NSW context, the focus is on 'removal of barriers to earlier

decision making about the viability of restoration and alternatives such as open adoption and guardianship'.⁸⁸ According to the NSW Government:

Permanency planning involves finding permanent relationships that can help children feel safe, connected, and secure no matter where they live. Permanency planning is based on the philosophy that every child has the right to a permanent and stable home, preferably with the child's own family. The primary focus of permanency planning is to prevent children 'drifting in care'. In other words, permanency planning reduces the likelihood of children experiencing continual change in their care arrangements which can result in repeated loss of social and community relationships. Instability in a child or young person's living arrangements can impair their ability to form deep and lasting attachments with carers, family and peers. These attachments are critical for promoting a child's emotional, psychological, social and cultural development.⁸⁹

77. Under the Permanency Support Program in NSW, each child or young person is to have a case plan with a goal of achieving a permanent outcome within two years – whether that be through returning home or through guardianship or adoption.⁹⁰ The NSW approach is based on permanent placement principles which include a preferred order of placement for children, being: preservation in or restoration with their birth family; guardianship; open adoption; and lastly, transfer of parental responsibility to the Minister.⁹¹
78. Adoption can provide positive outcomes for children.⁹² However, it is not a step to be taken lightly. Lessons must be learned from previous inquiries into Australia's past damaging practices of forced removals and forced adoptions. At the national level these include the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families,⁹³ the Senate Community Affairs References Committee Inquiry into Child Migration,⁹⁴ the Senate Community Affairs References Committee Inquiry into Children in Institutional Care,⁹⁵ and the Senate Community Affairs References Committee Inquiry into the Commonwealth contribution to former forced adoption policies and practices.⁹⁶
79. The Australian Government has issued a number of apologies to those affected by past practices of forced removals and forced adoptions, including the 2008 National Apology to Australia's Indigenous Peoples,⁹⁷ the 2009 National Apology to the Forgotten Australians and Former Child Migrants,⁹⁸ and the 2013 National Apology for Forced Adoptions.⁹⁹
80. The lasting impacts of these past practices are still being felt by many Australians, both Indigenous and non-Indigenous. Those affected should be provided with ongoing access to appropriate support services. Initiatives to promote the current and future use of adoption should be mindful of the ongoing sensitivities around this issue for many members of our community.
81. A number of significant changes have taken place since previous inquiries. Importantly, this includes the current widespread use of 'open adoption', whereby adopted children are able to access information about their birth family and maintain an ongoing relationship with them if they wish to do so. According to the Australian Institute of Health and Welfare, the majority (88%) of local adoptions finalised in Australia in 2016-2017 could be considered

open – that is, all parties agreed to allow a degree of contact or information exchange between families.¹⁰⁰

82. A national framework on adoptions within Australia would assist in facilitating the use of adoption where it is in the best interests of the child. Adoption must always be conducted in the context of sufficient legal and practical safeguards to ensure that children's rights and wellbeing are protected. Guiding principles should be included in a national framework to ensure that children's human rights and best interests are prioritised and protected. Suggested guiding principles are outlined in section 8 below.

7 **Aboriginal and Torres Strait Islander children**

83. The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families (the *Bringing them Home* Report) is the foremost piece of work to document the historic experience of forced removal and adoption on Indigenous peoples in Australia.¹⁰¹
84. Discussions about approaches to child welfare, including adoption, are therefore framed by this historical context, which has provided the basis for reforms in Indigenous child welfare over the past two decades.

7.1 **Aboriginal culture and adoption**

85. The Western concept of adoption is foreign to traditional Aboriginal and Torres Strait Islander child rearing practices that rely extensively on extended family networks.
86. The *Bringing them Home* Report expressed the view that the requirement to permanently sever familial and cultural identities makes adoption culturally inappropriate as a long-term placement option for Aboriginal children.¹⁰²
87. Furthermore, the Australian Law Reform Commission's 1986 report on Recognition of Customary Laws stated:

It is common for a member of a child's extended family, often a grandmother, to look after a child or children for periods of time where the parents are unable to do so for one reason or another. Sometimes these arrangements may extend for longer periods of time, to the point where the child might be identified as permanently in the custody of the person(s) looking after him or her and thus regarded as having been adopted. But it would not usually be correct to describe such placements as 'adoptions', since there is no severing of the parent-child relationship but rather a long term arrangement for substitute care. If an equivalent must be found in the State child welfare systems it would be fostering rather than adoption.¹⁰³

88. This is distinct from **Kupai Omasker**, which is an acceptable form of customary adoption for Torres Strait Islander peoples,¹⁰⁴ 'involving the permanent placement of children with members of the extended family. The new custodians of the child are thereafter regarded by the community as [the child's] parents'.¹⁰⁵

89. Given this distinction and what is known about the depth of intergenerational trauma and social disadvantage and the protective role of culture in promoting identity formation and resilience amongst Indigenous youth, the Commission urges great caution about the adoption of Aboriginal children into non-Aboriginal families.¹⁰⁶
90. The Commission notes that legislative innovations to adoption laws in overseas jurisdictions such as those in Canada may provide helpful examples for Australian governments that seek to investigate the creation and operation of pluralistic approaches where existing Indigenous systems are codified as valid legal mechanisms alongside mainstream adoption.

7.2 The effect of adoption on Indigenous populations

91. It is undeniable that historical policies of forced removal have had a devastating impact on Aboriginal and Torres Strait Islander peoples, including deleterious effects on their mental and physical health, and likelihood that those affected would come into contact with child welfare and criminal justice systems.¹⁰⁷
92. The transmission of ‘intergenerational trauma’ has been a significant outcome of these policies.¹⁰⁸ Intergenerational trauma refers to the process by which historical trauma is transmitted across generations. This can be transferred from the first generation of survivors that directly witness or experience traumatic events to subsequent generations.¹⁰⁹
93. There is increasing neuro-biological evidence to show that trauma can have a severe ongoing impact on the brain and body, manifesting itself through issues such as family violence, excessive drug and alcohol use, as well as knowledge of parenting itself.¹¹⁰
94. Intergenerational trauma is a factor that has extended to Aboriginal and Torres Strait Islander peoples who come into contact with child welfare authorities today.¹¹¹
95. It is important to note that there has been very little empirical evidence beyond the *Bringing them Home* Report about the effects of adoption on Aboriginal and Torres Strait Islander children. This means that caution must be exercised when attempting to extend adoption outcomes, for populations with different cultural and historical backgrounds, to Aboriginal and Torres Strait Islander children.

7.3 The Aboriginal and Torres Strait Islander Child Placement Principle: Issues with compliance, identification and placement

96. Moving beyond existing care options to adoption raises a number of other significant issues, insofar as Aboriginal and Torres Strait Islander children are concerned.

97. The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) provides a comprehensive approach to protecting the rights of Aboriginal and Torres Strait Islander children in out-of-home care.
98. The five elements of the ATSICPP are:¹¹²
1. Prevention: Protecting children's rights to grow up in family, community and culture by redressing the causes of child protection intervention.
 2. Partnership: Ensuring the participation of community representatives in service design, delivery and individual case decisions.
 3. Connection: Maintaining and supporting connections to family, community, culture and country for children in out-of-home care.
 4. Participation: Ensuring the participation of children, parents and family members in decisions regarding the care and protection of their children.
 5. Placement: Placing children in out-of-home care in accordance with the established ATSICPP placement hierarchy:
 - i. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members, or
 - ii. with Aboriginal or Torres Strait Islander members of the child's community, or
 - iii. with Aboriginal or Torres Strait Islander family-based carers.
 - iv. If the above preferred options are not available, as a last resort the child may be placed with a non-Indigenous carer or in a residential setting.
 - v. If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.
99. Whilst there have been strong statements of commitment to the ATSICPP by various Australian governments, experience has shown this has not been fully translated into child welfare legislation, which has tended to emphasise the placement hierarchy to the exclusion of the other elements of the ATSICPP.
100. The placement hierarchy has been introduced into Australian adoption legislation to varying extents and effects. For example, research from the Queensland Commission for Children and Young People and Child Guardian suggests that the placement hierarchy is only being fully applied in as few as 13% of matters.¹¹³
101. Furthermore, recent reviews of adoption legislation in Victoria suggest that, notwithstanding issues with compliance, these provisions 'provide relatively weak protection for a child's cultural connections'.¹¹⁴
102. Whilst much remains to be done to fully implement the ATSICPP across law and practice, statistics show that 66% of Indigenous children had been placed with Indigenous carers in 2015-16 in accordance with the principle.¹¹⁵
103. The early and accurate identification of Aboriginal and Torres Strait Islander children is a clear priority within this context, as is the strengthening and compliance of legislation in relation to the application of the ATSICPP. The ATSICPP must be fully implemented within the context of adoption and the

broader child welfare system in order to ensure that every Aboriginal and Torres Strait Islander child is able to be safe and thrive in family, community and culture.¹¹⁶

7.4 Financial and cultural support, carer shortages and lack of oversight

104. Adoption poses a number of additional areas of concern for Aboriginal and Torres Strait Islander children.
105. Chief among these is the lack of oversight associated with adoption orders, which means that there are limited safeguards in place to prevent further exposure to abuse and to ensure appropriate compliance with the cultural rights of Aboriginal children such as those prescribed through legislation enshrining the ATSI CPP.
106. Closely linked to this issue is the compounding effect of separating siblings where a prospective adoptive parent is unable to accommodate all children.
107. Given the lack of financial support that often distinguishes adoption from other types of care orders, this is likely to affect the ability of sibling groups to remain connected and acts as an additional barrier for Aboriginal and Torres Strait Islander peoples who wish to adopt.
108. There are significant questions about how the complex needs of adoptees will be met, given what is known about the developmental support needed for Aboriginal and Torres Strait Islander children in care, and particularly those with a significant history of maltreatment.¹¹⁷
109. The Royal Commission into Child Protection Systems in South Australia also recently noted:

Adoption is no panacea for the current shortage of suitable care placements for children who cannot remain with their families of origin. The fact that there is a cohort of families who are interested in starting or growing their families through local adoption, and who may relieve placement pressure in the care system, is irrelevant to the question of a child's best interest.¹¹⁸

110. These issues raise a number of concerns with how an adoption framework will meet the developmental, cultural and physical needs of a child to promote their safety, welfare and wellbeing.

7.5 Safeguarding Aboriginal and Torres Strait Islander children

111. With the number of Aboriginal and Torres Strait Islander children entering care each year significantly higher than at the time of the *Bringing them Home* Report, it is clear that urgent action is required to address the contact between families and the child welfare system.¹¹⁹
112. It is disappointing that decades of reports and inquiries, which have emphasised greater self-determination and investment in early intervention, have gone unimplemented. This includes the cornerstone recommendation of

the *Bringing them Home* Report, which emphasised the need for Aboriginal and Torres Strait Islander peoples to have greater self-determination in matters involving the wellbeing of Indigenous children and young people.¹²⁰

113. Aboriginal and Torres Strait Islander peoples and their organisations have long expressed a right to self-determination in a manner consistent with international law, to enable them to have a greater say and control over matters that affect them.¹²¹
114. Any steps to resolve the human rights challenges facing Aboriginal and Torres Strait Islander peoples, particularly in the child welfare space, must address this fundamental gap.
115. There must be acknowledgment that adoption is only one way to achieve stability and permanency for children and that such measures are likely to have a disproportionate effect on Aboriginal and Torres Strait Islander children.
116. The *Bringing them Home* Report recommended that the adoption of Aboriginal and Torres Strait Islander children should generally be viewed as an option of last resort and subject to stringent oversight and protections.¹²² The Commission considers that, in general, placements other than adoption, which provide for stability and attachment as well as cultural identity and connection, should be prioritised for Aboriginal and Torres Strait Islander children.
117. When making decisions in regard to adoption, the Commission notes the following principles:
 - In determining the best interests of the child, the following factors relating to connection to culture should be taken into account:¹²³
 - The need of the child to maintain contact with their Indigenous family, community and culture.
 - The significance of the child's Indigenous heritage for their future wellbeing.
 - The views of the child and their family.
 - The advice of the appropriate accredited Indigenous organisation.¹²⁴
 - Appropriate consideration should be given to the Aboriginal and Torres Strait Islander Child Placement Principle.¹²⁵
 - Consideration should be given to whether there are less intrusive options available to achieve permanency and stability for Aboriginal and Torres Strait Islander children through other care orders.

8 Guiding principles for a national framework on adoptions within Australia

118. In the Commission's view, a new national framework on adoptions within Australia would assist in providing consistent criteria to ensure that the best interests of the child are given appropriate weight in all adoption decisions.

119. Ideally, a national framework would result in the standardisation of legal and regulatory provisions relating to adoptions across Australia and would facilitate adoptions where they are in the best interests of the child.
120. There have been various efforts in Australia in the past to achieve national consistency in matters relating to adoption – some of which offer cautionary tales. For example, the Victorian Law Reform Commission’s 2016 consultation paper, *Review of the Adoption Act 1984*, outlines the development and implementation of model legislation in Australian states and territories during the 1960s which put in place secrecy provisions surrounding adoption.¹²⁶
121. Other more recent efforts at a national approach might be useful in the Committee’s current consideration.
122. According to the Victorian Law Reform Commission, ‘National Principles in Adoption’ were ratified by Community and Disability Services Ministers in 1993.¹²⁷ These were updated in 1997 to reflect Australia’s international obligations.¹²⁸ In 2008, the Community and Disability Services Ministers Conference (CDSMC) ‘agreed to establish the Enhancing Adoption as a Service for Children Working Group to review the National Principles and agree on a set of principles to guide adoption practice and a more consistent approach across jurisdictions’.¹²⁹ The Victorian Law Reform Commission’s 2016 consultation paper stated:
- The Commission understands that a revised draft of the National Principles was circulated out of session to the CDSMC in April 2012 and that all jurisdictions except the Commonwealth provided endorsement through this process. The CDSMC has since been disbanded as part of streamlining the Council of Australian Governments system. It is unclear whether there has been further work on this issue.¹³⁰
123. The 2011 National Standards for out-of-home care provide a useful model to consider in preparing a new national framework on adoptions within Australia.¹³¹ The National Standards include a set of nine overarching principles, many of which may be relevant to children who may be involved in adoption matters. The principles are as follows:
- Children and young people in out-of-home care have their rights respected and are treated in accordance with the United Nations Convention on the Rights of the Child.
 - Care provided to children and young people living in out-of-home care is focused on providing a nurturing environment, promoting their best interests, and maximising their potential.
 - Children and young people living in out-of-home care are provided with opportunities for their voice to be heard and respected and have the right to clear and consistent information about the reasons for being in care.
 - Care provided to children and young people will promote the benefits of ongoing safe, meaningful and positive connection and involvement of parents and families and communities of origin.

- Carers and their families are key stakeholders and partners in the care of children and young people, and their role is to be respected and supported.
- Children and young people living in out-of-home care are provided with a level of quality care that addresses their particular needs and improves their life outcomes.
- Continuous system improvements are designed to achieve better outcomes for all children and young people living in out-of-home care.
- Out-of-home care for children and young people is measured, monitored and reported in a transparent, efficient and consistent manner over time.
- Aboriginal and Torres Strait Islander communities are to be involved in decisions in accordance with the Aboriginal Child Placement Principle.¹³²

124. A national framework for adoptions within Australia should include the following as guiding principles:

- ***The rights of the child will be respected and protected.*** Children involved in adoption processes will have their human rights respected and they will be treated in accordance with Australia's obligations under the *United Nations Convention on the Rights of the Child*. Children will be provided with clear and age appropriate information about their rights, their situation and the care options available to them.
- ***The best interests of the child will be the paramount consideration in all adoption matters.*** For individual adoption decisions, the child's best interests should be assessed and determined on a case-by-case basis, in light of the specific circumstances and needs of the particular child.
- ***Children's rights to culture and identity will be respected:*** When determining the best interests of the child, regard should be had for the child's individual and collective rights to their identity, including their cultural identity. All rights outlined in the *Convention on the Rights of the Child* should be considered when determining what is in the child's best interests, including those outlined in article 30.
- ***Children's rights to be heard will be respected and facilitated.*** All children, including very young or vulnerable children, should be given the opportunity, either directly or through a representative, to express their views and be heard in adoption proceedings that affect them. As a child matures, their views should be given increasing weight in the assessment of their best interests.
- ***Children's consent will be sought:*** If a child has capacity to give or refuse consent, their consent should be sought prior to their adoption. Any legal minimum age requirement for a child being able to consent to their adoption should be supplemented by a provision allowing a child

below that minimum age to give or refuse consent where they have demonstrated a sufficient level of maturity and understanding to do so.

- **There will be a presumption for open adoption:** Open adoption ensures that the child has access to information about their birth family and their adoption, and has ongoing contact with their birth family unless that is not in the child's best interests.
- **All parties will have access to ongoing support services:** Birth families, children and adoptive families should be provided with access to information, counselling and support services prior to, during and after an adoption. The support needs of adoptive parents should be met on an ongoing basis, to ensure that the physical, emotional, health, educational and other needs of each individual adopted child can be fulfilled.

125. As noted earlier, this is not a comprehensive consideration of all matters that would need to be addressed when developing a national framework for adoptions within Australia. Rather, these guiding principles should be included to ensure that children's human rights and best interests are prioritised and protected.
126. The Commission is of the view that a national framework should recognise the particular, distinctive issues relating to the adoption of Aboriginal and Torres Strait Islander children. The framework should be developed in close consultation with Aboriginal and Torres Strait Islander peoples and their child welfare and family service agencies, in a manner consistent with the principle of free, prior and informed consent. At a minimum, the Commission is of the view that the national framework should be consistent with and seek to fully implement the ATSCIPP, and recognise that the Indigenous child's best interests must be conceived both as an individual and a collective right, including the right to culture.
127. The Commission is also of the view that, in developing the national framework, consideration should be given to the following issues:
- **Parental consent:** Ordinarily, parental consent should be sought prior to the adoption of a child. However, there may be circumstances in which it is not possible to obtain parental consent, or where a legal requirement for parental consent might work against the best interests of the child involved. In the Commission's view, a legal requirement to obtain the consent of the birth parent/s to an adoption should be able to be dispensed with, by court order, where it is clearly in the best interests of the child to do so, and it would be against the best interests of the child not to do so. Detailed consideration should be given to what these circumstances might legitimately include.
 - **Non-discrimination in eligibility requirements:** In the Commission's view, eligibility to adopt a child should be based on a non-discriminatory approach. For example, adults should not be excluded from eligibility for reasons of their marital or relationship status, their sexuality or their

age. The determining factor should be meeting the best interests of the particular child in each case.

- **The need for adequate monitoring and data collection:** The national framework should include a mechanism for nationally consistent data collection on factors including adoption rates for each type of adoption, characteristics of adopted children and adoptive families, adoption success and dissolution rates, and access by relevant parties to appropriate pre- and post-adoption support services; as well as an ongoing monitoring and review mechanism.

128. In the Commission's view, the development of a national framework for adoptions within Australia should proceed through the Fourth Action Plan of the National Framework for Protecting Australia's Children. This should include widespread consultation with all relevant stakeholders.

¹ *Principles relating to the Status of National Institutions* (The Paris Principles), GA Res 48/134 (20 December 1993). At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx> (viewed 15 May 2018).

² Senate Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption, Terms of Reference*. At https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Localadoption/Terms_of_Reference (viewed 30 April 2018).

³ Australian Institute of Health and Welfare, *Adoptions Australia 2016-2017* (2017) 4. At <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content> (viewed 30 April 2018).

⁴ Australian Institute of Health and Welfare, *Adoptions Australia 2016-2017* (2017) 4. At <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content> (viewed 30 April 2018).

⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 2.

⁷ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3.

⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 21; Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [38].

⁹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [38].

¹⁰ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [29].

¹¹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [48].

¹² Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [50].

¹³ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [81].

¹⁴ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [82].

¹⁵ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [55].

¹⁶ Committee on the Rights of the Child, *General Comment No. 11 (2009): Indigenous children and their rights under the Convention*, 50th sess, UN Doc CRC/C/GC/11 (12 February 2009) [32].

¹⁷ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12; Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [43].

¹⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12(2); Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be heard*, 51st sess, UN Doc CRC/C/GC/12 (1 July 2009) [32]–[33].

¹⁹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [54].

²⁰ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 8.

²¹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [55].

²² Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [55].

²³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 9(1).

²⁴ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 9(2).

²⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 9(3).

²⁶ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [61].

²⁷ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 19.

²⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 20.

²⁹ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [56].

³⁰ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013) [57].

³¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 21.

³² *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 21(a).

³³ Committee on the Rights of the Child, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, UN Doc CRC/C/GC/20 (6 December 2016) [39].

³⁴ Committee on the Rights of the Child, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, UN Doc CRC/C/GC/20 (6 December 2016) [39].

³⁵ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [53].

³⁶ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [54].

³⁷ Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict* (2018) 17. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/AUS/5-6&Lang=en (viewed 14 May 2018).

³⁸ Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict, Endnotes and Appendices* (2018) 33-35, 68-70. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CRC/ADR/AUS/29898&Lang=en (viewed 14 May 2018).

³⁹ Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict* (2018) 17. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/AUS/5-6&Lang=en (viewed 14 May 2018); Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict, Endnotes and Appendices* (2018) 68-70. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CRC/ADR/AUS/29898&Lang=en (viewed 14 May 2018).

⁴⁰ Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict* (2018) 17. At

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/AUS/5-6&Lang=en (viewed 14 May 2018); Australian Government, *Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict, Endnotes and Appendices* (2018) 68-70. At

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