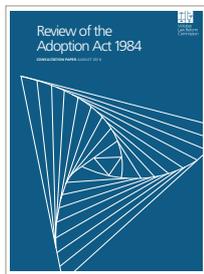


Review of the *Adoption Act 1984* — a reference from the Attorney-General

The *Adoption Act* is more than 30 years old and needs to be modernised.



18 December 2015

The Attorney-General provided the Commission with the terms of reference.

10 August 2016

The Commission released a consultation paper outlining the current law in Victoria and presenting several options for reform.

16 September 2016

The Commission finished its consultation period and received 61 submissions by the due date.

28 February 2017

The Commission delivered its report to the Attorney-General by the due date.

7 June 2017

The report was tabled in the Victorian Parliament and published.

What was this project about?

This project concerned adoption laws in Victoria. The Commission was asked whether or not the *Adoption Act 1984* sufficiently prioritised the best interests of the child, was in harmony with community values, and upheld the principles of other laws and conventions including the United Nations *Convention on the Rights of the Child*.

Why did the law need to change?

When it was first introduced, the *Adoption Act 1984* made significant changes to the laws of adoption in Victoria. The 1984 Act replaced 'closed adoption' with 'open adoption'. 'Closed adoption' involved secrecy at every stage. 'Open adoption' means that information and contact can be shared between the birth parents and adoptive parents of a child.

However, more than 30 years have passed since the Act's introduction. Society's values have changed and in some ways the law is now out of step with community expectations on the needs of children and families. The technical language of the Act is not easy for most people to understand, and Parliament has amended it many times, making it even more complex.

What was the Commission's task?

The Attorney-General gave the Commission these terms of reference:

'At the time of its introduction, the *Adoption Act 1984* represented a significant change in Victorian adoption policy.

The government recognises that adoption is complex, and past adoption practices have resulted in significant trauma for people affected by those practices. The government also acknowledges the positive experience of adoption for many Victorian children, adult adopted people and their families.

To ensure that the *Adoption Act*, now over 30 years old, meets the needs of the children and families it affects, it is time to review the Act to ensure:

- > The best interests of the child are paramount
- > It is consistent with contemporary law in relation to family and community
- > It operates harmoniously with other relevant areas of law that have developed since the introduction of the *Adoption Act*
- > It is structurally sound and in accordance with contemporary drafting practice.

Accordingly, the Victorian Law Reform Commission ('the Commission') is requested to provide recommendations to government on the modernisation of the *Adoption Act 1984* and the *Adoption Regulations 2008*.'

For the complete terms of reference, see lawreform.vic.gov.au.

The Commission was not asked to consider intercountry adoption programs or commercial surrogacy (which are national, not state matters) nor adoption by same-sex couples (which has already been legislated in Victoria).

What were the issues?

Lifelong effects of adoption

Adoption has lifelong emotional and legal effects for the child and their natural and adopted families. It is important for decision makers to consider the effects of adoption into the adulthood of the child, not just in the present.

Trauma

Past forced adoption practices have had traumatic effects on the people involved. Adopted people have often struggled with psychological and emotional trauma, even when their adoptive families were loving and supportive.

Openness

Despite the introduction of 'open adoption', adoption processes still involve secrecy:

- > Records (such as those relating to adoption orders) are often closed and information restricted, and court orders are needed to access these.
- > Natural parents and adoptive parents are not told each other's full names.
- > Proposed adoptive parents are not allowed to see the adoptive child's birth certificate and are not told the child's surname.
- > Adoptive parents are not required to tell a child that they are adopted.
- > Court proceedings about adoptions are not open to the public.

Participation of the child

The child should be at the centre of any adoption process, and the law should allow children to make their views known.

Support

Ongoing support is needed even after an adoption process is formally complete. Support should be made available for everyone involved in an adoption process, including families, siblings and subsequent generations.

Transparency and clarity

The law on adoption should be made easier to understand, and the process of making decisions about adoptions should be more

open. If the law is clear, this will help everyone — adoption agencies, adoption information services and applicants for adoptions — to make better decisions about adoptions.

What did the community say?

The Commission undertook 38 consultations across Victoria with individuals and organisations who had personal experience with adoption laws or specialist knowledge about adoptions. Consultations were held with people who had been adopted and their parents, groups representing adopted people, adoption agencies, lawyers with expertise in adoption matters and Aboriginal and Torres Strait Islander organisations.

The Commission received 61 written submissions, including from adopted people and their families, academics, medical practitioners, community organisations and religious groups. Most of these submissions are available on the Commission's website.

What was recommended?

The report, *Review of the Adoption Act 1984*, makes recommendations to modernise the law of adoption in Victoria and ensure that it is consistent with other laws. The central recommendation is that the current Act should be repealed and replaced with a completely new Adoption Act.

The Commission recommended that the new Act should provide for the following:

- > Adopted people should be able to obtain integrated birth certificates that show the names of their natural parents and adoptive parents—not just adoptive parents.
- > The same criteria should apply to single people applying to adopt as to couples.
- > An independent children's lawyer should be appointed for every child in the adoption process.
- > Every adoption should have a court-approved adoption plan with details about contact arrangements, information exchange and other aspects of the adoption.

- > It should be easier for children and relatives to obtain information under a new 'access to information' scheme.
- > There should be more consistency across Victoria and between agencies in the treatment of applicants for adoption.
- > Religious exemptions under the *Equal Opportunity Act 2010* (Vic) should not apply to publicly-funded adoption agencies. It should not be possible for religious bodies to refuse to provide services to LGBTI applicants.
- > There should be a state-wide register of approved applicants to adopt a child.

People involved in adoptions should have access to more support through their lives, such as counselling, mediation and financial grants.

The report was tabled in the Parliament of Victoria on 7 June 2017.

More information

More information about this project, including the report, the consultation paper and many of the submissions, can be viewed on the Completed Projects page of the Commission's website.