

Inquiry into local adoption: House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry

The Centre for Excellence in Child and Family Welfare (the Centre) welcomes the opportunity to respond to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry. As the peak body for child and family services in Victoria for over 100 years, the Centre have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

The Centre believes in the right of all children to grow up in a safe and nurturing environment as part of a family, and emphasises the importance of child-centered practice in decision making affecting children. This must be a focus in considering ‘the best interests’ of the child.

The terms of reference to consider for this Inquiry are the:

- stability and permanency for children in out-of-home care with local adoption as a viable option
- and the appropriate guiding principles for a national framework or code for local adoptions within Australia.

In Australia adoption can be divided into three types: inter-country, local and known adoption. For the purposes of this submission into adoption within Australia, we have focused on the latter two. Local adoption is when a child is adopted by parties with no connection to the child. In 2016-17, there were 42 local adoptions in Australia with 14 in Victoria.¹ For the same period, there were 204 known adoptions in Australia, of which only one occurred in Victoria.² In known adoptions, where the child is already known to the adopted parents, and in almost all the cases in Australia, the adopted parent is either the child’s current non-related carer (70% of cases) or the child’s step parent (28% of cases).³

Stability and permanency for children in out-of-home care (OOHC) with local adoption as a viable option

This House of Representatives Inquiry is examining whether known adoption can achieve permanency and stability for children in out of home care (OOHC). As of 30 June 2017, there were 10,312 children in OOHC in Victoria.⁴

In August 2014, the Victorian Government passed the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) (permanency amendments). The permanency amendments made significant changes to the Children, Youth and Families Act 2005 (Vic) (CYFA). The changes seek to ensure that decisions about the care of vulnerable children are made in a timely way, and promote permanency of care arrangements. The permanency amendments introduced a requirement that a case plan is created for all children identified as being in need of protection. Case plans include all significant decisions that are made by the Secretary (and delegated to the

¹ AIHW (2018) [Data Tables: Child Protection Australia 2016-17](#), Table S13.

² Ibid, Table S19.

³ Ibid, Table S20.

⁴ AIHW (2018) [Data Tables: Child Protection Australia 2016-17](#), Table S36.

Department) about the care and wellbeing of the child.⁵ Previously, the CYFA 2005 did not require a case plan to be prepared until after a final order was made. All case plans must include a permanency objective that is considered in the following order, depending on the best interests of the child:

- **Family Preservation** – aims to ensure that a child who is in the care of a parent remains in the care of a parent
- **Family Reunification** – aims to return a child who is in out-of-home care to the care of their parent
- **Adoption** – aims to secure an adoption order under the Victorian Adoption Act 1984 (the Adoption Act)
- **Permanent Care** – aims to arrange a permanent placement for the child with a permanent carer or carers, preferably a suitable family member or other person of significance to the child
- **Long-term OOHC** – aims to place the child in a long-term care arrangement with a specified carer or carers, preferably a suitable family member or other person of significance to the child.⁶

There are also requirements that a cultural support plan is prepared for Aboriginal children.⁷

The Victorian Commission for Children and Young People (CCYP) has recently reviewed the permanency amendments and has identified significant systemic issues that have affected the ability of the Victorian Department of Health and Human Services (DHHS) to meet these objectives. The review found that:

- most Aboriginal children in OOHC had no cultural support plan
- case-planning processes were inadequate and there was no evidence that families and children were involved in their preparation
- there were significant in the finalisation of case plan reviews
- essential information about children’s placement details and type of protection order was not recorded on their files
- many children did not receive the minimum required visits from a departmental Child Protection practitioner that is necessary to support reunification and promote permanency.⁸

The data indicates that there has been no increase in the number of known adoptions in Victoria, despite the permanency objectives.⁹ The CCYP found that:

The inclusion of adoption in the hierarchy of permanency objectives was one of the more controversial aspects of the permanency amendments. Aboriginal people and organisations told the Commission that the inclusion of adoption parallels the removal of Aboriginal children as part of the Stolen Generations. The Commission heard that some Aboriginal women were not seeking help for family violence because they were concerned their child would be

⁵ Victorian Government (2005) Children, Youth and Families Act 2005.

⁶ Ibid.

⁷ Ibid.

⁸ CCYP (2017) Safe and Wanted: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, p. 19.

⁹ AIHW (2018) Data tables: Adoptions Australia 2016-17, Table S1.

*removed and then adopted. Many non-Aboriginal consultation participants also objected to the inclusion of adoption and acknowledged the legacy of the Stolen Generations when commenting on the inclusion of adoption in the hierarchy of permanency objectives.*¹⁰

The CCYP also found that adoption is at odds with aspects of the CYFA 2005 and that its inclusion in the hierarchy has not been accompanied by any changes to practice or policy. In the six months following the permanency amendments, there were no applications for adoption and no adoption orders have been made for children known to Child Protection.¹¹ In light of widespread community concern, particularly within Victoria's Aboriginal community, and the evidence that adoptions are not occurring in practice, the CCYP recommends that it be removed from the hierarchy of permanency objectives. This will have no impact on adoption being pursued under the Adoption Act for children subject to Child Protection involvement, when it is in a child's best interests.¹²

The Centre supports the recommendation that adoption be removed from the hierarchy of permanency objectives.

The Victorian Law Reform Commission (VLRC) undertook a comprehensive review of the legislative framework covering adoption in Victoria in 2017. It found that the Adoption Act is outdated and does not reflect contemporary best practice. It recommended that Victoria introduce a new act regulating adoption.¹³ The VLRC closely examined the pathways for non-parent carers to legally formalise the transfer of parental authority for the children in their care. The current system encourages relative carers, such as grandparents, to seek family law orders to formalise their care arrangements. The VLRC recommended that this should continue to be the preferred pathway for carers that are related, as family law orders confer legal responsibility for the child without severing the legal relationship between the child and their parents.¹⁴

Foster carers of children in OOHC are not able to access the family law system to formalise their care arrangements. In Victoria, long term legal responsibility for a child in OOHC is granted by a permanent care order. Permanent care orders transfer parental responsibility for the child from the biological parents to the permanent care parents while maintaining the legal parental relationship. They are made under the CYFA 2005 and granted by the Victorian Children's Court. Permanent Care Orders can include provisions for contact between the child and his or her biological parents, and family members, including siblings. Permanent care orders do not change the legal status of the child, and they expire when the child turns 18 or marries. In 2015-16, 503 permanent care orders were granted in Victoria, an 82% increase on the 277 orders granted in 2014-15.¹⁵

The Centre agrees with the VLRC and:

'does not regard adoption as the solution to problems in the child protection area, but as one of a range of options, to be considered for each child in their particular circumstances'.¹⁶

¹⁰ CCYP (2017) Safe and Wanted: Inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, p. 16.

¹¹ Ibid.

¹² Ibid, p. 21.

¹³ VLRC (2017) Review of the Adoption Act 1984, p. xii.

¹⁴ Ibid, p. xvii.

¹⁵ Ibid, p. 18.

¹⁶ Ibid, p. 19.

The VLRC recommends that adoption remain a distinct and separate legal framework from the Child Protection system.¹⁷

The Adoption Act only allows two types of known child adoption: adoption by a step parent or adoption by a relative. Currently there is no pathway between orders made under the CYFA and the Adoption Act. The VLRC has recommended that a pathway be established to enable permanent carers to adopt the children in their care if:

- leave is granted by the President of the Children’s Court
- the natural parents have provided specific consent to the adoption
- and the permanent care order has been in force for a least two years.¹⁸

The VLRC recommends that an adoption order is sought only in circumstances where the continuation of the permanent care order would not make adequate provisions for the best interests of the child. The President of the Children’s Court can only grant leave to apply when she is satisfied that:

- making an adoption order would be in the best interests of the child
- an adoption order would be clearly preferable to the continuation of the permanent care order.¹⁹

The Centre supports adoption for children in the Child Protection system only if it is in the best interests of the child to do so. The Centre supports the recommendations made by the VLRC as they provide sufficient safeguards to ensure that adoption is in the best interests of the particular child.

The South Australian Child Protection Systems Royal Commission concluded that:

‘Adoption is no panacea for the current shortage of suitable care placements for children who cannot remain with their families of origin. The fact that there is a cohort of families who are interested in starting or growing their families through local adoption, and who may relieve placement pressure in the care system, is irrelevant to the question of a child’s best interest’.²⁰

Appropriate guiding principles for a national framework or code for local adoptions within Australia

The starting point for any principles for a national framework for local adoptions within Australia must be the best interests of the child. The ongoing legacy of the Stolen Generations and of forced adoptions means that adoption must be determined on a case by case basis. Adoption should be the last option for children, and only sought when all options to keep the child within the extended family

¹⁷ VLRC (2017) Review of the Adoption Act 1984, p. 17.

¹⁸ Ibid, p. 207.

¹⁹ Ibid, p. 206.

²⁰ Nyland, M. (2016) Child Protection Systems Royal Commission Report Part IV: Children in Out-of-home Care, p. 369.

network are unsuccessful. Family law orders and permanent care orders are preferred as they do not extinguish existing family relationships.

Open adoption and transparency is crucial, with those affected by adoption able to access information about the adoption process. Ongoing support, both before and after the adoption, is important, and this support should be available not only to the child and biological parents, but also the extended family and any children of the adopted person. It is important to recognise that adoption is for life, and will have ongoing lifetime ramifications.

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

- 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.

The VLRC has recommended a series of guiding principles which should be included in the Victorian Adoption Act. The Centre suggests that these guiding principles would be suitable to be applied to a national framework. They include:

- a) The best interest of the child concerned, both in adulthood and in their later life, must be the paramount consideration.
- b) Adoption is a service for the child concerned and no adult has a right to adopt a child.
- c) Consent to adoption must be fully informed and free from duress, pressure or coercion.
- d) A child who is capable of forming their own views on a matter concerning their adoption must be given the opportunity to express them freely, and these views are to be given due weight in accordance with the age and maturity of the child.
- e) Anyone involved in the adoption process should be given the information they reasonably need to participate effectively, in a manner and form that enables them to understand the relevant process.

f) A person or body exercising a function or power in relation to an Aboriginal or Torres Strait Islander child must observe the decision making principles for Aboriginal and Torres Strait islander children.²¹

The Centre does not recommend a significant change to local adoption practices in Victoria. It is appropriate that adoption is seen as an option of last resort for children in OOHC. However, for some children adoption may be in their best interests and in those cases the Centre supports legislative amendments to allow permanent carers to apply for adoption orders.

The Centre supports a nationally consistent approach to adoption across Australia and the implementation by all states and territories of national guidelines that clearly recognise adoption should only be sought if it is in the child's best interests and that no adult has a right to adopt a child.

²¹ VLRC (2017) [Review of the Adoption Act 1984](#), p. 33.