



# Characteristics and outcomes of newborns entered who entered into care (EIC) within 7 days of birth in NSW, Australia<sup>☆</sup>



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## ABSTRACT

**Introduction:** Out of home care (OOHC) is the last recourse when children are at risk of serious harm and the home environment is not considered safe. A large proportion of children in OOHC are under five years of age and an estimated 18% are under one year of age. This study is the first to identify, over a defined period of time, the number, and outcomes of newborn babies removed by an assumption of care (AoC) and placed into OOHC in New South Wales (NSW). This study additionally aims to investigate if there is any association between the amendments to the NSW Children and Young Persons (Care and Protection) Act 1998 in 2008 and any increase in the number of newborn babies entering into care (EIC).

**Method:** This study uses data on newborn babies aged seven days or less that entered into OOHC in NSW from January 1, 2006 to December 31, 2014. The data set ( $n = 1834$ ) was analysed to determine the annual numbers, trends and characteristics of newborn babies who EIC in this vulnerable period. A pre and post 2008 analysis was undertaken to determine if legislative changes influenced the trend of prenatal reporting and the numbers of newborn babies EIC.

**Results:** The number of newborn babies EIC care steadily increased from 2006 to 2014 as did prenatal reporting. Aboriginal newborn babies were over represented in the data set which correlates with national data. Approximately one third of the sample was identified as Aboriginal (31.6%) and Aboriginal newborn babies are 9.5 times more likely to be in OOHC than non-Aboriginal. The odds of a prenatal report being submitted to FACS were 1.91 times higher for Aboriginal compared to non-Aboriginal. Our study shows that of the newborn babies that EIC care in the study period, only 6.6% were restored to their parent/s and only 5.1% were adopted. Comparison of the pre and post legislative amendment period indicated a higher proportion of newborn babies were EIC at a younger age in the second period compared to the first, a greater proportion of these were subject to prenatal reports and a smaller proportion of these newborn babies were adopted.

**Findings:** Newborn babies are the most vulnerable group of children admitted to OOHC. This study has drawn attention to the number, characteristics and outcomes of newborn babies who EIC within 7 days of birth. Further research is required to be able to compare the NSW data to other States and Territories and to understand the impact of an Assumption of Care (AoC) at birth on the newborn baby and the mother. Findings from this study have implications for maternity care providers and child protection services.

## 1. Introduction

In Australia, statutory child protection is the responsibility of state and territory governments and in New South Wales (NSW) it falls within the remit of Family and Community Services (FACS) formerly known as the Department of Community Services (DoCS). Child protection processes across states and territories are similar and include

notifications, investigations, substantiations, care and protection orders, out of home care (OOHC) and family support services (Australian Institute of Health and Welfare, 2016). OOHC, an intervention of last resort, is utilised when the home environment is not considered safe due to potential for abuse or neglect. In any given year tens of thousands of Australian children reside in OOHC and several thousand are entering into care (EIC) for the first time. A large proportion of these are

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children under five years of age and an estimated 18% of all those EIC are under one year of age (Australian Institute of Health and Welfare, 2016). Because of their developmental stage babies less than one year of age represent a particularly vulnerable group (Seng et al., 2013). One could argue that, due to the importance of intellectual and emotional development during the prenatal and early postnatal time together with the total dependency on others, newborn babies aged seven days or less are the most vulnerable of all. Little is known about the characteristics of newborn babies who EIC. The removal of a newborn baby from the mother at birth or soon after by a court order is known in NSW as an ‘assumption of care’ (AoC). The process is a traumatic event that brings child protection firmly into the arena of midwifery (Marsh, Browne, Taylor, & Davis, 2015a); the interest of the authors.

Midwifery is a “woman centred” profession (ACM, 2005) and midwives work with child bearing women throughout pregnancy, labour, birth and into the postnatal period. The role of the midwife is to work in partnership with the child bearing woman not only to monitor her (and her baby’s) health and wellbeing but to build her capacity for birth and parenting. As mandatory reporters midwives also have a responsibility to protect and promote the safety and wellbeing of vulnerable babies and the process of assumption of care particularly when planned without the child bearing woman’s knowledge, brings midwives into conflict with the philosophical tenets of their profession (Marsh et al., 2015a). Anecdotally, the first author noted an increase in the number of assumption of care episodes in one particular hospital setting especially post the Woods’ Inquiry in 2008 (detailed below). This research set out to examine the evidence for this construal and to determine the characteristics and outcomes of newborn babies EIC in NSW.

### 1.1. Legislation

Intermittently child protection is subject to considerable media interest. In 2007, two cases attracted significant media attention. One was the case of Ebony (a pseudonym), a seven year old, who died of starvation in her family home and the other Dean Shillingsworth two years of age, whose body was found inside a suitcase dumped in a pond (NSW Ombudsman, 2009a, 2009b). In both cases the parents were found culpable. These cases triggered a Special Commission of Inquiry into Child Protection Services in NSW, which was conducted by the Honourable James Wood (AO QC). The report published in November 2008, recommended a number of changes to child protection services and legislation (Wood, 2008).

Justice James Wood identified that FACS were overwhelmed by too many child protection reports and an excessive amount of this organisation’s scarce resources were spent in managing these reports (Wood, 2008). He recommended that amendments to the NSW *Child and Young Persons (Care and Protection) Act 1998* include a change to the mandatory reporting criteria; from a notification of a child ‘at risk of harm’ to a child ‘at risk of significant harm’. Following a notification to FACS, the case is investigated and the risk of significant harm is either ‘substantiated’ or ‘not substantiated’ (White, 2005). Substantiation indicates there is sufficient reason to believe that a child has been or is likely to be at risk of serious harm. Prenatal reporting, defined under Section 27 of the NSW *Children and Young Persons (Care and Protection) Act 1998*, provides for reports to be made for an unborn baby when there are concerns that the unborn may be at risk of significant harm after birth (NSW Government, 2009). If a prenatal report is substantiated, after endorsement by the Children’s Court, Section 106A of the NSW *Children and Young Persons (Care and Protection) Act 1998*, gives statutory power to FACS to remove a newborn baby from its mother in hospital within hours of birth. The newborn baby is then EIC; usually a foster carer. All states and territories in Australia have adopted the ‘Aboriginal Child Placement Principle’ in legislation and policy. This principle lists the order of preference for the placement of Aboriginal children as; with the child’s extended family, within the child’s Aboriginal community and with other Aboriginal people

(Australian Institute of Health and Welfare, 2016)

### 1.2. Prevalence and trends

In 2014–2015 nationally there were 43,400 children in OOHIC and 11,600 children EIC for the first time. Forty-six percent of these were children under five years of age and approximately 18% were under one year of age (Australian Institute of Health and Welfare, 2016). Data for the number of newborn babies (7 days of age or less) is not published. NSW had the second highest rate of children in OOHIC at approximately 10 per 1000 children following the Northern Territory with the highest at 16 per 1000 children. Approximately 41% of children in OOHIC have been continuously in this type of care for five years or more. Aboriginal and Torres Strait Islander children are over-represented in these statistics representing 36% of all children in OOHIC in 2015; a rate of 52.4 per 1000 children which is 9.5 times the rate for non-Aboriginal children. Of all Aboriginal children in OOHIC in 2014–2015, 66% were placed with relatives, other Aboriginal caregivers or in Aboriginal residential care.

Nationally, the number of children EIC for the first time has not changed substantially in the last five years with 11,613 admitted in 2010–2011 and 11,581 admitted in 2014–2015. NSW followed a similar pattern with 3542 admitted in 2010–2011 and 3440 in 2014–2015 (Australian Institute of Health and Welfare, 2016). We know that approximately 18% of children EIC are less than one year of age, which means that in NSW approximately 600 infants EIC each year. We do not know how many of these are newborn babies; the most vulnerable age group of all.

### 1.3. Infant attachment

Although the newborn period is a well-recognised critical period of development for babies and their mother (Kim, 2016) there is undisputed support that the prenatal period plays a formative role in fetal development. The stress, fear and anxiety associated with the situation in which the woman is living and the possibility or prospect of an AoC at birth have the potential for the child bearing woman to be exposed to chronically elevated cortisol levels. Crucial neurological research evidence supports maternal stress as an significant influencing factor on the developing fetal brain and supports the need for early intervention/assistance (Octoman, McLean, & Sleep, 2014).

Attachment to the mother begins in utero with the fetus becoming familiar with the sounds and smells of the mother. In utero, the olfactory mucosa of the fetus is bathed in amniotic fluid and the voice of the mother is carried through the amniotic fluid to the fetus. Sullivan et al. suggest that these familiar audio and olfactory stimuli are particularly important in assisting the newborn baby to transition to life outside of the uterus where the baby is exposed to a variety of other stimuli. (Sullivan, Perry, Sloan, Kleinhaus, & Burtchen, 2011). As early as the first day of life, newborn babies have been shown to respond differently to their mother’s odour and sounds. Attachment, described as ‘dynamic [and] bi-directional’, is a critical process in the development of both the mother and baby (Cassidy, Jones, & Shaver, 2013). Infant response to maternal cues elicits caregiving behaviour in the mother, which biologically is important to survival. What is more, studies in animal and human subjects have shown that attachment has an important role in shaping infant neural and behavioural development (Moriceau & Sullivan, 2005). Evidence suggests that secure early attachment between a baby and its mother provides a prototype for all future social relationships (Cassidy et al., 2013).

Studies have shown that children and young people engaged with the welfare system have poorer physical and socio-emotional health and poorer intellectual and learning abilities compared to their peers (Fusco & Cahalane, 2013; Paxman, Tully, Burke, & Watson, 2014) It is difficult however, to isolate the effect of individual factors on this situation as failure to form early secure attachments may be one factor

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