

I am a permanent care parent to two young children aged 12 and 10 years old. The 12 year old was 5 months old when he joined the family, and the 10 year old was three years old when she joined the family.

Myself and my wife applied for and were assessed to be on the list for either Adoption or Permanent Care. We did not apply to be foster carers, and we have no biological or kin relationship with our two permanent care children. We were not linked with any prospective adoptive children, however our experience as permanent care parents has very strong echoes with an adoptive parent's experience.

Throughout this submission I refer to the persons who are named as carers in a Permanent Care Order (PCO) as permanent care parents, as opposed to permanent carers. This reflects the modernised language of the recent amendments to the Children Youth and Families Act 2005, which recognises us as parents under the terms of the CYF Act (CYF Act, Note to Sec 321)

My views in this piece are chiefly in relation to the possible intersections between adoption, the Child Protection system and permanent care. However I would like to first mention adoption of adults.

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re Adoption Act, Sec 10. 1 (b). As the VLRC Consultation paper states:

'An adult can also be adopted under the Adoption Act. This can happen where: the proposed adopter or adopters 'brought up, maintained and educated' the person as if they were their parent or parents and 'special circumstances make [the adoption] desirable'. This consultation paper concentrates on adoption of children, but the Commission will consider any issues relating to adult adoption within the terms of reference that are raised in submissions.'

I believe that children who have spent their childhoods within a permanent care family from early childhood, should have the opportunity to cement and fully legalise this relationship when they become adults, by adopting the parents that have raised them. Someone who has lived their childhood under a PCO would clearly fulfil the requirement that the person has been 'brought up, maintained and educated' by the permanent care parents.

And in relation to Sec 15. 2 "...special circumstances.." we would argue that having been subject to a PCO for your whole life, and then having had that legal connection terminated due to the ceasing of the order, would constitute a special circumstance in its own right, making the adoption desirable.

So I would argue that an adult who has been subject to a PCO, and then wishes to become the legal child of the permanent care parents by the making of an adoption, should have the

right to do so. They could then enjoy the same rights of inheritance as any other child in a family, and assume the same responsibilities as any siblings within the family. It should be incumbent on the Court to demonstrate why this would not be of benefit to the adult in question, and this right should not be unreasonably refused by the Court.

I would propose a new section in the Adoption Act that specifically allows for an adult who has grown up under the very special (and rare) category of a PCO, to apply for an adoption order to adopt their pc parents, with their consent. Counselling for all parties should be compulsory in these cases.

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Chapter 5 The best interests and rights of the child

Question 5 Should there be a greater obligation to identify and contact the father of the child to obtain his consent to an adoption? If yes, what steps are reasonable to try to obtain a father's consent?

Yes. I think the provisions in Queensland Adoption Act referred to in the Consultation paper work in the best interests of the child, as all children should have the opportunity to have the fullest knowledge and information possible from both sides of their genetic heritage.

At worst the current provisions in the Victorian Act may work to let men off the hook in terms of their responsibilities, meaning they may not be required to be recognised as fathers, and this is very unfair on the children so affected. Even if a father has no intention of being involved in the care of an infant, he has at the least an obligation to allow that child knowledge about their biological heritage.

Also, as a 'stay home dad', my first hand experiences tell me that parenting roles have shifted significantly over the last 30 or 40 years. The assumptions that babies and children should always be raised by (a) mother where possible, and which may have strongly influenced the thinking behind previous Victorian Adoption Acts, no longer apply – it is acknowledged that fathers are equally able to bring up babies and children, and it is very important that fathers are made aware that they have a right to look after the child if they are able to do so.

Of course in the types of situation that may lead a mother to consider consenting to an adoption there may be many factors working against a father being able or willing to take responsibility in this way. However the best interests of the child in the long term are clearly best served by the identity of the father being sought and established, wherever possible.

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Re Adoption in the Child Protection context (Sec 4, page 38 in VLRC Consultation)

Many in Victoria might argue that we don't need to consider adoptions from Out of Home Care, because we have permanent care orders. It has been argued by DHHS (for eg in the Adoption and Permanent Care Learning Guide) that an advantage of PCOs is that they do not 'sever the legal tie' between child and birth parents, whereas Adoption orders do. Although open Adoptions clearly allow for ongoing contact between child and birth family, the implication equally clearly is that a permanent care order is preferable for a child in these circumstances.

I would argue however that while a PCO might be the best option for many children within kinship networks, where a relative is bringing them up as their primary carer until they reach adulthood, with non-kinship placements of children there is a place for adoption. However, a modified form of Adoption Order is required in these instances, whereby a child's biological heritage is recognised on a birth certificate (discussed further below).

The strength of Adoption, from the perspective of a permanent care parent, is it makes the adoptive parents the legal parents for life, and therefore the child becomes a 'legal child' of the family, and enjoys all the benefits that that legal status provides.

The weakness of Permanent Care is that a) it doesn't make the permanent care parents the 'legal parents' in the fullest sense, meaning the children miss out on some of the rights other children enjoy, and b) that it ceases to operate after the child reaches age 18.

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Question 9 Are the grounds for dispensing with consent appropriate for adoption in contemporary Victoria? If not, what changes should be made?

The circumstances listed in Sec 43 of the Adoption Act re dispensation of consent (for example that 'the [birth parent] has abandoned, deserted, persistently neglected or ill-treated the child') have always seemed to me to be very closely aligned with the reasons that child protection give for the removal of a child for their own safety under the Children Youth and Families Act 2005 (sec 162 'When is a child in need of protection?', for example that the child 'has been abandoned.. suffered significant harm as a result of physical injury...sexual abuse...emotional harm').

In our own family our son had never lived with his birth mum, and he joined our family when he was 5 months old. His birth mum has had several other children, and all are in different long term placements or permanent care. Many people are surprised that an Adoption Order was not pursued for him.

As the VLRC states 'In 1971-72, 1768 children [were adopted] in Victoria', and it is now clear that a large proportion of these adoptions had been forced or coerced, without true consent.

The situation with children removed by Child Protection in the present day is quite different however. Generally Child Protection become involved with existing families, where for a variety of reasons birth parents have been unable to adequately care for their child, to the extent that the child has suffered or is likely to suffer significant harm. However the vast majority of children removed by child protection in this way are away from their home only temporarily, and are then successfully returned to their families.

The numbers of PCO's made in Victoria each year is approximately 250. Of these the majority are made to kinship carers, ie to carers from within the child's kinship network, so per year the number of PCOs made to non-kin carers would be less than 100.

Clearly the scale of the numbers of children living away from their birth parents on a permanent basis has shifted dramatically since the era of forced adoptions. It seems inconceivable that the combination of conditions within society that led to these forced adoptions of earlier years would ever return.

As mentioned in the consultation paper, the situation in NSW is quite different, in that Sec 67 of the NSW Adoption Act allows 'carers', at least those who a child has lived with and who the child has formed a relationship with, to apply to the Court for an Adoption. Further, in these instances where a child and carers have formed a long term parental relationship, it is possible for the Court to dispense with consent, on those grounds alone, as long as the Court deems it to be in the best interests of the child to make an adoption.

The VLRC Consultation paper states "Some agencies and individuals consider that there might be more adoptions of children from the child protection system in Victoria because of its similarities to New South Wales legislation addressing the same issue"

I would think this highly unlikely, unless the Adoption Act changed to allow adoption from care in the same way that NSW does. My understanding is that DHHS has no intention of pursuing adoptions under Sec 43 of the Adoption Act, ie adoptions without consent of the birth parents. The placement of adoption within the 'permanency objectives' in the recently amended CYF Act seems to have been more to remind DHHS staff in child protection departments that it is possible to raise adoption as a possibility for parents. Current practice would seem to be that the possibility of adoption is never raised by Child Protection staff, unless it is volunteered by the client.

There is no suggestion that Victoria will seek to insert a similar provision within the Adoption Act, allowing adoption by carers in a child protection context without consent of birth parents. And if Victoria doesn't follow the NSW path, then the only reason that adoption from the child protection system would increase, would be if birth parents chose to consent to children being adopted in this way. Given that the provisions around giving of consent are now much stricter than in past Acts, a concern that there would be a return to the forced adoption era of the past is I believe unwarranted in this regard.

Victoria seems much more likely to continue to view the making of a PCO as the desired outcome for permanency within the 'Out of Home Care' system. I use the parentheses

because our children are in fact not living 'out of home'; they are simply living *in their home, with their families*.

In my opinion what is in the best interests of the child is that **whoever is looking after that child on a permanent basis, whether they be adoptive or permanent care parents, should be recognised as legal parents, in order that they can provide the best possible childhood for them.**

This is not to deny birth family or biological heritage for one minute. My name is not on my sons' birth certificate, and this is not a problem in itself for him. What is a problem for us both, is that the document that does link me to him (the PCO) does not recognise me as his legal parent, Australia-wide.

I believe that were future Adoptions to be modified, to fully recognise birth parents on birth certificates (along the grounds below) , then there are grounds for adoptions of children from the Child Protection system. This would most likely be from the very small number of children who do not have extended family willing or able to offer a long-term placement, or permanent care placement.

Alternatively, if permanent care orders truly granted children full rights as a 'legal child' within their permanent care families, then the best interests of children would equally be better served.

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Re Conditions on an Adoption Order (VLRC Consultation p62)

Question 10 Should the court be able to put conditions on an adoption order in a broader range of circumstances if it is in the best interests of the child? These circumstances might include situations where: (a) the court has dispensed with the consent of a parent but it is in the best interests of the child to have contact with the parent or with relatives of that parent (b) consent was given but the adoptive parents and the birth parent giving consent have not agreed about contact or exchanging information about the child.

Perhaps an Adoption Order could include similar conditions (which I understand are currently voluntary) as the recent CYF Act amendments, which now place the following conditions on prospective permanent care parents ;

"CYF Act 2005 Sec 321 (1)... A permanent care order...

' (ca) must include a condition that the person caring for the child must, in the best interests of the child and unless the Court otherwise provides, preserve—

- (i) the child's identity and connection to the child's culture of origin; and

(ii) the child's relationships with the child's birth family; “

This clause in the CYF Act makes clear the expectation and requirement for permanent care parents to maintain a child’s knowledge of their biological heritage. A similar clause in the Adoption Act would ensure all Adoptions are ‘open’, unless the Court finds good reason for them not to be. It would however impose an obligation on the adoptive parents, whereas as I understand it, currently contact with birth family is by mutual agreement, so that if adoptive parents don’t agree to this happening there is no compulsion to do so.

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Question 39 How should an adopted person’s identity be reflected on their birth certificate?

Question 40 If a different form of birth certificate were available to adopted people, what legal status should it have?

Question 41 Are there any problems with introducing integrated birth certificates or another form of birth certificate? If yes, what are the problems and how could they be addressed?

In discussions about birth certificates for adopted persons, it is important to be absolutely clear **who the legal parents are**, because the preferred alternative to adoption from child protection, a PCO, doesn’t make this crystal clear. Whilst Federal Law acknowledges all Adoption Acts Australia-wide as signifying that the Adoptive parents should be treated as if they had given birth to the adopted child, and therefore are clearly recognised as the legal parents, the Victorian Permanent Care Order is not recognised in the same way.

I outline below a few of the ways in which this works against the best interests of the children in our families. I then suggest 2 different ways that Adoption Orders might acknowledge birth family, making these perhaps a more viable alternative to PCOs for some children.

Most obviously it is in the intersection between State and Federal Law that permanent care families find themselves at a disadvantage. It would be a mistake I think to alter the Adoption Act such that there was confusion created as to who are the legal parents, because this is very much an issue in permanent care.

In Permanent Care, the persons named in the order have ‘parental responsibility to the exclusion of all others’ meaning that the birth parents parental responsibilities are removed, for the duration of the order. However the birth certificate details do not alter, and the birth parents names remain on the birth certificate. It is possible to change the surname of a child in permanent care, but while this does change the ‘legal name’ of the child for all official purposes (school, Centrelink etc) the birth parents details remain on the certificate. Also, if a

permanent care child's surname is changed in this way, the reverse of the birth certificate lists any of such changes of name.

Therefore as permanent care parents we cannot use a birth certificate to prove a relationship between ourselves and our kids - **our proof of parental responsibilities is the permanent care order (PCO) itself**, which names us as the responsible 'carers' /parents for our child. We have to show the PCO in all our dealings with government departments etc to prove our link to our child; in many ways it is the 'birth certificate' proving our children's 'birth' in to our families.

I would hate for adoptive parents to be placed in the position we find ourselves in as permanent care parents, where we find, especially when dealing with Federal departments, that there is misunderstanding as to who has the legal authority to sign which form, or who is liable for which payment, or who is eligible for which benefit.

As the VLRC consultation paper states:

"The adoptive parents assume all the parental rights and responsibilities that belonged to the child's birth parents before the adoption order was made."

Similarly, permanent care parents assume all the parental responsibilities that belonged to birth parents (or the State) before the order was made. Unfortunately for our permanent care families however, **the rights for the child that would flow if pc parents were recognised as being fully 'legal parents', are not fully transferred, and therefore our children are disadvantaged in comparison to their adopted or natural born peers.** For example;

Inheritance. Despite growing up in our families, our 'permanent care' children do not automatically benefit from a right of inheritance, unlike in adoptive families.

Australian Passport applications. To apply for a passport, you have to first prove that you are indeed an Australian citizen. Proof of eligibility as an Australian citizen is, at least for children under 10 years old, established purely through a child's biological heritage, or through the status of their adoptive parents at the time of their birth. Despite having full parenting responsibility of our 'permanent care' children until they become adults, our citizenship status is considered irrelevant to the children in our families by this Federal legislation. Proving a child's Citizenship status and obtaining a passport is therefore highly problematic for us.

Change of name. Permanent care parents are entitled to apply for a change of name for their children via the Victorian Births Deaths and Marriages office. But there is no absolute or automatic right to change a name, the BDM Office retains the discretion to approve or not. Of course names are a key symbol of belonging to a family and for most children it is taken for granted that they share a surname with one or both of their parents. For many pc families the first enrolment at school is a time when children wish to assume their parents surname if they haven't already, but school will only complete all official documentation in whatever name is on the birth certificate, so at this point many permanent care families consider applying for a change of name.

Centrelink Child Support – This Federal legislation doesn't recognise a pc parent as liable to pay child support for a 'permanent care' child on the event of a couple splitting up – the Federal DSS considers these children as 'residents' rather than as 'dependents'. A permanent care parent who would ordinarily expect to pay child support if living away from their child, is relieved of this responsibility, and their only compulsion is their own moral conscience.

Federal Government Paid Parental Leave scheme. Permanent care parents who are direct applicants (ie those who do not have a child in their family through foster care or kinship care, and then 'convert' to permanent care) have to cease paid work for at least a year as a condition of the placement, in order to establish a firm attachment with their new child. However, these parents are explicitly excluded by Federal government from the Paid Parental Leave scheme. Federal government considers these permanent care parents as 'closer to foster carers than to adoptive parents' (DSS Paid Parental Leave Scheme Review Report, June 2014 p70)

So while a more honest birth certificate for adopted people is clearly warranted, it should not be at the risk of confusing the important issue for the child of who is the legal parent.

Below are two possible options for Adoptions in the future, in relation to the issue of identity and birth certificates:

1) It is conceivable that a birth certificate for an adopted child/adult could remain with only the birth parents details on it (albeit with a change of the 'current legal name' to the adoptive parents name), but that **the Adoption Order itself would provide proof of legal parentage**, rather than the birth certificate. In other words the birth certificate would cease to be the sole indicator of who is the 'legal parent', and the Adoption Order would take precedence over the birth certificate as the proof of who is the legal parent.

This would be a similar situation to the way that a permanent care child's birth certificate indicates the biological parents of the child, but does not indicate who is actually bringing them up as Mum and Dad with 'parental responsibilities' – the PCO is the document that verifies that.

Of course an Adoption Order though would continue to give full **parental responsibilities and rights**, recognised in all States.

2) Alternatively, it has been suggested that it would be possible for a birth certificate for an adopted child to have the (adoptive) mother and (adoptive) father listed on the front, and **on the reverse to have the 'parents at birth' listed**. This would enable an adopted child to have their biological heritage recognised on the same certificate as their adoptive parents, whilst ensuring that the adoptive parents continue to be identified as the 'legal parents' as now, by virtue of remaining on the front of the birth certificate.

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Question 48 Should there be increased requirements in the Adoption Act to provide postadoption support? If yes: (a) Who should be responsible for providing this support? (b) What type of post-adoption support should be provided, and in what circumstances? (c) Who should be eligible for it?

Yes absolutely!! I believe the Government should be funding a service that will be available to all adoptive (and permanent care) families for the entirety of their kids' childhoods.

Both adoption and permanent care are physically and mentally very hard work for many families, and these are in addition to the normal stresses and strains and challenges of parenting. A lot of the difficulties are related to the child's early experiences and disruptions in their attachment to a primary carer, and their own growing understanding of their difference from 'normal' biological families. Problems at home and school for our kids will not always emerge till months or years after an initial placement, and key times such as the onset of adolescence may bring to light issues that were not at all visible before. Identity becomes prominent for any teenager, and teenagers with an adoption or permanent care background have a whole extra layer of complexity, added to an already tumultuous period for many. Therefore it is vital that any service is available in the long term, ie throughout the child's childhood years.

In our family we have had multiple difficulties both at home and at school with very challenging behavioural difficulties, from two very different children, which has been a real struggle for me and my wife on a daily basis, and continues to be in many respects. The most helpful services for us have been a) finding professionals skilled in attachment and trauma therapy b) finding peer support groups, such as PCA Families 'Journal Club', where we have been able to share experience and gain support from other families.

Similar to adoption agencies, following the legalisation of a PCO at the Children's Court permanent care placement agencies' support to carers tapers off. So a year or so after legalisation, most permanent care parents are 'on their own', similar to adoptive parents. Unlike in foster care, there is no ongoing 'worker' who can be called on to help with emergencies, respite, therapists etc, and there is no 'case manager' from child protection.

There is therefore a need for Governments to fund a service that will provide support to all those adoptive and permanent care families who seek it.

If government is serious about providing for the best interests of the child who grows up away from biological family, then they **need to recognise that legalisation of an adoption or permanent care order is only the start of the journey.** Needs arising directly from the child's unique start in life are likely to continue long after 'legalisation', and likely to be in addition to the normal needs of a growing child. There is a clear gap in service here, the bridging of which could genuinely improve outcomes for our children.

The Permanent Care and Adoptive Families organisation provides telephone advice, training and peer support services to families. It is staffed in large part by people with lived experience of adoption and permanent care, and has the potential to provide such a service on a State-wide level.