

## Submission to the Victorian Law Reform Commission review of the Adoption Act 1984

### Introduction

The Centre for Excellence in Child and Family Welfare (the Centre) is the peak body for the Victorian Child and Family Services sector. The Centre welcomes the opportunity to contribute expert knowledge to the reforms to Victoria's 1984 Adoption Act ('the Adoption Act'). The Centre believes in the right of all children to grow up in a safe and nurturing environment as a part of a family, and emphasises the importance of child-centred practice in the development and enactment of child placement practices.

Severing a child's biological family ties can have significant and ongoing ramifications, and therefore, the decision to adopt should not be taken lightly. However, it is clear that in some instances adoption may be necessary to provide stability to the child. A stable and safe home environment can help to mitigate the effects of childhood trauma and provide an environment that is supportive of the child's identity, self-esteem and overall development.<sup>1</sup>

All parties involved in making decisions about the placement of a child have a life-changing responsibility. It is thus crucial that the Adoption Act provides comprehensive guidance and support to professionals involved in the adoption process.

The Centre has chosen to focus on five key areas included in our response to the discussion paper:

1. The best interests of the child should be the fundamental consideration (this includes Aboriginal children and connection to culture)
2. Adoption regulations need to reflect contemporary family and parenting structures
3. Current provisions around child consent need to be strengthened to make sure children's views are not lost
4. Any changes to the birth certificate need to be based on the child's best interests
5. There need to be sufficient post adoption supports for families who may need these.

The Centre proposes that any changes made to the Adoption Act must be guided primarily by the best interests of the child. We consider adoption to be a child-centred service. As such, the child's wellbeing and best interests should be at the forefront of any changes to the Adoption Act.

A recurring theme in our submission is the need to build flexibility into any legislation relating to children and families. There is no 'one size fits all' solution when it comes to the care of children. The adoption model needs to have flexibility, transparency and to provide options for children.

### 1. The Best Interests of the Child

Australia is a signatory to a number of International agreements concerning the welfare of the child. These conventions establish a set of standards which guide the decisions surrounding the placement of children. Article 21 of the *UN Convention on the Rights of the Child* (UNCRC) states that 'the system of adoption shall ensure that the best interests of the child shall be the paramount

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<sup>1</sup> Wynne, D 2016 'Child Placement Best Practices to Support Permanency and Preservation Across the Continuum', *Adoption Advocate*, No. 97, National Council for Adoption: Washington.

consideration’.<sup>2</sup> Consistent with this, the best interests of the child should be the fundamental consideration in any decision made about the placement of the child. Despite international agreement about the importance of the best interests principle, Victoria’s current Adoption Act provides little guidance about what would constitute the best interests and the factors that need to be taken into consideration by the courts and other decision-makers.

The Centre recognises the need for legislation to include guidance about the factors that should be considered in determining the best interests of the child. Setting out a clear list of guiding principles and factors pertinent to the best interests of the child will make placement decisions more transparent and unambiguous.

The *Children, Youth and Families Act (CYFA) 2005* includes a set of best interest principles that promote positive outcomes for vulnerable children. Reforms to Victoria’s Adoption Act should draw from these principles to ensure a consistent and unified approach to protect the wellbeing of all Victorian children. The UNCRC also offers a common framework through which to understand the best interests of the child. The amount of time and resources dedicated to litigating in the best interests of the child, and the accompanying disruption to family life, often has a negative impact on the lives of children. Therefore, a common interpretation of best interest is integral to effective adoption legislation.

The following factors should be considered when assessing the best interests of the child:

- Exploration of all permanency options
- The child having a stable and secure home with a family
- Views of the child
- Wishes of the birth parents
- Sense of cultural identity, connection and belonging
- Relationship with birth parents and other biological family members
- Ability of birth parents to fulfil parental responsibilities
- Ability of adoptive parent/s to fulfil parental responsibilities
- Preservation of cultural, linguistic and religious heritage of the child
- Sibling contact.

In addition, what constitutes best interests changes over the life course. The needs of a young child may differ significantly from those of an adolescent. The Adoption Act should provide a framework for how a long-term perspective can be taken in regards to the best interests of the child.

An ‘object’ or ‘overarching principles’ section of the Adoption Act would be helpful in making the purpose of the adoption legislation concrete and unambiguous. New South Wales (2000) and Queensland (2009) have both provided an Object in their Adoption legislation. These provisions clearly articulate the philosophy underlying the legislation and offer a useful starting point for Victoria. Objectives to consider include:

- Adoption primarily as a service for the child
- Commitment to open adoption and access to information

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<sup>2</sup> UNCRC 1989, [‘Convention on the Rights of the Child’](#).

- Compliance with Australia's obligations under the UNCRC
- Access to cultural heritage.

### **Recommendations:**

- A Statement of Best Interests, consistent with international and national guidelines, should be presented at the core of the Adoption Act.
- The purpose of the Adoption Act should be set out in an object clause.
- A framework for determining what constitutes the best interests of the child should be included in the Adoption Act.
- Consideration should be given to the best interests of the child throughout their lifetime.
- Honesty and openness in adoption should be incorporated into the best interests of the child.

### **2. Adoption regulations are relevant and appropriate to contemporary family and community needs**

#### *Eligibility*

Adoption legislation needs to reflect contemporary family and parenting structures to make sure that all children have access to a stable parenting commitment. Internationally and in Australia there is increasing recognition of familial structures other than the traditional nuclear family. Indeed, there is an expanding body of evidence to show that a range of people other than heterosexual, married couples can provide a safe and nurturing home that is in keeping with the best interests of the child.

A US study has shown that single adoptive parents can be a suitable option for hard-to-place children.<sup>3</sup> A review of adoption literature found single parent families to be as nurturing and viable for children as a couple.<sup>4</sup> Such research suggests that we need to become more flexible in the ways that we think about the available options for child placement and adoption. The Centre advises that adoption law reform should remove the current provision that a single person may be considered for adoption only in 'special circumstances in relation to the child'.

#### *Contact*

Maintaining contact with birth parents after an adoption can be fraught. There are families of origin where maintaining contact will not be easy for a myriad of reasons. However, maintaining contact may have important implications for the child's sense of self and cultural connection. Therefore, contact arrangements must be considered as part of the best interests principle.

The adoption process should not centre on simply authorising a new family composition. Rather, the focus should be helping children understand and come to terms with the reality of their own family situation.

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<sup>3</sup> Groze, V, 1991 'Adoption and Single Parents: A Review', *Child Welfare*, 70, pp. 321.

<sup>4</sup> Groze, V, 1991; Kadushin, A, 1970 'Single-Parent Adoptions: An Overview and Some Relevant Research', *Social Service Review*, 44(3), 263-274.

The form and frequency of contact should be determined on an individual basis, with the focus being on the best interests of the child.

The enforcement of a strict number of contact visits available to the adopted child may not be in line with their best interests, as the ideal number of visits may change over time, or may vary among family members. For example, regular contact with siblings and other key people in their lives can allay a child's grief associated with parental separation.<sup>5</sup> The Centre believes that contact should be pursued insofar as it is in the best interests of the child. This includes a requirement of the Court to consider making conditions for contact with family members other than parents after an adoption.

There should be flexibility in the form that contact takes. Though contact may be face-to-face, consideration should also be given to alternative modes of contact, such as the exchange of emails or letters and Skype and phone conversations. Here, it is important that Adoption Plans remain flexible in regards to the channels through which contact is maintained, and the frequency of contact across the child's life.

Further, the purpose of contact in adoption must be at the forefront of any decisions surrounding contact arrangements. The purpose of contact with a child's biological family is to assist them in their understanding of their identity, and not to facilitate reunification.

#### *Kith and Kin*

The importance of Kith and Kin in adoption should also be considered in new legislation. The process by which adoptive parents are selected must be set out more clearly in the Adoption Act, including a legislative requirement to consider intra-family placement and placement with siblings.

It is acknowledged that adoption within the family may cause family distortion or confusion. However, for some children, adoption by a step parent or a grandparent may offer a sense of belonging or normalcy. Therefore, adoption of this type must not be excluded entirely. Rather, there must be a level of flexibility built into legislation that allows for the child's specific family situation.

Research indicates the importance of placement and connection with a child's natural network and community. The Centre encourages an approach that requires an exploration of options for the child to be cared for within their biological family. Failing this, legislation should provide for family and/or relevant community members to become involved in decision-making about the placement of the child when appropriate.

#### *Special Provisions for Aboriginal and Torres Strait Islander children*

Adoption legislation must be flexible enough to respect and provide for cultural differences. As a priority, the Act must recognise the complex relationship between the issue of the Stolen Generation of Indigenous children, and adoption. The 1997 *Bringing Them Home* Report details the harmful and ongoing effects Australia's previous forcible removal policies. Changes to the Adoption Act must be mindful of this history and take actions to prevent history from repeating itself.

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<sup>5</sup> Wise, S, 2011, 'All Together Now – Research examining the separation of siblings in out-of-home care', Policy, Research and Innovation Unit, Anglicare Victoria.

Further, the reforms must acknowledge the significance of different kinship structures, and provide the flexibility and responsiveness needed to provide the best outcomes for Aboriginal children, such that they are able to maintain their cultural connectedness and community belonging. Maintaining links to family, culture, language and country should be considered at all stages of adoption.

The situation of each child should be considered fully, including thorough research into the child's cultural background, extended family and their community connections. Both New Zealand and Canada's child placement legislation offer strong examples of countries that provide more resourced and concerted efforts to identify kin of First Nation people.

The Act should encourage the use of family group meetings to make decisions about how to best meet the needs of the child. Family group meetings introduce a consultative approach, which may allay some concerns of the Indigenous community that are being excluded from adoption decision-making processes. Although family groups meetings may play an important part in finding the right solution for the child, the Centre would caution against making them mandatory.

#### Recommendations:

- Remove the disqualification of single person adoption as appropriate only in special circumstances.
- Maintenance of contact with biological family members should be pursued insofar as it is in the best interests of the child.
- The court should be required to consider making conditions for contact with extended family members including grandparents and siblings after an adoption.
- Cultural sensitivity and collaboration with Aboriginal and Torres Strait Islander communities should be embedded in legislation.

### **3. Consent**

#### *The Child*

The Adoption Act does not require that children consent to their own adoption. Though there are provisions that the court must be satisfied the wishes of the child have been given due consideration, there is no guarantee that this will occur. In light of this, it is the view of the Centre that the current provisions related to the consent of the child need to be strengthened.

A child's wishes relating to the adoption should be determined and given due weight according to the child's age and maturity. The Centre advises against assigning a strict rule or age limit relating to the consent of a child; however, there is a need to strengthen the current provisions such that the views of the child do not slip through the cracks.

#### Recommendations:

- Current provisions surrounding child consent need to be strengthened to make sure the child's views are not lost.

### **4. Changes to Birth Certificate**

Today, it is widely recognised that it is appropriate, and indeed, desirable for children and parents to have access to information about their adoption. The conceptualisation of adoption and its purposes has shifted over the past two decades to reflect this preference of ‘open’ and transparent adoptions.

There is wide agreement that children should not be prevented from knowing about their familial origins. Indeed, the UNCRC stipulates that children have the right to an identity and an official record documenting who they are, including their name, nationality and family ties.<sup>6</sup>

Maintaining the child’s name can be important to the preservation of heritage and personal identity. It is important, therefore, that any decision to alter the name of the child on their birth certificate after an adoption is based on the child’s best interests. For example, it may be in the best interests of the child to change their family name so that they can feel a sense of belonging and connectedness to their adoptive family. However, considered efforts should be made to preserve the child’s heritage and given names.

Rather than creating a new birth certificate that presents the adoptive parents as if the child were born to them, there are alternative options that promote a more transparent approach. This could include the provision of a new birth certificate which contains all details of the child’s biological heritage, place of birth and the subsequent adoption.

#### Recommendations

- When a child is adopted, the birth certificate should reflect the child’s lived reality by including details relating to the biological heritage, birth, and the subsequent adoption.
- Changes to the child’s first and last name should only be pursued if it is in the best interests of the child.

#### **5. Post-Adoption supports**

The needs of children and families post adoption are wide and variable. While some families may not face many barriers to a stable family life, a large number will encounter significant challenges. Adopted children may have experienced abuse or neglect in the past, and the adoption process itself may be traumatic. It is reasonable to expect, then, that adoptive families may require additional supports even after the adoption has been finalised.

The provision of adequate and appropriate support to adoptive families influences the uptake of permanency, and positive outcomes for the child’s security and wellbeing. A number of studies have espoused the importance of post adoption supports for adoptive families in the promotion of longevity and the wellbeing of the child.<sup>7</sup> Failure to provide adoptive families with the appropriate services risks additional disruption and instability, thus further traumatising children who are not living with their family of origin. There is reason to expand the provision of post-adoption supports beyond that of counselling for the relevant parties.

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<sup>6</sup> UNCRC 1989.

<sup>7</sup> Barth, R, Miller, J, 2000 ‘Building effective post-adoption services: What is the empirical foundation?’ *Family Relations*, 49(4), pp. 447–455; Houston, D, Kramer, L 2008 ‘Meeting the long-term needs of families who adopt children out of foster care: A three-year follow-up study’, *Child Welfare*, 87 (4), pp. 145–170.

Examples of post-adoption services outside the current provisions include referrals, education and training, support groups and respite care.<sup>8</sup> Informal supports, too, have been found to have a positive impact on a family's adjustment to adoption.<sup>9</sup> Some families prefer informal supports such as support from other adoptive families, to professional and clinical supports. The complexity and variability of needs for these families necessitates a continuum of support that incorporates informal and professional supports.

It is preferable to provide these additional services at the front-end of the adoption process and especially during sensitive adjustment periods, than for the State to pay a higher cost at a later stage when unaddressed trauma and financial hardship leads to far greater problems.

Adoptive families may encounter added barriers to access of support services. Common challenges to accessing services include lack of awareness of services and their cost, and inconvenient times and locations. Addressing service accessibility is crucial to the development of effective post adoption services.

Recommendation:

- The scope of post-adoption support should be extended beyond that of counselling and the provision of information about an adoption, for families that require additional assistance.
- Adoption supports should be flexible and responsive to the specific needs of the child, incorporating both formal and informal modes of support.

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<sup>8</sup> Merritt, D, Festinger, T. 2013 'Post-adoption service need and access: Differences between international, kinship and non-kinship foster care', *Children and Youth Services Review*, 35(12), p. 1913-1922.

<sup>9</sup> Houston & Kramer 2008.