

Families, policy and the law

Selected essays on contemporary issues for Australia

Edited by
Alan Hayes and Daryl Higgins



Australian Government

Australian Institute of Family Studies

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[4]

Past adoption practices **Key messages for service delivery responses and** **current policies**

Pauline Kenny and Daryl Higgins

THIS CHAPTER DRAWS FROM the findings of the report *Past Adoption Experiences: The National Research Study on the Service Response to Past Adoption Practices*, released by the Australian Institute of Family Studies in August 2012 (Kenny, Higgins, Soloff, & Sweid, 2012). Here we examine the nature of identity and connection through the lens of the study participants' lived experiences of past adoptions, and the subsequent effects on the formation of "self" within these constructs, including barriers and enablers. We then explore the influence of these experiences on the participants' views about family formation and composition as they relate to the current climate of adoption, donor conception and surrogacy, as well as permanent care arrangements in the child protection system.

This chapter provides an opportunity to reflect the voices of those who took part in the research, particularly of those who were adopted as children, and what they saw as being integral to current policy discussions in these domains, as they view themselves as the living results of a past "social experiment".

Past adoption practices in Australia

In the decades prior to the mid-1970s, it was common in Australia for babies of young, vulnerable women (usually unwed mothers) to be adopted. Shame and silence surrounded pregnancy out of wedlock. This was matched by mounting social pressure to meet the needs of infertile couples. Societal views—reflected in organisational practices in hospitals, children's homes, government welfare departments, and other agencies—prioritised the needs of "deserving" infertile couples. The needs of single or other vulnerable young pregnant women giving birth were largely ignored (Higgins, 2012).¹

¹ Wherever possible, the term "mother" is used in this paper to refer to the person who gave birth to the child.

Adoptions in Australia reached a peak of almost 10,000 per year in 1971–72. Since then, rates of adoption have dropped significantly. In 2012–13, there were 339 adoptions—up slightly from 333 in 2011–12, which was the lowest number on record (AIHW, 2013). Of these, only 54 (16%) were local adoptions, 129 (38%) were intercountry adoptions, and 156 (46%) were “known” child adoptions.

When the adoption process in Australia was at its peak, adoptions were “closed”. Closed adoption was where an adopted child’s original birth certificate was sealed forever and an amended birth certificate was issued that established the child’s new identity and relationship with their adoptive family. Mothers were not informed about the adoptive families, and the very fact of their adoption was usually kept secret from the children. Changes in legislation now allow access to such information (if no veto from the other party has been put in place). The majority of local adoptions (those of children born or permanently residing in Australia) are now “open”.

Reforms affecting past practices

Legislative and social reforms and other significant events have contributed to the shifts away from the peak period of adoption in Australia in the late 1960s and early 1970s, such as:

- the establishment of the Council of the Single Mother and Her Children (Victoria) in 1970, and a national equivalent set up in 1973, aimed at challenging the stigma of adoption and providing support to single and “relinquishing” mothers;
- the status of “illegitimacy” changing to “ex-nuptial births”, starting in 1974 with a *Status of Children Act* (Victoria and Tasmania);
- abortion becoming allowable under some circumstances in most states from the early 1970s (see the 1969 Menhennitt ruling [*R v Davidson*] in Victoria, and the 1971 Levine ruling in NSW);
- the Commonwealth Government’s introduction of the Supporting Mother’s Benefit in 1973;
- further legislative reforms to overturn the blanket of secrecy surrounding adoption (up until changes in the 1980s, information on parents was not made available to adopted children/adults);
- establishment of registers for those wishing to make contact (both for parents and adopted children), beginning in 1976 in NSW;
- implementation of legislation in Victoria (1984) granting adopted persons over 18 the right to access their birth certificate, subject to mandatory counselling, with similar changes following in other states; and
- legislative changes in most of the eight states/territories by the early 1990s that ensured that consent for adoption had to come from both mothers and fathers.

However, the damages incurred to many thousands of Australians prior to such reforms are certainly evident today, as recognised by the Australian Government’s formal apology in March 2013 for the Commonwealth’s contribution to former forced adoptions. Although legislative responsibility for adoptions has remained with the states and territories, it is an important acknowledgement of the collective responsibility held nationally for the current service and support needs of those affected.

Past Adoption Experiences study

On 4 June 2010, the Community and Disability Services Ministers’ Conference (CDSMC) announced that the ministers had agreed to a joint national research study into closed

adoption and its effects, to be conducted by the Australian Institute of Family Studies. This study complements the Senate Inquiry into the role of the Commonwealth in former forced adoptions (Senate Community Affairs References Committee, 2012).²

The key focus of the AIFS study was on current needs for services and supports, and was designed to produce evidence that can assist with improving service responses to those affected by past practices, including the provision of information, counselling, search and contact services and other supports.

The study—the results of which were published in the report *Past Adoption Experiences: National Research Study on the Service Response to Past Adoption Practices*—targeted a wide group of those with past adoption experiences, including: mothers and fathers separated from a child by adoption, adopted individuals, adoptive parents, wider family members (to look at “ripple effects”), and those servicing their current needs (counsellors, psychologists and other professionals).

It incorporated mixed methods (online surveys; reply-paid survey; in-depth interviews and focus groups), integrating results from across the different elements of the study, and used and built on existing research and evidence about the extent and effects of past adoption experiences.

Over 1,500 individuals across Australia participated in the study, comprising:

- 823 adopted individuals;
- 505 mothers;
- 94 adoptive parents;
- 94 other family members; and
- 12 fathers.

In addition, we surveyed 58 service providers about their views on the current needs and service provision models for those affected by past adoption practices.

Follow-up individual interviews and focus groups included over 300 participants in 19 locations across all states and territories.

Themes from the study

One of the advantages to this study was that there was a nationally coherent voice among the participants. Although a broad lens was applied, we are able to reflect on some of the lessons learned regarding past adoption practices, with specific focus on the currency of some of those issues in today’s legal and ethical discussions relating to assisted reproduction, current adoption practices and permanency care planning.

We have chosen to focus on three key themes within the findings of the study—identity, connection and access to information—as they pertain to the experiences of the adopted individuals in particular, who were not only the largest respondent group, but who are living examples of the outcomes of past policies and practices.

Theme 1: Identity

I grew up feeling like an imposter, needing to be extra good to ensure that I would fit in and not be rejected. Only through meeting my natural family members did I learn about other parts of who I am. Only then I became able

² The Senate Community Affairs Reference Committee examined the role, if any, of the Commonwealth Government in forced adoption practices, and its potential role in developing a national framework to address the consequences for mothers, their families and children subjected to such practices.

to make my own choices [about who I am] more freely. (cited in Kenny et al., 2012, p. 112)

A point to make early in this discussion is that the findings from the study indicate that for adopted individuals, regardless of the quality of upbringing they experienced from their adoptive families, the majority of participants said that their adoption had some negative effects on their lives. Identity issues was one of the most challenging of these. Therefore, seeking information about themselves and family members from whom they were separated was fundamental for many adopted individuals, particularly as this process relates to the formation of identity.

The concept of identity was viewed from two predominant perspectives:

- Where have I come from (biologically)?
and
- How have I been raised?

These questions probably do not appear to be markedly different to how non-adopted individuals may contemplate their views of self and how these concepts are formulated; however, the tensions existing between the two questions for those who grew up as an adoptee in the period of closed adoptions were obvious in the results of this study.

Neither of these fundamental questions appeared to be viewed as being mutually exclusive; indeed, this was rarely so. For many, there was a constant sense of “not fitting” or “belonging” within their adoptive families, even if they felt loved, and their subsequent reaction was often a driving need to conform or modify their behaviours in order to counteract these differences. This only added to their confusion as to who they fundamentally viewed themselves to “be”.

For other adoptees who indicated that they had not experienced such an underlying feeling of “trying to fit in” and who felt completely assimilated with their adoptive families, some still indicated that they faced challenges. Meeting their biological relatives triggered further reflection on how they’d previously viewed themselves and their sense of identity. Certain aspects of their personalities started to make more sense; similarities in hobbies and interests and seeing themselves physically reflected in their relative’s features all became significant in contributing to how these participants now considered what constituted their identities. While this may have answered some long-held questions, the effects of such discovery can’t be underestimated:

I just need to accept that as an adoptee, I am a mixture of my birth parents and my adoptive parents. I have genetic, emotional and personality traits from my birth mother and have learned personality traits from my adoptive parents. Unfortunately, that makes me feel that I don’t really fit with either parents. (cited in Kenny et al., 2012, p. 98)

Sadly, there were some participants in the study who did not discover they were adopted until later in their lives; many only once their adoptive parents had passed away. Late-discovery adoptees may experience significant emotional damage as they find themselves contemplating a life and what they considered to be their identity that has been based on lies and deception, no matter how well-intentioned their adoptive families may have been in keeping the adoption secret. As one participant articulated about their experience of discovering their adoption at a later age, the effects were significant:

Absolutely let down. I had led a lie for my first 24 years of my life. Upon disclosure, a big black hole opened up for me: “Who was I really?” (cited in Kenny et al., 2012, p. 99)

So the concept of identity formation is certainly complex, and arguably more so for those adoptees who have no information about their families of origin. The capacity to contact and make further connections with their biological relatives and explore more thoroughly their own ideas and experiences of what it means to be “me” is important.

Theme 2: Connection

The closed records adoption system was a violation of the human right to know oneself. To be given an entirely fictional identity was a further cruelty. To have birth rights stripped away is utterly immoral and wrong. (cited in Kenny et al., 2012, p. 87)

Of all the messages that emerged from the adopted individuals who participated in the study in relation to what was most important to them now and into the future, the one that was held with the most passion and conviction was the right to have access to their own information. The inaccessibility of their records, birth certificates and contact information of their biological families, and how this relates to the formation of their identity, sense of “place” in the world and, ultimately, connection to their own histories, was felt to have been largely misunderstood or not acknowledged in the wider focus of the adoption discussion, and this was one thing they would like to see rectified.

Currently, all states and territories have variances in their legislation relating to adoptees and access to information. This was identified by study participants as being in dire need of reconsideration; that the complexities and barriers many face in attempting to find and connect with their families of origin were viewed by some to be a violation of their human rights:

I want the restoration of my human right to full disclosure regarding who I am and how I got here. (cited in Kenny et al., 2012, p. 108)

Further barriers to obtaining information that would help them form connections, which participants felt could be revised legislatively, included:

- the parameters surrounding contact and information vetos;
- the cost of accessing original birth certificates and other documentation; and
- the variability in the quality of the information and the way in which such information is provided.

Another more complex and certainly less enforceable challenge for adoptees is the lack of willingness by some family members to disclose information about their biological families. This was an issue particularly in the case of mothers failing to reveal the identity of fathers; but also of adoptive parents who continue to perpetuate the lie about their child being adopted:

I would dearly love to find my birth father because recently I have become disabled and they are talking genetics. Unfortunately, my birth mother is not willing to help me do this (cited in Kenny et al., 2012, p. 109).

The most pertinent point here is in order for those adoptees affected by closed adoption practices to be able to connect with their families of origin, their access to information

needs to be viewed as being a right, not a privilege; for the rest of the community, this is something that is generally taken for granted. Importantly, and certainly from the viewpoint of service and support needs, the barriers that prevent this information from being accessible creates a further frustration, and often, unnecessary trauma when adoptees are denied the opportunity to make connections not only about how, as an individual, they develop their own sense of self, but also how they are placed within a broader societal view of what comprises identity.

Theme 3: Access to information

In this section, we examine the tensions existing between an adoptee's socially constructed identity (i.e., who they are and where they fit within their social selves), versus the biological information that informs the individual of what they are made up of (i.e., genetic/medical histories).

Biologically and socially constructed views about what comprises us as individuals largely centres on family. Everyday questions like: Where is your family from? Does your family have a medical history of a particular condition? Who do you get your hair or eye colour from? are all examples of how having some knowledge about our genetic histories makes sense to others when exchanging information to try to formulate a picture of who we're talking to. Certainly, this focus poses a number of issues for those who have no access to such information, as they have, at least in part, constructed their identities.

Not surprisingly, the nature and nurture debate featured strongly across all respondent groups in this study. Interestingly, some adoptive parents, once they had met their child's families of origin, very strongly asserted their beliefs about nature being the more dominant paradigm when it came to how their children's personalities are developed. But this discussion is more than that. It is not only about having access to information that aids in connecting with others to help formulate identity, but also about the actual capacity to function as an individual in a society that stipulates certain measures of identity before one can participate.

Our desire to belong, to connect, to relate, to fit in, are all examples of how these external/societal viewpoints of what comprises an identity place perhaps unnecessary focus and hence stress on those who do not have such information from which to go by in their journeys of self-discovery. Adoptees live their lives as a constant tug-of-war between, on the one hand, what feels alright for an individual in their knowledge of self and what their adoptive family and others have done to help them understand their unique situation, and, on the other, the reality of what society asks of them on a daily basis to prove who they say they are.

One extreme and certainly distressing example of how access to information about self affects the formation of identity are those individuals whose adoptions were arranged "informally", or illegally in some instances. They are faced with the incredibly challenging reality of having absolutely no information about themselves and where they have come from. So how do they operate in a society that requires an ever-increasing level of such information in order to enjoy the same privileges as the large majority? As one adopted individual said to us:

I would also like to be able to access my genealogy and family history and have the same right to the base information that I believe is a child's right to have. The law should not deny me or protect those who created what turns out to be a lie. In other words, the history I was raised with turns out not to be my history, but an adopted history (cited in Kenny et al., 2012, p. 109).

Implications of the study findings

It's huge, and I think we need to have a voice and say, "This is what it did to us". (cited in Kenny et al., 2012, p. 102)

Identity formation has been a key focus of this chapter; what it means at an individual level, a societal level and a functional level, and how experiences of both current and past legislative environments relating to access to personal information affects people still today. These effects have manifested in many and varied ways for those who participated in our study. One point that was made early in this discussion was that many of the adopted individuals (around 70%) indicated that they thought their experience of adoption had had some negative effect on their health and wellbeing; and the proportion of adopted individuals who said their upbringing had been good was roughly equivalent to the proportion who were unhappy with their upbringing and their experience of growing up in an adoptive family.

The strongest message from our participants across most respondent groups was the need to ensure that "this never happens again"—and that the lessons learned are implemented today in relation to policies that relate to children and families. These issues are still current for those affected. Issues relating to the health and welfare of participants were not just historical—people were reflecting the current difficulties they were experiencing. For example, adopted individuals' scores on a measure of current wellbeing were significantly lower and levels of psychological distress significantly higher than comparative data available on the general population.

From the perspective of adopted individuals, one of the main reasons they wanted to participate in the study was in the hope that the provision of information about their own experiences would be of benefit for future policy and practices in relation to the current adoption and donor conception environment in Australia—so that what has happened to them doesn't happen to others, particularly in relation to:

- the effects of adoption on themselves (predominantly around identity, abandonment and attachment issues); and
- the inaccessibility of information.

It is evident that many were motivated by their need to know who they are and where they have come from, which is more than simply having access to medical records or genetic information. Participants—including adopted individuals, parents and adoptive families—all agreed that people need support in doing this. Adopted individuals sent a strong message about the need to alert people to the significant unintended consequences of "well-meaning" policies:

I think the underlying root of the problem is the baby-supply industry. The same issues are coming up with donor conception, surrogacy, "selling" children on the Internet, especially in America. The same issues are popping up and they're being repeated ... I'm seeing people put in similar situations where they'll never know who their father is. They're told, "But you've been given life, you're better off because we want you". It's about the needs of the parents, not the child. (cited in Kenny et al., 2012, p. 120)

It is therefore essential that debate continues, reflecting on the key messages from this important national study reflecting a large and diverse orchestra of voices from those touched by an experience from the past era of "closed adoption" in Australia.

The key needs identified by the study included:

- acknowledgement, recognition and increased community awareness of and education about past adoption practices and their subsequent effects;
- specialised workforce training and development for health and welfare professionals to appropriately respond to the needs of those affected;
- a review of current search and contact service systems, with a commitment to develop improved service models;
- improved access to information through the joining of state and territory databases, governed by a single statutory body;
- improved access to and assistance with costs for mental, behavioural and physical health services; and
- ensuring that lessons from past practices are learned from and translated where appropriate into current child welfare policies, and that adoption-specific services are created or enhanced to respond to the consequences of past practices.

What's changed ... and what can change?

Future adoptions, surrogacy, IVF etc. be focused around the child and not just that of the parent. It always seems as though that is the voiceless person in the debate and where the impact appears perpetually underrated. (cited in Kenny et al., 2012, p. 120)

In the introductory sections of this chapter, we provided an overview of some of the contributing factors that led to the “adoption boom” in Australia. One of the most compelling factors that contributed to this “boom” was the discrimination associated with illegitimate births and the societal viewpoint that every child needs two married parents. Clearly, belief systems in Australia have shifted in such a way over the past three decades that we recognise there are many and varied ways to form a family, none any less legitimate than another, with a massive rise in the proportion of marriages preceded by cohabitation—from 16% in 1975 to 78% in 2008 (Higgins, 2013).

The AIFS report (Kenny et al., 2012) complements the report from the Senate Community Affairs References Committee (2012) into the Commonwealth Contribution to Former Forced Adoption Policies and Practices. The final Senate Inquiry report outlined the contributions of the Commonwealth Government, its policies and practices to contributing to forced adoptions; and acknowledged the role of the Commonwealth in developing a national framework to assist states and territories to address the consequences for the mothers, their families and children who were subject to forced adoption policies.

What is clear from both the study by AIFS and the Senate Inquiry report is that force comes in a range of forms. In particular, mothers who were separated from their child who was adopted talked about the illegal acts to which they were subjected, the prejudicial and differential treatment they received (e.g., hospitals having different practices in relation to wed and unwed mothers), the absence of support from family, the lack of options provided, the failure of officials to appropriately take consent for the adoption, factors influencing their capacity to make decisions (including the administration of drugs and use of psychological coercion), and the broader attitudes of society that were reflected in the actions of the institutions, agencies and professionals. This supports the range of existing smaller scale studies, case studies and personal biographies that highlight the interlinking layers of coercion, secrecy, silence, shame and blame that pervaded the past experience of “closed adoption” in Australia (Higgins, 2010).

If we use a public health perspective to examine the effects of past adoption practices, we can see that the social and economic costs and consequences of preventable health issues are borne not only by the individuals but by the entire community. Studies have consistently shown that population-level prevention and early intervention are cost-effective and can positively alter risk and protective factors that affect individuals.

In this context, if we consider some of the child protection reforms being considered across Australia at present (see Box 1), it is certainly important to bear in mind the potential longer term implications for children whose connection to their parents are severed, as well as their mothers, fathers and wider family members. An urgent policy issue for consideration therefore, is the lessons that can be learned from past adoption practices that can be applied to intercountry adoptions, adoption and permanent care for children in statutory out-of-home care, anonymous donor conception and surrogacy.

Research on past adoption practices can provide timely cautions about the potential effects on future generations of children if attention is not paid to their needs for identity, connection and access to information.

Box 1: Recent state parliamentary child protection inquiries

New South Wales

Improving child protection <tinyurl.com/bppqf5c>

A safe home for life: Report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012. (2013). Sydney: FACS. Retrieved from <tinyurl.com/po5vkxb>.

Child protection legislative reforms (Fact Sheet). (2013). Sydney: FACS. Retrieved from <tinyurl.com/mya7mmx>.

Queensland

Queensland Child Protection Commission of Inquiry <www.childprotectioninquiry.qld.gov.au>

Taking responsibility: A roadmap for Queensland child protection. (2013). Brisbane: Queensland Child Protection Commission of Inquiry. Retrieved from <tinyurl.com/nkrnsfc>.

Victoria

Protecting Victoria's Vulnerable Children Inquiry <www.childprotectioninquiry.vic.gov.au>

Report of the Protecting Victoria's Vulnerable Children Inquiry. By P. Cummins, D. Scott, & W. Scales. (2012). Melbourne: Dept. of Premier and Cabinet. Retrieved from <www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>.

Victoria's vulnerable children: Our shared responsibility. Strategy 2013–2022. (2013). Melbourne: Victorian government. Retrieved from <tinyurl.com/jwn4j7c>. (A whole-of-government strategy developed in response to the inquiry.)

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