GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

# GRIFFITH JOURNAL OF LAW & HUMAN DIGNITY



Volume 12 Issue 1
2024

Published on 11 September 2024, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*

ISSN: 2203-3114

**CONTENTS**

# ADOPTION LAW REFORM: A PERSONAL VIEW

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*Adoption law does not adequately apply the best interests of the child as the paramount consideration. As a consequence of each of the States and Territories of the Commonwealth of Australia having enacted their own laws, a child who is adopted in one jurisdiction is subject to different laws from a child adopted in another. That particularly applies to the application of the paramountcy principle. There have been significant changes to adoption law which have benefited parents, adoptees and adoptive parents by enabling greater transparency, allowing adoptees to learn their identities and assist in reunions in appropriate cases. The consequences of forced adoptions highlighted the antithesis of greater transparency. This article argues that each of the States and Territories refer the legislative power in adoption to the Commonwealth to overcome the diversity of adoption laws and enable the enactment of a national uniform adoption law. The Commonwealth should vest the jurisdiction in the Federal Circuit and Family Court of Australia. What is now known as an order for adoption should be determined by the Court in the same manner as a parenting order in family law. In referring the powers, the States and Territories should reserve questions of succession law and adult applications for discharge of adoption orders to their own courts. Consideration should be given to abandoning the term 'adoption'.*

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## I INTRODUCTION

Twenty-one years as a Justice of the Family Court of Australia (as it then was) and more than a decade of involvement with the difficult issue of forced adoptions in Australia have led me to the view that the law and practice of adoption in this country does not adequately meet the fundamental requirement of the paramountcy of the best interests

of the subject child (the 'paramountcy principle').[1] Consequently, I offer this personal view of adoption law reform which, I suggest, will better achieve that fundamental requirement.

My basic proposition may be summarised as follows:

(1) Adoption should be regarded as part of family law;

(2) Each of the States and Territories should refer their powers relating to adoption law to the Commonwealth;

(3) The Commonwealth should enact legislation incorporating adoption into the *Family Law Act 1975* (Cth) (*'FLA'*), thereby enabling decisions with regard to adoption to be made pursuant to the same principles as are in the *FLA* and, in particular, the paramountcy principle;[2]

(4) The jurisdiction pursuant to that national adoption law should be vested in the Federal Circuit and Family Court of Australia ('FCFCA'); and

(5) Consideration should be given to referring to an adoption order as a parenting order.

I now turn to a development of those basic propositions.

## II THE LANGUAGE OF ADOPTION

At the outset, it is necessary to make reference to the use of language when discussing adoption and those affected by it. I use the terminology decided on by the Senate Community Affairs References Committee (the 'Senate Committee') in their inquiry into forced adoptions.[3] The essential concept is that the mother of a child should be known as "the mother" with no adjective such as "birth mother" or "natural mother".[4] The adopted

[1] Standard referred to in *Family Law Act 1975* (Cth) s 60CA (*'FLA'*).
[2] See below Part VIII.
[3] Senate Community Affairs References Committee, Parliament of Australia, *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Report, 29 February 2012) 2–3 [1.9]–[1.14] (*'Senate Forced Adoption Report'*).
[4] Ibid [1.9].

child is usually referred to as "the adoptee" or "the adopted person".[5] The person or persons who have adopted the child are referred to as "the adoptive parent/s".[6]

## III WHY ADOPTION?

A civilised community must recognise the fact that at times the parents of a child are unable to care for that child. That may be brought about by one or more factors including mental illness, alcohol or other drug dependence, or serious criminality including violence by one partner to the other or to the child. In the case of 'forced adoption', as discussed below, it is usually young women in harsh social and economic circumstances, confronted with an unsought pregnancy with little or no support.[7] In these circumstances, it is appropriate to look to extended family such as grandparents, aunties, uncles, or older siblings. At times, extended family may also not be available or appropriate for various reasons. In those circumstances, the option of placing the child in the care of strangers to the child must be considered.

The placement referred to in the previous paragraph may be achieved by foster care or, relevantly to this paper, by way of adoption. The essential element of adoption is the placement of the child with strangers. As much as I believe that there are significant shortcomings with adoption, my experience brings me to recognise that there are circumstances concerning the best interests of a child that can only be accommodated by such a placement.

An adoption order may also be made in favour of a step-parent of the child.[8] That may occur when the primary parent of a child, the parent who has the greater responsibility for the care of the child, marries another person and the other parent is either deceased or has no real contact with the child. Such an order has the effect of placing the step-parent in the same relationship with the child as the primary parent.

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[5] Ibid [1.10].
[6] Ibid [1.12].
[7] Ibid [1.29].
[8] *Adoption Act 1993* (ACT) s 14(c)–(d); *Adoption Act 2000* (NSW) s 30; *Adoption of Children Act 1994* (NT) s 15; *Adoption Act 2009* (Qld) div 4; *Adoption Act 1988* (SA) s 12; *Adoption Act 1998* (Tas) s 20; *Adoption Act 1984* (Vic) s 11; *Adoption Act 1994* (WA) s 67.

## IV RELEVANT FEATURES OF THE DEVELOPMENT OF ADOPTION LAW

It is not the purpose of this paper to detail the development of adoption law and practice. In that regard I refer to a publication of the Australian Institute of Family Studies which sets out that development and some of the drawbacks which it presented.[9] For present purposes, it is only necessary to refer to the concepts of "closed adoption" and "open adoption" which are described below:

> From the 1920s, adoption practice in Australia reflected the concept of secrecy and the ideal of having a "clean break" from the birth parents. Closed adoption is where an adopted child's original birth certificate is sealed forever and an amended birth certificate issued that establishes the child's new identity and relationship with their adoptive family. Legislative changes in the 1960s tightened these secrecy provisions, ensuring that neither party saw each other's names… The practice of closed adoption changed gradually across each of the states and territories in Australia from the late 1970s through the 80s and 90s. With the implementation of these legislative changes, adoption practices shifted away from secrecy. Now, the vast majority (84% in 2010–11) of local adoptions (but not intercountry adoptions) are "open", where the identities of birth parent(s) are able to be known to adoptees and adoptive families.[10]

In my view, the transition from closed adoption to open adoption constituted a marked improvement in the application of the paramountcy principle. As Dr Higgins wrote:

> Open adoption has led to a number of improvements in practices, such as: more accountable processes for obtaining consent from (birth) parents; a requirement for consent to be provided by both birth parents (or the need for a parent's consent to be dispensed with by a court for a child's adoption to proceed); and higher quality assessments and benchmarks for assessing the suitability of prospective adopters.[11]

In my view, the improvements to the application of the paramountcy principle would be further enhanced by the reforms which I am advocating in this paper.

A further relevant feature of present-day adoption is the fact that there are a very small number of adoption orders being made throughout Australia. The Australian Institute of

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[9] See Daryl Higgins, 'Past and present adoptions in Australia', *Australian Institute of Family Studies* (Fact Sheet, February 2012) <https://aifs.gov.au/sites/default/files/publication-documents/fs201202_0.pdf>.
[10] Ibid 2–3.
[11] Ibid 3.

Health and Welfare, an independent statutory authority of the Commonwealth Government, recorded 208 adoptions in the 2021–22 year.[12] Of those, Australian child adoptions totalled 192 or 92%.[13] That last figure may be subdivided into known child adoptions (161 or 77%) and local adoptions (31 or 15%).[14] Intercountry adoptions totalled 16 or 7.7%.[15] A "known child adoption" is an adoption by a person, such as a carer of the child, who is already known to and by the child.[16]

The adoption numbers referred to in the previous paragraph have reduced markedly from those recorded in the forced adoptions era to which I now turn.

## V FORCED ADOPTIONS

On 21 March 2013, the then Prime Minister Gillard, formally apologised on behalf of the Australian people to the large number of Australians affected by forced adoptions.[17] The apology, together with many concrete measures, was recommended by the Senate Committee. Their report was the fundamental underpinning of the forced adoptions issue in Australia and has been widely quoted in many countries which have considered similar apologies.[18]

I was privileged to chair the Government's Forced Adoptions Apology Reference Group which recommended the wording of the apology to the Government. Following the apology, I chaired the Forced Adoptions Implementation Working Group. Part of my obligations arising out of those positions was to consult with people affected by forced adoption throughout Australia. The following observations are derived from those consultations.

For the purposes of the inquiry, the Senate Committee defined forced adoption as 'adoption where a child's natural parent, or parents, were compelled to relinquish a child

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[12] Australian Institute of Health and Welfare, *Adoptions Australia 2021-22* (Report, 28 April 2023) <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2021-22/contents/summary>.
[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Amanda Rishworth MP, 'National Apology for Forced Adoptions: 10th Anniversary' (Speech, National Apology for Forced Adoptions: 10th Anniversary, 28 March 2023) <https://www.dss.gov.au/sites/default/files/documents/03_2023/minister-rishworth-national-apology-forced-adoptions-10th-anniversary_0.pdf>.
[18] *Senate Forced Adoption Report* (n 3) ix [9.56]–[9.58].

for adoption'.[19] The evidence to the Senate Committee regarding the compulsion makes difficult reading. Essentially, forced adoption was experienced by young women in harsh social and economic circumstances confronted with unsought pregnancy. They had no effective choice as to whether they should consent to the adoption of their newly born child. They did not have guardians or independent advice, were often drugged, tied to their beds and suffered similar abuses which removed any independence that they might have otherwise had. They were often prevented from seeing their newly born babies and were not permitted to feed them. At times their consents were forged or post-dated to overcome the requirements of the legislation.[20] The trauma experienced by mothers has continued to the present-day and has become intergenerational. It has affected adopted children, siblings and wider families including grandparents. As a consequence, the mere mention of the word adoption triggers profoundly upsetting memories for a large number of people within the Australian community.

I have referred to the particular trauma suffered by mothers who were affected by forced adoptions. It is also necessary to refer to the adoptees. The main area of the adoptees' trauma arising out of all adoptions, including forced adoptions, is the question of their identity. No matter whether their adoption has been a positive experience or otherwise, adoptees demonstrate an overwhelming need to learn their identity dating back to their birth and beyond. One major advantage of the development of open adoption has been the more ready availability of information with regard to their identity.

The Senate Committee estimated that the '[t]otal adoptions from 1940 (the first year for which the committee found records) to the present day would be well in excess of 210,000 and could be as high as 250,000'.[21] It also concluded that 'it is impossible to estimate the number of *forced* adoptions which have taken place'.[22]

I have discussed the issue of forced adoptions to illustrate the profound trauma which affects a large portion of the Australian society and the fact that it operates as a significant trigger of memories for that segment of the community. I will return to this issue below.

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[19] Ibid 6 [1.28].
[20] Ibid chs 3–4.
[21] Ibid 8 [1.35].
[22] Ibid 10 [1.39].

## VI THE FRAGMENTATION OF THE ADOPTION JURISDICTION IN AUSTRALIA

A child adopted in Albury, New South Wales ('NSW') would be adopted pursuant to a different Act of Parliament than a child adopted on the other side of the Murray River in Wodonga, Victoria. I use that example to illustrate what I regard as being an outdated legislative framework that twin cities sitting adjacent to each other across a state border do not have a uniform adoption law. The same can be said of any two places in different States or Territories.

Until 1 February 1961, matrimonial causes, which are within the Commonwealth's power pursuant to section 51(xxi) and (xxii) of the *Commonwealth Constitution*, were governed by State legislation. Each State had its own matrimonial causes Act,[23] a structure which is the jurisdictional equivalent of adoption law today. The inappropriateness of the fragmentation of the matrimonial causes jurisdiction was properly recognised as requiring substantial law reform which resulted in the Commonwealth enacting the *Matrimonial Causes Act 1959* (Cth). Jurisdiction pursuant to the newly enacted legislation was vested in the state Supreme Courts which all applied the same law. Likewise, to give further effect to section 51(xxi) of the *Constitution*, the marriage power being exercised by the States was brought within the Commonwealth's jurisdiction with the enactment of the *Marriage Act 1961* (Cth).

The ultimate remedy for the fragmentation of matrimonial causes law was the enactment of the two Acts and the creation of the Family Court of Australia. That Court has been subsumed into the FCFCA but the essential conduct of the jurisdiction by one court, divided into a superior court of record (Division 1) and an inferior court of record (Division 2), has remained intact. I note that notwithstanding the creation of the FCFCA, Western Australia has maintained its own family court with state family law legislation which is essentially identical to that of the Commonwealth legislation.

In my view, the inappropriateness of previous state legislation in matrimonial causes is the same as the inappropriateness of current adoption legislation. I will expand on that

[23] See e.g. *Matrimonial Causes Act 1873* (NSW); *Matrimonial Causes Jurisdiction Act 1864* (Qld); *Matrimonial Causes Act 1858* (SA); *Divorce and Matrimonial Causes Act 1860* (Tas); *Divorce and Matrimonial Causes Act 1861* (Vic); *Divorces and Matrimonial Causes Act 1863* (WA).

proposition below. The issues of integrated birth certificates, and particularly the paramountcy of the best interests of the child, are specific examples of the need for uniformity of adoption law.

## VII INTEGRATED BIRTH CERTIFICATES

Closed adoptions provided for the effective obliteration of any record relating to the adoptees' birth. The enactment of open adoptions has resulted in a significant increase in the availability of information to adoptees and their parents. That has been potentially significantly advanced by the proposed national introduction of integrated birth certificates ('IBCs'). IBCs entitle an adoptee to obtain a birth certificate that shows their parents and siblings at birth, as well as their parents and siblings after the adoption.

The Senate Committee recommended that:

> all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and jurisdictions investigate *harmonisation* of births, deaths and marriages register access and the facilitation of *a single national access point* to those registers.[24]

In my view, this is a major positive development which advantages parents, adoptees and adoptive parents. To date, NSW, Victoria, South Australia and Western Australia have introduced IBCs.[25]

I suggest that uniform law throughout Australia regarding IBCs, together with the national access point, would significantly benefit adoptees in ascertaining their identity following their adoption. It would also benefit parents in their search for adopted children. The remaining States and Territories — Queensland, Tasmania, the Australian Capital Territory and the Northern Territory — should accept and put into effect the recommendation for harmonisation quoted above.

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[24] *Senate Forced Adoption Report* (n 3) x–xi [12.33] (emphasis added).
[25] *Adoption Act 2000 (No 75)* (NSW) ch 8 pt 2, Dictionary; *Births, Deaths and Marriages Registration Act 1995* (NSW) s 52; *Adoption Act 1988* (SA) pt 2A; *Births, Deaths and Marriages Registration Act 1996* (Vic) s 46A; *Births, Deaths and Marriages Registration Act 1998* (WA) ss 27–28, 68; *Adoption Act 1994* (WA) pt 4.

## VIII THE BEST INTERESTS OF THE CHILD — THE PARAMOUNTCY PRINCIPLE

It is commonly accepted that the best interests of the subject child are the most important consideration in any decision relating to the child's placement. It is usually expressed as those best interests being 'paramount'. I refer to this principle as the 'paramountcy principle'. It is expressed in section 60CA of the *FLA* that '[i]n deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration'.

Section 60CC of the *FLA* also outlines the considerations that a court must take into account in determining the paramountcy principle which I regard as a vital aspect of decision making.[26]

The *FLA* includes a specific discretionary jurisdiction to the FCFCA, and any other court with jurisdiction in family law, to grant leave to a limited class of potential applicants to apply for adoption of a particular child.[27] That class is confined to:

(a) a parent of the child;

(b) a spouse or de facto partner of a parent of the child; or

(c) a parent and their de facto partner.

The condition for the granting of leave is a determination that the order is in the best interests of the child, subject to a number of factors which are not relevant for the purpose of this paper.[28] The reader is otherwise encouraged to refer to the section for further details.

Each of the six States and two Territories has its own adoption legislation, each of which is different. In particular, the provisions with regard to the paramountcy principle are very diverse. The NSW, Queensland, South Australia and Australian Capital Territory legislation are closest to mirroring the *FLA* provisions although each of them is different.

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[26] Please note that s 60CC of the *FLA* (n 1) was significantly amended by the *Family Law Amendment Act 2023* (Cth) which came into effect on 6 May 2024.
[27] *FLA* (n 1) ss 60G, 4 (definition of 'prescribed adopting parent').
[28] Ibid ss 60G(2), 60CB, 60CG.

They contain an express provision of the paramountcy principle and include criteria for applying that principle on a case-by-case basis.[29]

By contrast, the legislation of Victoria, South Australia, Western Australia and Tasmania express the paramountcy principle, again differently worded, but give little or no further detail as to how it is to be applied.[30] The legislation of the Northern Territory also has little to add to the paramountcy principle with the exception of significant provisions for children of First Nations ethnicity, culture and/or race.[31]

## IX A PROPOSED MODEL

In my view, adoption law needs radical reform. That reform should commence with the States and Territories referring their legislative powers with regard to adoption to the Parliament of the Commonwealth of Australia, thereby vesting jurisdiction in adoption in the Commonwealth.[32] That will enable the Commonwealth to enact uniform legislation which applies throughout Australia, with the possible exception of Western Australia, thereby removing the possibility of children born in different States and/or Territories possibly experiencing different adoption outcomes depending on the law pursuant to which the order is made.

There are two possibilities for the vesting of the uniform legislation. One possibility is vesting the jurisdiction in the State and Territory courts. That would replicate the structure which existed until the enactment of the *FLA* with regard to matrimonial causes. The other possibility, and to my mind the preferable one, is the Court. The basis of my preference arises from the fact that an application for adoption is essentially an application for parenting orders. It might be by a stranger or strangers to the child, a step-parent or wider family member, a scenario which is very common in family law applications and for which the Court is very well equipped. That includes all the necessary assessment, reporting and evidentiary skills within the family law jurisdiction which are necessary in determining adoption applications.

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[29] *Adoption Act 1993* (ACT) s 5; *Adoption Act 2000* (NSW) ch 2, particularly s 8; *Adoption Act 2009* (Qld) s 6; Adoption *Act 1988* (SA) s 3.
[30] *Adoption Act 1988* (Tas) s 8; *Adoption Act 1984* (Vic) s 9; *Adoption Act 1994* (WA) s 3.
[31] *Adoption of Children Act 1994* (NT) s 8 sch 1.
[32] *Australian Constitution* s 51(xxxvii).

The most important advantage of uniform legislation would be in the area of the best interests of the child. That legislation already exists in optimum form in the *FLA* as referred to above. In my view, the present legislation would accommodate most of the issues which arise in adoption.

## X SOME SPECIFIC ISSUES

### A *Permanency or Long Term*

There are several issues which require specific consideration. The first of those is a distinction that might be drawn between an application for adoption and an application for parenting orders in family law. It is sometimes suggested that an adoption application requires a greater degree of permanency in the placement of the child arising out of the fact that the application is made by strangers to the child. We know that a child of three years has different needs to a child of thirteen years. Therefore, it would not be in the best interests of a child if a significant change of that child's circumstances could not lead to a variation or setting aside of the adoption order. The issue was considered by the Full Court of the Family Court of Australia (as it then was) in the context of a parenting application in the following terms:

> Firstly, s 60CA of the Act requires that a court, in deciding whether to make a particular parenting order in relation to a child, must regard the best interests of the child as the paramount consideration. It is obvious that what particular order is in the best interests of a child may change as time passes and as circumstances change. Indeed, the decision in Rice and Asplund accepts this but places a brake on repeated applications by insisting that the change in circumstances must be such as to warrant a reconsideration of the orders.[33]

### B *Adult Application for Discharge of an Adoption Order*

While the issue of variation or discharge of an adoption order of a child under the age of 18 years should remain in the jurisdiction of the court, there is an additional question of the discharge of an adoption order on the application of an adult adoptee. There is a further inconsistency in the State legislation with regard to one of the grounds for making

[33] *Elmi v Munro* [2019] FamCAFC 138 [32]–[33].

such an application. While the various legislation generally empowers a court to set aside an adoption order on the application of an adult adoptee on the basis of fraud, duress and like bases,[34] the more significant ground is similar to that referred to above. However, the NSW legislation provides a ground of 'other exceptional reason',[35] while the Victorian legislation provides for 'special circumstances'.[36]

While the legislation should be consistent throughout Australia, an application by an adult adoptee for discharge of their adoption order should remain within the jurisdiction of the court that made the order.

### C *Succession*

Upon the making of an adoption order, the child effectively becomes the child of the adoptive parents and the adoptive parents effectively become the parents of the child.[37] That particularly concerns the question of succession with respect to inheritance. States and Territories have legislated to provide for inheritance of property where a deceased has not left a will, known as dying intestate.[38] Relevant for present purposes is the question of the standing of an adoptee where the deceased is a parent or adoptive parent of that adoptee. Conversely, the standing of the parents, adoptive parents or siblings is relevant if the deceased is the adoptee.[39]

Upon the referral of powers as suggested above, that legislation would remain in the State and Territory jurisdiction and be adapted to apply to adoption orders made under the proposed Commonwealth legislation.

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[34] See, eg, *Adoption Act 1993* (ACT) s 39L(1), 39L(10); *Adoption Act* 2000 (NSW) s 93(1); *Adoption of Children Act 1994* (NT) s 44(1); *Adoption Act 2009* (Qld) s 221(1); *Adoption Act 1988* (SA) s 14(1); *Adoption Act 1988* (Tas) s 28(1), 28(2); *Adoption Act 1984* (Vic) s 19(1), 19(2); *Adoption Act 1994* (WA) s 77(1).
[35] *Adoption Act 2000* (NSW) s 93(4)(a).
[36] *Adoption Act 1984* (Vic) s 19(1)(b).
[37] See, eg, *Adoption Act 2000* (NSW) s 95; *Adoption Act 1984* (Vic) s 53.
[38] See, eg, *Administration and Probate Act 1929* (ACT) Pt 3A Divs 1-3; *Succession Act 2006* (NSW) Ch 4; *Administration and Probate Act 1969* (NT) Pt III Divs 4, 4A, 5; *Succession Act 1981* (Qld) Pt 3; *Administration and Probate Act 1919* (SA) Pt 3A; *Intestacy Act 2010* (Tas) Pt 5; *Administration and Probate Act 1958* (Vic) Pt I Div 6; *Administration Act 1903* (WA) Pt II.
[39] See for example *Succession Act 2006* (NSW) s 109; *Administration and Probate Act 1958* (Vic) pt 1A and s 90 (definition of 'eligible person').

### D *The Role of State and Territory Child Welfare Authorities*

Typically, the current process that results in the making of an adoption order is conducted by State child welfare authorities (the 'Authorities').[40] They receive a notification of a child's need for special care outside of the home and are responsible for making arrangements to advance the child's best interests. That will often involve placing the child in foster care but ultimately there is a need for a long-term outcome. If it is not in the child's best interests to be placed in the care of a relative or other person known to the child, the outcome will usually be arranging for strangers to the child to apply for adoption with the Authorities supporting that application. The Authorities identify the need, make the necessary arrangements, support the adoption application in court and undertake supervision of the operation of the adoption order.

The process which could properly operate in the proposal put forward in this paper would require the Authorities to undertake all the present steps up until the decision to recommend an adoption. At that point, the matter would be referred to the FCFCA and placed within the assessment, counselling and evidentiary processes referred to above. In the normal course of events, an independent children's lawyer would be appointed to represent the child, a process which occurs in present applications for adoption. Again, the FCFCA is well equipped to undertake that process.

### E *Intercountry Adoption*

Intercountry adoption is governed by the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. Jurisdiction pursuant to that convention is vested in the FCFCA and State and Territory courts.[41] While it may be preferable for that jurisdiction to be exercised only by the FCFCA, the State and Territory courts are exercising the uniform jurisdiction of the Commonwealth, thereby avoiding fragmentation of the law as now occurs in adoption law.

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[40] Child and Youth Protection Services Australian Capital Territory; Department of Communities and Justice New South Wales; Department of Territory Families, Housing and Communities Northern Territory; Department of Child Safety, Seniors and Disability Services Queensland; Department for Child Protection South Australia; Department for Education, Children and Young People Tasmania; Department of Families, Fairness and Housing Victoria; Department of Communities Western Australia.
[41] *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) pt 5.

### F *The Term "Adoption"*

My experiences of forced adoption described above lead to the question of whether it remains necessary to refer to what is now called "adoption" by that term. The concept of adoption is an extremely emotional trigger for people who experienced forced adoption. It is suggested that that in itself should cause a reconsideration of the terminology of adoption.

In my view, it is consistent with the proposal in this paper to regard what is now an "application for adoption" as an "application for parenting orders in accordance with the *FLA*". It is suggested that the essential character of what is now referred to as adoption is essentially the same as an application for parenting orders, particularly because of the paramountcy principle which is common to both parenting and adoption orders.

## XI CONCLUSION

I suggest that the law and practice of adoption of children in Australia requires significant modernisation to better realise the application of the paramountcy principle. That modernisation should commence with the referral of the legislative powers of the States and Territories to the Commonwealth. The Commonwealth should enact uniform adoption law thereby vesting the jurisdiction and power of that law in the Court.

The States and Territories should continue to administer child welfare matters until such time as there is a recommendation for the adoption of the subject child. Upon the Commonwealth's enactment of the uniform adoption law, the matter should be referred to the FCFCA by the Authorities for consideration of the making of an adoption order.

In referring the powers, the States and Territories should reserve the question of recognition of adoption orders in their respective jurisdictions for the purpose of the application of succession law which is within their jurisdiction and retain the jurisdiction to set aside adoption orders on the application of adult adoptees.

Finally, it is questionable as to whether the term "adoption" should continue to describe these applications. They should be described as "parenting orders" in accordance with the *FLA*.

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