



Review of the Adoption Act 1984

Submission to Victorian Law Reform Commission

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A Note on Terminology:

As noted in the Victorian Law Reform Commission Consultation Paper, where possible the term 'parent', 'mother' or 'father' has been used to describe people to whom a child was born, or who adopted a child. For the sake of clarity, these terms have been used alongside the terms 'birth' or 'adoptive' parent, mother, father or family where there might otherwise be confusion between these parties. Similarly, adopted people will be referred to as a 'child' if referencing the adoption process, or 'adopted person' when referring to adult people who have been adopted.

In addition, 'access' has been referred to when referencing contact between children and their birth family as this is the terminology currently used in the Adoption Act. It's acknowledged this is not contemporary language.

1. Connections UnitingCare

Connections UnitingCare ('Connections') is a community organisation with a long and proud history of supporting marginalised and disadvantaged children, young people, and families. Connections has a vision of empowered children, young people, and families who enjoy wholeness and fullness of life within socially inclusive communities. As an agency, Connections boldly and sensitively seeks out and actively engages children, young people, and families experiencing marginalisation and disadvantage to create opportunities for safe and nurtured living.

On a weekly basis, Connections provides services to 2000 clients, and 23,000 children, young people, and families are supported annually. Connections is considered a strong leader in the sector and is well renowned for the delivery of quality, trauma informed services.

Connections offers a broad range of support programs and services to help children, young people, families, and individuals in need who live in south-east Melbourne, Victoria. Out of Home Care programs offered by Connections include Local Adoption, Permanent Care, Concurrent Care, and the Adoption Information Service (AIS).

Connections' work contributes to the overall work undertaken at a national level by the agency's founding body, the Uniting Church in Australia, and the UnitingCare Victoria and Tasmania Network.

2. Modernisation of the Adoption Act 1984 and Adoption Regulations 2008

As the Commission has identified, there are a number of sections of the Adoption Act and Adoption Regulations (hereafter 'the Act' and 'the Regulations') that no longer represent the values and needs of the community, nor contemporary law, due to the legislation being enacted over 30 years ago. As such, Connections supports the Attorney-General's decision to commission the Victorian Law Reform Commission ('the Commission') to provide recommendations about the modernisation of the Act and Regulations.

3. Priorities for Changes to Adoption Legislation

Connections has identified a number of key priorities for legislative reform. These can be summarised as follows:

(i) Greater regulatory requirements for Adoption Services

Adoption Services in Victoria are not subject to accreditation requirements, outside of a three yearly application for renewal of Adoption Licence as per the requirements of Section 26 of the Act. Requirements to apply for renewal are minimal, which is concerning as it is commonly known that a lack of guidelines, frameworks and standards in out-of-home care can result in children being placed in unsafe situations, a view that appears to be supported by the current Royal Commission into Institutional Responses to Child Sexual Abuse.

Connections ensures that there are robust measures in place to promote the safety of children in their program; however, greater regulation is required to ensure the safety of children across the state. This position is also applicable to the Permanent Care sector, which is not subject to the same regulatory requirements as other types of out-of-home-care such as home-based care or residential care. Adoption and Permanent

Care (A&PC) services are typically excluded from quality and service-enhancement related initiatives available to other out-of-home care programs. It is recommended for legislative reform to reflect greater visibility and accountability of A&PC programs, which are often seen as separate to other forms of out of home care within the sector.

The legislative gap further extends to structural barriers experienced by A&PC teams managed by Community Service Organisations (CSOs). Despite numerous advocacy attempts, community-based A&PC teams are unable to conduct Child Protection history checks (for example, if prospective applicants have currently or previously had children in their care), which means that prospective carers may have a history of Quality of Care concerns or child abuse and/or neglect, but CSOs are unable to access this information when formulating an assessment about their suitability to care for children. Conducting such a check for an Adoption agency may be seen as unauthorised access to information, which limits the program's access to this necessary information. Additionally, A&PC teams based within the Department of Health and Human Services (hereafter 'DHHS') programs (Eastern, Northern and part of Western Divisions) have access to this information, while community-based programs such as Connections do not. Attempts to obtain Child Protection history checks with the written consent of prospective carers have been unsuccessful across the state, unless community-based A&PC teams have had a contact willing to informally complete the check.

Furthermore, the program is unable to access the DHHS Carer Register which includes information about disqualified caregivers (e.g. foster carers). It is of note that there is currently no mechanism in which to disqualify Adoptive (and Permanent) Carers, which means there is a risk that carers may be locally disqualified from one agency, and may approach the state-wide A&PC program seeking accreditation. While the privacy of carers is important, the safety of children must be prioritised and such silos have the capacity to place children at risk of harm. Again, DHHS-based Adoption programs have access to this information.

In addition, there is no competency-based training and assessment framework available for carer screening and assessment. Assessment requirements have been developed by local and state-wide teams, however there is no empirically based A&PC framework available. While assessments conducted across the state are thorough, the absence of an assessment framework is concerning as it increases the likelihood of subjectivity in assessments.

A&PC teams also experience barriers associated with communication and collaboration with state and federal government agencies outside of DHHS, a matter which will be further explored in more detail at a later point in the submission.

It is strongly recommended for these structural barriers to be addressed as a matter of urgency.

(ii) Greater clarity about circumstances in which the best interests of the child takes precedence over birth parents' wishes.

As the Commission will be aware, the Act was passed following the period of the 1950's and 1970's, during which forced adoption policies and practices were common across Australia. Forced adoption involved the permanent cessation of parental rights and responsibilities without willing or informed consent, incorporating unethical and/or illegal practices. Bearing in mind Australia's forced adoption history, Connections currently operates the Adoption program with a strong emphasis on the empowerment and self-determinism of parents in determining future care arrangements for children being considered for adoption. However, as will be explained in the latter parts of this document, the legislative context can at times mean that the agency does not have an

authorising environment to promote the best interests of the child, which can be contrary to our beliefs and values as a child-centred community organisation.

(iii) Adoption Act to reflect contemporary attitudes

The third key priority area identified by Connections relates to the eligibility to apply to become an adoptive parent. It is of note that the legislation has been amended in relation to same-sex applicants, which is supported by Connections. However, the legislation continues to be discriminatory against single applicants. This will be further addressed at a later point in this document.

4. Key issues with Legislation

The below section provides an overview of the key challenges Connections has experienced with the Act and Regulations, including:

(i) Consent by birth parent under the age of 18

There is a lack of clarity about the rights of relinquishing parents who are under the age of 18 years – including the age a parent is able to give informed consent.

If consent cannot be provided on the basis of competency, clarity is needed about whether a dispensation path is pursued or consent is obtained from the young person's legal guardian (or the option of both, depending on circumstances).

(ii) Consent

The current legislative framework does not make clear the point at which a birth parent can change their mind about adoption (e.g. pre-consent signing, post-consent signing, post-placement/pre-legal, post-legal etc.), including timeline and best interests considerations.

There is also a need to outline the steps birth parents, adoptive parents and/or an agency can take in response to these circumstances.

(iii) Approval to adopt

In the context of approval to adopt a child, there is also a lack of clarity about:

- What constitutes a 'fit and proper' person;
- Age, physical and mental health of applicants;
- Requirements related to the citizenship status of applicants (it is currently a policy position for at least one applicant to be an Australian citizen).

As will be discussed later in greater detail, single applicants are currently only able to adopt as a last resort under special circumstances.

(iv) Best interests of children

There is currently a lack of clarity about circumstances under the Act where the agency must act in accordance with the birth parents' wishes, and when agencies can act in the child's best interests – particularly if there is a conflict between the two positions.

The current Act also lacks a definition of 'best interests' and would benefit from one similar to that in the Children, Youth and Families Act (2005).

(v) Birth fathers

There is a need for a contemporary interpretation of what actions are required to locate/engage a putative father (e.g. unnamed but who may emerge at any stage of the process; named but uncontactable; named but not wishing to engage in relinquishment counselling; named or unnamed and wanting to care for the child after the child has been placed with adoptive parents both pre- or post-legally).

This includes the extent of the father's rights after consent has been signed (i.e. if he was unknown to the agency or uncontactable) at the time of consent signing.

Clarity is also required regarding the process of paternity testing post-legalisation and its legal implications related to the child's existing care arrangements, particularly as the best interests of the child is not currently emphasised in the Act.

(vi) Extended family

The Act provides a lack of guidance about whether the wishes of extended birth family in adoption matters should be weighted.

(vii) Ending placements not deemed to be in the best interests of a child

There is a lack of clarity about the circumstances in which an agency can end a placement early (i.e. during the pre-legal phase) and steps required to do so, including processes related to quality of care investigations. The DHHS Guidelines for Responding to Quality of Care Concerns in Out of Home Care, do not include guidelines for managing quality of care concerns in adoptive placements.

(viii) Legalisation

There is a lack of clarity about legal pathways in the event that adoptive parents do not wish to proceed with applying for an Adoption Order but are willing to continue to care for the child (e.g. under circumstances where children experience severe disabilities), as the role of Principal Officer is intended to be an interim role while adoption arrangements are made.

5. Case Studies

The following section provides examples of de-identified case studies which highlight some of the key challenges Connections has experienced in relation to the Adoption Act and Regulations.

CASE STUDY – MG – Birth Parent changes mind about adoption

MG is a child who was relinquished by his mother soon after birth. After the period for revoking consent had expired and the child was due to be placed with an adoptive family, the mother changed her mind and requested that a family member raise the child. Although consent was legally final, Connections felt that it was in the child's best interests for the family placement to be explored.

Issues considered by the agency in making a decision not to proceed with adoption included:

- The welfare and interests of the child are paramount in any decision under the Act (s. 9).
- The Act is founded on principles of open adoption and informed consent.

- the Convention on the Rights of the Child (CRC) includes a requirement that States must: *“...ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary ...”*
- There is no universal understanding or interpretation of the best interests/'welfare and interests' of the child but, along with ensuring stability for the child, another relevant consideration would be ensuring that the child is able to know and be cared for by her or his parents (e.g. Article 7 of the CRC).

Connections sought legal advice which indicated that Guardianship was limited to the purpose of adoption, which suggested that the agency did not have a mandate to investigate the proposed placement and assess its suitability. The agency could not conduct an assessment of the family members for adoption as private adoption is illegal in Victoria. It was agreed that a report to DHHS Child Protection would be made to assess the placement. However, concerns were then raised in relation to the scope of the assessment, as the assessment tool used (Kinship Assessment Part A and B) could be completed in a short time and would not compare to the thoroughness of an adoption assessment.

To address these concerns, it was agreed that an independent assessor would be engaged via another Adoption agency to assess the couple. Before this could commence, the birth said that she had changed her mind and wanted her son to be adopted for a number of reasons.

Legal advice received by Connections outlined the following options:

- Advise the mother to approach the County Court to apply to revoke her consent, or:
- Approach the County Court to revoke Guardianship on the basis that it is no longer possible to place the child for adoption, and request that DHHS to seek an order in the Children's Court on the same date to ensure the child remains in placement while assessments occur prior to any return to family to ensure that the placement was suitable before the agency withdrew.

The latter option did not occur as DHHS Child Protection were not able to seek an order on behalf of the child without the child meeting the requirements in the Children, Youth and Families Act (2005). Furthermore, the County Court also advised the mother that the Court was not able to accept an application from her to revoke consent and that Connections would be required to make this application.

The family member who was to be assessed for placement also mounted a legal challenge, seeking that the adoption be halted in the Federal Circuit Court and the child be placed in her care. It was determined that the Federal Circuit Court did not have jurisdiction, although it remains unclear whether any other court could have prevented the adoption occurring on these grounds.

This case raises complex issues including:

- Lack of clarity regarding whether a parent's decision to seek adoption for their child is subject to appeal or injunction, and if so in what jurisdiction. Can the courts prevent a child being placed for adoption and on what grounds?

- Can adoption proceed if a parent changes their mind, after consent has become final and should it? How can a child's best interests be addressed if the parent revoking consent means that the child can live with extended family members?
- If a parent seeking adoption changes their mind and asks for a family member to be assessed as a carer, who conducts this assessment and on what terms – a child protection risk assessment or a permanent care/adoption assessment?
- The limitations to the Adoption agency's guardianship during the post-consent /pre-legal period – can the Agency make decisions about the child's welfare other than for the purposes of adoption? What decisions can the agency make in relation to promoting the child's best interests?
- There was a lengthy delay between the mother initially expressing that she wanted adoption for her child, and the child being placed with adoptive parents. What is an acceptable time period for parents to make decisions about the care of their child, and at what point does the child's right to permanency take precedence?

CASE STUDY LT – Father challenging adoption post-legally

LT is a 9 year old child who was placed with an adoptive family at 6 months of age. The child's mother was a young woman who concealed her pregnancy from her family. She stated that the putative father of the child denied being the father and was not supportive during the pregnancy. The child's mother signed a statutory declaration stating that she did not want him involved with the child. She provided the father's first name and some limited information about him but did not provide his surname, with the consequence that the agency could not identify him to seek consent. On one occasion, prior to the adoption being legalised, the mother said that the putative father was coming to access but he did not attend. Agency records indicate that he was aware of the child's birth and the pending legalisation of the adoption.

Shortly after legalisation, the mother contacted the agency and said that the putative father had asked for a paternity test. The mother was in support of this as she wanted him to accompany her to access visits. As the child was on an Adoption Order, the agency had no role in providing consent to the paternity test. The adoptive parents chose not to have a paternity test, but agreed to the putative father coming to access with the mother; however, the putative father refused to attend access until he was sure he was the child's father. Over several years he contacted the agency requesting a paternity test, and these requests were passed on to the adoptive family. After many years the adoptive family agreed to a DNA test and the putative father's paternity was proven. The putative father then requested a much higher degree of access than typical in adoption situations. The adoptive parents hold concerns about his intention to request that the child be placed in his care, or that frequent access is granted by the court.

This raised the following issues:

- Can a parent who has not been named prior to an Adoption Order being issued appeal the matter in the court? If so, after what time frame? Which court has jurisdiction?
- What are the rights of a parent who has not been named prior to adoption?
- Are the rights different if the putative father is aware that the child has been born and has not acted prior to the Adoption Order being made, compared to a father who was not aware of the child's birth?
- What is the proper process for having paternity testing after an adoption order has been granted?

- What are the implications of a positive DNA test being conducted, post an adoption order being granted? Is there a risk of the Adoption Order being revoked?
- What are the rights of the child, birth parents and adoptive parents?

CASE STUDY PR – Assessment of birth parents’ capacity to consent to adoption

PR is a child born to parents under the age of 13 years. Connections were contacted to provide relinquishment counselling as the parents wanted to explore adoption for the child. A psychological assessment of the parents was sought and it was identified that the older parent was capable of giving informed consent, but that the younger parent would prefer his guardian to make the decision on his behalf. The psychologist engaged for the purpose said he could not make a firm ruling on the younger parent’s capacity, which resulted in uncertainty about whether both parents were required to consent to the adoption.

This case study raised the following questions:

- At what age can a young person make a decision for adoption in relation to their child? What assessment of competency is required and what degree of proof is required?
- Should a relinquishment counsellor be able to assess competency?
- If the child is not competent, are there any circumstances in which the child’s guardian should provide consent on their behalf, or should their consent be dispensed with?

6. Response to the Key Questions

Connections has not responded to all the questions posed by the Commission, and as some of the responses addressed issues raised within several questions, these questions have been grouped together with one response addressing these common themes.

Question 2: Should the Adoption Act provide guidance about how to determine what is in a child’s best interests?

If yes: (a) What should decision makers be required to consider? (b) Should all the matters have equal weight or should some be weighted more heavily than others? (c) If some matters should be weighted more heavily than others, what are they?

Question 4: Should the Adoption Act include a principle requiring decision makers to consider placing siblings for adoption in the same family? If not, in what other ways could the Adoption Act ensure that sibling relationships are considered in decisions about adoption?

Connections agrees that the Act should provide guidance about determining the best interests of children.

Connections has experienced a number of circumstances in which the legislation has not provided clear guidance in how to uphold the best interests of the children involved, for example:

- When a birth parent has indicated that they have other children, but do not want the siblings to know about the adopted child, and does not want the adopted child to know their siblings. The child's right to know or know about their siblings is in conflict with the parent's right to make decisions about their child's adoption.
- When a birth parent does not express wishes about access, and after placing the child in pre-adoptive care, can no longer be contacted by the agency. The parent's consent can be dispensed with in order for adoption to take place, but access between the child and other family members, including siblings in other forms of care, is not currently included on the Adoption Order.

It is the agency's view that greater clarity is required about how to uphold the best interests of the child in adoption matters. Decision makers should be required to consider the child's right to have relationships with birth family members, including siblings, even if it is not the parent's wishes. However, there needs to be provision for Adoption agencies to use discretion, for example in cases where the parent has convincing reasons for their decisions, or where promoting access between the child and family members may put the child or the parent at risk.

Connections believes it is in the best interests of children relinquished for adoption to be placed with siblings where possible. There have been past circumstances where a birth parent has expressed a wish for a relinquished child not to be placed with a sibling who has previously been adopted, and Connections is of the view that there should be scope from a legislative perspective for discretion to be used to promote the best interests of the child, which includes the child's right to reside with, and have a relationship with their sibling.

Question 3: Should the Adoption Act have requirements about the age differences between the adopted child and any other children in the family?

If yes, what requirements?

It is recommended that the child entering the family be the youngest child in the family, as practice experience shows that this is least disruptive for all children in the household. In general, Connections supports an age gap of approximately 2 years between children, with potential for some variability based on specific circumstances. Exceptional circumstances need to be considered, for example, if the other child being placed with the family was a sibling of the child, the age criterion would not necessarily apply.

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?

In general, the current requirement for Adoption agencies to attempt to locate fathers are adequate, although inclusion of social media and online searches would be relevant. It would also be appropriate to modernise requirements such as placing newspaper notices to search for fathers as this method of locating people is outdated.

It is also important to note that there are existing structural barriers which prohibit agencies from making reasonable inquiries to locate a father (when this information has not been provided to the agency by the mother). For example, despite section 43(2) of the Act, Adoption agencies are prohibited from accessing information from

Centrelink for the purposes of locating a father, when named. Reform in this regard is required to give fathers a greater opportunity to exercise their rights.

In cases where the father in adoption is not named or where their surname is not provided, it is not possible to search for them. Connections' view is that a mother who knows the identity of the father but does not name him should be provided with information about the likely consequences of this decision, including future legal challenges by the father. Connections does not believe that a mother should be compelled to name the father against her wishes, however there would be value in an item being added to the Adoption Schedules for the adoption counsellor to certify that he or she has discussed with the birth mother the implications of not naming the father where his details are known to her.

Question 6: Are there any situations when no attempts should be made to contact the father to seek his consent to an adoption?

If yes, what are they?

Current provisions in the Act provide an appropriate level of flexibility.

While Connections has had few cases in which section 43(h) of the Act has been legally tested (which provides for special circumstances in which consent can be dispensed with in the best interests of the child), there may be value in including a provision that states consent may be dispensed with if seeking consent may pose a significant risk to a child or parent. It would also be of benefit if examples of specific circumstances were included such as the person being a perpetrator of family violence or if the child was conceived by rape, as the current wording implies that consent can be dispensed with if the person has been violent or abusive toward the child, but does not include family violence directed towards a relinquishing parent.

Question 7: Should any changes be made to the current consent provisions?

If yes, what changes?

As outlined in the case study of MG (above), the Act does not address circumstances in which a parent changes their mind about the adoption of a child after the consent has become final, but before the child has been placed with adoptive parents. If a parent changes their mind after a child has been placed, the child's best interests need to be considered, factoring in the disruption that ending an adoptive placement may have on the child. The Act does not provide any guidance about how the best interest of the child can be promoted in such circumstances.

There are also issues relating to competency (see case study of PR above) for under-age birth parents. Initially an assessment of competency can be conducted by the relinquishment counsellor, and if required, a Gillick assessment or other assessment of competency could be performed. Guidelines about the process for determining competency should be included in the Act for consistency, including an acceptable age (considering the child's stage of development) whereby consent can be provided.

Question 8: Should any other people be consulted about, or required to consent to, an adoption?

If so, who?

Connections does not believe that parties other than birth parents should be required to consent to adoption. The only notable exception would be circumstances in which the parent was not able to provide informed consent to adoption.

Question 9: Are the grounds for dispensing with consent appropriate for adoption in contemporary Victoria?

If not, what changes should be made?

Connections is of the view that there are circumstances in which dispensation of consent is appropriate in Victoria, for example, on the grounds of a birth parent not being located after reasonable inquiry or due to abandoning the child.

There is, however, increasingly a need to ensure that dispensation of consent is exercised only within its intended purpose under the Adoption Act. Permanency reforms to the Children, Youth and Families Act (2005) has resulted in adoption being considered prior to permanent care. There is therefore a need for greater clarification about circumstances in which dispensation of consent can be applied for, as the dispensation clauses currently contained within the Adoption Act could realistically be applied to all situations where children have been placed in out of home care due to substantiated concerns of abuse and/or neglect. Examples include a parent who:

- Persistently neglected or ill-treated the child (43(1)(c));
- Seriously ill-treated the child (43(1)(d));
- Discharges their obligations as a parent of the child for at least one year (43(1)(e)); and
- Experiences physical or mental disability (or other impairment) which affects ability to meet the needs of the child (43(1)(f)).

The Act also makes provision for 'special circumstances in line with the best interests of the child' (43(1)(h)).

Connections is of the view that adoption should not be the first option for children removed from their parents care, despite there being grounds available to dispense with parental consent under the Act. Legally, adoption terminates all birth family relationships, and many children in Permanent Care have relationships with grandparents and extended family members that endure while in their permanent placement. Connections is of the view that adoption of children who have been removed from their parents care should only be pursued with the consent of parents, other than in cases where:

- Parents are deceased or have not been in contact with the child for an extended period;
- Parents have seriously harmed the child or another child to such a degree that no contact is permitted;
- Adoption will not sever any other important family relationships or otherwise disadvantage the child (for example, the right to inherit from grandparents), unless the birth extended family support the adoption;
- There are other factors which indicate that adoption is in the best interests of the child.

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.

The court should be able to put conditions on the Adoption Order in a broader range of circumstances if it's in the best interests of the child.

For example, if the relinquishing parent has reasonable grounds for specifying that the child should not have access with extended family members, for example due to criminal history or on character grounds, this should be taken into account. However in circumstances where the parents' consent cannot be obtained but the child's best interests would be met by the maintenance of family relationships, the court should have capacity to make such conditions where recommended by the Adoption agency following an assessment of the parents' wishes and the child's best interests, including consideration given to any risk or harm that may come to the child or parent from the conditions being made.

Question 12: Are there any other issues within the terms of reference that should be considered in determining the best interests of the child and balancing the rights and interests of other people with an interest in the adoption?

If yes, what are they?

There needs to be provision for Adoption agencies to consider the safety and wellbeing of the child as a primary consideration, but to also consider the best interests of parents in decision-making related to adoption matters. For example, if the Act includes provisions about the child's best interests, i.e. to allow family members to have access with a child post-adoption, where this is not the parent's wishes, this should only occur if it is assessed that this would not place the child or parent at risk.

For example, there may be cultural considerations in protecting the safety of a child and their parents. Connections is aware of referrals whereby 'honour killing' has been a concern for mothers who had concealed the pregnancy, due to having a child and not being married. In these circumstances no access arrangements were sought with extended family due to the risks to the child and the mother.

In other situations, parents have stated they do not want the child to have contact with the child's extended family, but then after relinquishing care of the child, cannot be located or elect to not attend access. In these circumstances the ability to vary access arrangements to allow extended family contact would be useful.

It is the view of Connections that Adoption agencies should have access to centralised legal representation for matters brought before a court on the grounds of the best interests of the child in the pre-legalisation phase, as CSOs are not resourced for legal fees associated with adoption matters when children are under the care of the Principal Officer.

Question 13: In some states and territories, children aged 12 and over consent to an adoption. Should this be required in Victoria?

If not, are there any changes that should be made to the Adoption Act to ensure it provides appropriately for the views and wishes of the child?

Connections is committed to listening to the voices of children and, where children are able to provide informed consent, firmly believes that their wishes should be upheld.

The majority of adoptions involve younger children and Connections may only place around one or two children in the Special Needs Adoption program each year (including older children). If the child was old enough to understand adoption and provide informed consent, their consent would be sought. However, determining competency to provide informed consent has been challenging in recent times for children aged 11-12. Connections currently seeks the views of children in step-adoption matters, which are the majority of cases where children older than 12 years of age are adopted.

Question 19: Should there be a requirement that in any adoption of an Aboriginal or Torres Strait Islander child the first preference is to place a child for adoption with Aboriginal or Torres Strait Islander extended family or relatives?

If not, what should the order of preference be for placing Aboriginal and Torres Strait Islander children for adoption?

The writers of this submission are not aware of Connections having placed any Aboriginal child for adoption over the agency's extensive history of providing adoption services. There would be value in adoptions of Aboriginal children being conducted by an authorised Aboriginal children's agency in order to ensure that issues such as maintenance of culture, connections to family, and the child's right to have contact with family or community members are managed appropriately, unless the parent requests that the adoption be managed by a non-Aboriginal agency.

Question 24: Single people can adopt a child only if there are 'special circumstances in relation to the child' which make the adoption 'desirable'. (a) Is this requirement consistent with the best interests of the child? (b) Should this requirement be amended?

If yes, what criteria should apply to adoptions by single people?

Connections is of the view that the current wording regarding single applicants' eligibility is discriminatory and presents as a major contradiction, as 'healthy' infants cannot be placed with single applicants as the legislation excludes them, however some of our most vulnerable children with special circumstances can be placed with a single person. In practice, this involves children with complex special needs being placed with single applicants provided all other placement options are exhausted first.

Connections believes that all applicants should be assessed on their merits. Connections would advocate that the Act and Regulations should place requirements only such that the adoptive applicant is suitable and able to meet all the needs of a child, as per the general requirements of the Regulations (i.e. those applicable to all applicants regardless of their relationship status).

Question 26: Step-parents and relatives of a child can only adopt a child in their care in limited circumstances. Parenting orders under the Family Law Act are the preferred option in these situations. Is this appropriate?

If not, what changes are needed?

Connections' view is that this provision is adequate. While there may be circumstances where adoption is the best option, the Family Court provides adequate legal avenues for step- and extended family members to formalise parenting arrangements. Assessment of step-parents seeking adoption is still necessary, due to the finality of adoption in terminating parental and extended family relationships.

With reference to section 11(6)(c) of the Adoption Act 1984, the following grounds are commonly put forward to the court as reasons the Adoption Act has better provision for the welfare and interest of a child than an order under the Family Law Act 1975:

- Exceptional circumstances, for example, where the non-custodial parent has been absent from the child's life for an extended period or is deceased.
- To provide the child with legal rights not conferred by a parenting order, i.e. that of automatic inheritance from a step-parent or relative.
- To provide the child with legal family ties to the step-parent or relatives. Extended family's legal rights are not altered by a Parenting Order.
- To enhance the child's sense of belonging or security in the step-family.

However, greater clarity about the circumstances in which step-adoption can be considered would assist families seeking this process.

There is limited capacity in the service system to conduct assessments of step-adoption applicants, and no resourcing is attached to this function. Financial compensation for agencies conducting assessments at the request of step-parents is required. Presently, Adoption agencies complete a small number of these in good faith, however, as Connections understands, no state-wide programs are funded to conduct these assessments.

Section 119(1) of the Adoption Act 1984 makes it unlawful for payments to be made in relation to an adoption. A relevant exception is in relation to the payment of legal expenses, whereby legal counsel can be paid for their services related to adoption matters (s.119(2)(a)). However, in order for a matter to be brought before the court, an assessment of the applicants' suitability to adopt must be undertaken by an authorised Adoption agency under the Act. In adoption matters where children are relinquished by their parents for placement outside of the family, these cases are funded by DHHS; however no funding is available for step-adoptions, and it is currently unlawful to 'make, give or receive, or agree... to make, give or receive, a payment or reward for or in consideration of' adoptions (s.119). This is in contrast with the Act's provision for intercountry adoptions where Intercountry Adoptions Victoria may '...require payment by the applicant or applicants of a fee...' (s.112). This represents a clear gap, and it is suggested that fee for service arrangements should be considered for applicants seeking step-adoptions.

It is recognised that there are historic reasons why it is illegal to make or receive payment to adopt children, but with sufficient safeguards built into the legalisation, along with provision being made for this to be relevant only to step-adoptions, it will enable agencies to undertake a component of the Adoption Act that currently occurs pro bono due to the limitations of the legislation. It is unlikely agencies will be able to continue to undertake this work without additional funding.

Question 27: Are the suitability criteria in the Adoption Regulations appropriate?

Should any criteria be added, removed or changed?

Connections' view is that the suitability criteria requirements are generally adequate; however, some amendments need to be made. Greater clarity is required regarding the language used in the Regulations, which currently stipulates that applicants be "fit and proper persons to adopt a child (s.35(k))." This language is ambiguous and requires further clarification.

Connections believes it would be useful to provide additional provisions in the suitability criteria that demonstrate that applicants are able to care for a child into adulthood.

These would include greater clarity about age, physical and emotional health, as well as any additional risk factors that could potentially impact an applicant providing a child with longevity of care.

Furthermore, policy guidelines stipulate that at least one applicant is an Australian citizen, however this requires clarification in the Regulations.

Question 28: Should the requirements applicants must satisfy for approval to adopt be set out more clearly in the Adoption Act and/or Adoption Regulations?

If yes, what changes are required to make this clearer?

Connections is of the view that there needs to be transparency to assist applicants' understanding of why they have or have not been approved. The Regulations need to be more concrete regarding suitability criteria.

In Connections' experience, the most frequent reason for an application for adoption not proceeding to assessment is on health grounds. The current process is that medical reports are sought and reviewed by the DHHS medical examiner which provides guidance to the Adoption agency about the applicant's suitability. It is often difficult for applicants to accept that they are not recommended in the program due to health concerns such as obesity. The Victorian Adoption program has uniform practice guidelines about the management of obesity, but these are not referenced in the Regulations.

A consistent rationale would assist both assessors and applicants completing an assessment if these were clearly addressed in the Regulations.

Question 29: Should the steps in the assessment process be set out more clearly in the Adoption Act and/or Adoption Regulations?

If yes, what changes are required to make the assessment process clearer?

There would be value in a common assessment framework for use across all Adoption agencies to ensure consistency. Currently there are policy guidelines, but variation in the assessment process exists. Any framework should not be so restrictive as to prevent innovative practice but, if developed in consultation with Adoption agencies, could ensure a model of best practice is implemented across the state.

Training in an assessment tool could also assist in developing the skills of assessors, with assessor accreditation an option to ensure all assessments are of high quality.

Question 31: Should the process by which adoptive parents are selected be set out more clearly in the Adoption Act and/or Adoption Regulations?

If yes, what changes are required to make the selection process clearer?

Connections believes the selection process should be set out more clearly.

In the first instance that parents should have the right and option to choose an adoptive family, however, there may be reasons that this is not possible, such as:

- the capacity of the parent to make an informed selection;
- conflict between parents about the selection of an adoptive family;

- overly narrow selection criteria resulting in no or very few possible placement options;
- the parent does not select any of the eligible families;
- the parent cannot be contacted.

To enable parents to choose a pre-approved adoptive family for their child, a process is initially required to narrow down prospective adoptive parents from the state-wide register, based on the preferences put forward by the birth parents, alongside the needs and best interests of the child. Presently, it is the responsibility of the Principal Officer to consider the best interests of the child when shortlisting adoptive families to be presented to the parents for consideration and Connections believes this system should remain in place.

In relation to Special Needs Adoption, matching of the child to prospective carers by a panel remains the most robust option to ensure that the child's needs can be adequately met by the adoptive family. While parental input should be required (if the parents wish to express preferences), Connections believes that the ultimate decision needs to be made by a panel in these circumstances, as the parents' wishes are one factor in selection but the primary objective needs to be a family who can best meet the particular needs of a child into the long-term future. Selecting an adoptive family should include a thorough assessment of their capabilities and requires a more in depth evaluation than can be achieved by birth parents selecting a family from a number of brief de-identified family profiles.

Question 32: Is it appropriate that birth parents are able to express wishes about the religion, race and ethnic background of adoptive parents?

What matters should parents be able to express wishes about?

Should other matters be included in the Adoption Act?

Connections is of the view that it should continue to be at the discretion of the parents to choose the characteristics of the family their child will reside with. Questions about religion, ethnicity, gender and sexual orientation may be important to birth parents and their preferences should be respected wherever possible. The ability of the birth family to form a relationship with the adoptive family will be important for the child's future sense of identity and kinship.

It is suggested for the wording of Schedule 7 in the Adoption Regulations – 'Wishes of Natural Parent with Respect to Religion, Race and Ethnic Background of Adoptive Parents' to be presented in more general terms related to background, beliefs or attitudes. The focus on religion, race and ethnicity alone can focus parents on these attributes to the exclusion of others which may also be important to the parent. Discussion of these attributes may occur as part of a broader conversation with the parents about the characteristics of an adoptive family they would like their child to be raised by.

Question 33: Should any other people have rights to adoption information under the Adoption Act?

If yes, who should be given these rights and what should their rights be?

In general, the provisions of the Adoption Act are appropriate in relation to people seeking information. There should be scope for the Act to allow an elderly or ill birth parent or adopted person to delegate the right to receive information to someone else, such as a child, partner or sibling. The process of seeking information requires interviews for the individual to gain an understanding the social, historical and political

context of records, and there needs to be scope for an individual to delegate this responsibility to someone else in some cases. This delegation of rights would need to be with informed consent from the birth parent or adopted person.

Connections does not support further broadening the scope of people having rights to adoption information to include other family members who are not directly impacted by the adoption.

Question 36: Is the balance in the Adoption Act between providing access to information and protecting people’s privacy appropriate?

If not, what changes are needed?

The provisions of the Adoption Act in relation to information provision generally work well. There are some disparities, for example grandchildren can seek information about grandparents but not vice versa. It is important that these provisions are consistent.

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?

Connections supports children receiving a birth certificate with their adopted name, and it should not present differently, or have a different legal status, to the birth certificate of any other member of the wider community.

Question 42: Is changing a child’s given names consistent with the best interests of the child?

Question 43: In what circumstances (if any) should the Adoption Act allow a child’s given names to be changed?

Connections has a strong preference for adopted children retaining their given names, where named by their parents or family. Connections encourage adoptive parents to consider the impact of changing a child’s birth name and its significance for the child and address this issue throughout training and assessment phases.

It is sometimes identified that adoptive parents wish to change the child’s name as a way of “claiming” the child. Connections is of the view that changing the child’s surname to the adoptive family’s surname, as carried out as part of the legalisation process, can function as a symbol of the child belonging to their new family, and that their given names represents a connection to the family of origin and their birth parent, which should be retained if possible.

In the event the child was named by an Adoption agency or the hospital (if the parent chose not to name the child), there could be scope for the child’s name to be changed by the adopted parents. However such a decision would need to factor in the child’s age and stage of development at the time of changing their given names.

Question 47: Are there requirements in the Adoption Act or Adoption Regulations that are out of step with contemporary technology or unduly burdensome without providing effective additional safeguards?

If yes, what are they and what would provide appropriate alternatives?

The process of gazetting counsellors in Adoption agencies is lengthy and frequently leads to delays in new staff being able to perform relinquishment counselling. It is unclear what benefits are provided by gazettal and this measure could reasonably be removed without effect.

It can be difficult for Adoption agencies to obtain information from State and Commonwealth agencies such as Births, Deaths and Marriages (BDM), Centrelink and Medicare. For example, an Adoption agency cannot obtain information regarding a child's birth registration, prior to the adoption. This means that a parent may advise that they have registered a child's birth, and the agency cannot confirm this with BDM. Other concerning scenarios include Medicare cards issued in the child's full birth name being sent to the adoptive parents (when the birth surname is undisclosed) or Medicare details being sent to the birth mother, when the child's adoptive parents surname is undisclosed. It would be of benefit if the Act provided for an information exchange protocol for children in the pre-adoptive phase.

Question 48: Should there be increased requirements in the Adoption Act to provide post-adoption 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?

Connections is of the view that if adoptive parents seek support, post-adoptive support is currently available from Adoption agencies as needed. The agency has flexibility to provide ongoing support depending on the child and family's needs.