VANISH Submission:

Response to the VLRC's Review of the *Adoption Act 1984* Consultation Paper, August 2016

To: Victorian Law Reform Commission
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This submission was prepared by a working group comprised of VANISH staff and Committee of Management members. VANISH also acknowledges and thanks those external to the working group and VANISH who also provided input or feedback on this submission.

Contents

1. INTRODUCTION

VANISH appreciates the opportunity to have met with the Victorian Law Reform Commission and to make this further written submission in regard to the Commission's *Review of the Adoption Act 1984 Consultation Paper August 2016* (the *Consultation Paper*).

The format of our written submission begins with a summary of the recommendations we make throughout the document (section 2). This is followed by background information about VANISH (section 3.1), our general position on adoption (section 3.2), the implications of our position in regard to the current review (section 3.3), then some preliminary comments on the terms of reference and review process (section 4), before addressing various contextual aspects of the legislation under review (section 5). The submission then addresses the questions regarding which the Commission is specifically seeking the views of the community (section 6). Closing comments (section 7), a bibliography (References section) and appendices are provided at the end of the document.

2. SUMMARY OF RECOMMENDATIONS

A list of VANISH's recommendations to the Commission, and to the Victorian Government more generally, in relation to the current review of adoption legislation is provided in this section. The recommendations are repeated in the body of this document, interspersed in the context of our responses to the *Consultation Paper* and the questions it poses.

VANISH recommends:

1. That adoption be removed from the permanency planning hierarchy of the amended *Children, Youth and Families Act 2005*.

2. That Victoria's adoption legislation be amended so as to properly reflect and respect the needs of the majority of people directly affected by adoption in the state, rather than favour the interests of an anticipated, but unknown and likely relatively small, number of people affected by future adoptions.

3. That the Victorian Government clarify its policy on the use of adoption.

4. That measures be implemented to collect and maintain comprehensive data on all aspects of Adoption and Permanent Care Orders and their outcomes as they are dealt with by the relevant courts, child protection program and out-of-home care system in Victoria. This includes collecting and recording a child's adoption/permanent care status on entry to the child protection and/or out-of-home care system.

5. That anonymised aggregated (i.e. statistical) data regarding the adoption/permanent care information collected and maintained by the courts and DHHS be made publicly available on an annual basis.

6. That the Adoption Act be amended to enshrine that the primary consideration in any potential adoption proceeding is whether any other less drastic legal order could achieve a stable long-term family placement for the child/young person until they achieve adulthood.

7. VANISH recommends that the stringent suitability criteria for prospective adopters that are currently used in practice be enshrined in the adoption legislation and regulations.

8. That the *Adoption Act* include a principle requiring decision makers to consider placing siblings for adoption in the same family.

9. That the consent provisions for adoption provide for a longer minimum period (at least 30 days) after birth before consent can be given, with capacity for this to be extended for at least another 30 days.

10. That the legislation be amended to enshrine the current practice of asking the court to dispense with consent only if the child's natural parents cannot be located after reasonable efforts to locate them over a reasonable period of time, and no extended members of the child's natural family are known.

11. That both natural parents be provided with counselling by an independent and suitably qualified professional, including advice about their information rights and involvement in signing off the information maintained on the adoption file about them.

12. That provisions for counselling be strengthened in order to better support the natural parents and enable appropriate involvement of their extended families in any consideration of adoption.

13. That the court should always specify the conditions (including parties to have contact, nature and frequency of contact) for ongoing contact between the adopted child and their family of origin members (a contact plan) when an Adoption Order is made.

14. That there be provision for parties to apply for variation of the contact plan over time as circumstances change, until the adopted child/young person reaches 18 years of age.

15. That in any adoption proceeding, the child be provided with an independent legal representative.

16. That in any adoption proceeding, the child also be provided with an independent non-legal *guardian ad litem* who is appropriately expert in adoption.

17. That the Act enshrine co-habitation for a minimum of two years as a requirement for eligibility to adopt, whether or not the couple are married.

18. That there be reform of adoption services provision in Victoria, including centralisation of adoption services to a single authorised provider, being the responsible government department (i.e. DHHS).

19. That adoption of a child/young person by relatives or step-parents not be permitted under any circumstances. Alternatively, parenting arrangements in such cases should be made through Parenting Orders in the Family Court, so that the child's identity and existing biological relationships are preserved.

20. That there be a minor amendment to "the applicants have a suitable appreciation of the importance of: contact...and exchange....", by inserting "and acceptance" after "appreciation".

21. That the Act and Regulations better recognise, support and enhance an active and informed role for natural parents in the selection process for adoptive parents of their child.

22. That adopted people be enabled to apply for their original birth certificate from BDM without first being required to have a 'counselling' session with an Adoption Information Service (AIS).

23. That a choice should be provided to adopted people and natural parents applying for their adoption records applicants as to whether or not they want a counselling interview and/or who this interview should be with.

24. That clear guidelines be introduced for AISs in relation to the redacting of records released to applicants.

25. That the legislation reflect that the protection of records is the responsibility of the agencies, and that they must adequately preserve and maintain adoption records at their own cost.

26. That, where an adoption file has not been able to be located, the AIS be required to provide the applicant with full details of the efforts employed to find the file; and where the file has been destroyed, the AIS be required to provide the applicant with the details regarding when and why this occurred.

27. That the meanings of *adoption information*, *identifying adoption information* and *information relating to personal affairs* be agreed and clearly defined in the adoption legislation.

28. That the legislation set out more clearly what adoption information must be released and in what circumstances.

29. That clear guidelines regarding the 'certain circumstances' in which the right to adoption information overrides the right to privacy be developed and incorporated into the relevant Acts, Regulations and Guidelines.

30. That applicants who have a right to identifying information without consent from the other party be able to directly access from Births Deaths and Marriages (BDM) the relevant certificates, which will identify the applicant's natural parent or son/daughter.

31. That consideration be given to a two-step process whereby:
    - minimum identifying adoption information (excluding unnecessary personal information) is released to the applicant, in accordance with their right to apply for such information; and
    - where the applicant is unable to make contact with the natural parent or son/daughter (either because they cannot locate that person or because that person is deceased) and further information is essential in order for the applicant to learn more about their

biological background or their son/daughter, the applicant be able to apply for further adoption information to be released.

32. That a party's wishes for release of adoption information and/or contact should be recorded on a contact register and the applicant advised.

33. That anyone about whom adoption information is to be released should be informed of this.

34. That in future adoptions, relinquishing and adoptive parents be provided with the opportunity to sight the case notes concerning the adoption; and to sign indicating that they have sighted the case notes, do not dispute the contents, and that they have been advised that the records may be released at a later date.

35. That the primary purpose of a birth certificate be to provide an accurate and comprehensive record of the facts of a person's genetic and/or biological parentage and birth, and changes to presentation of the relevant information on all birth certificates be made accordingly.

36. That in future adoptions, cancellation of a person's original birth certificate and issuance of a new one (as if the adoptee was born to the adoptive parents) not be permitted under any circumstances.

37. That provisions be made to issue:
    - an 'integrated birth certificate', which incorporates accurate identifying details of the person's natural parents and adoptive parents, for adopted people who request them; and
    - an alternative identity document for people who were adopted (or born of assisted reproduction interventions, such as donor conception or surrogacy) who do not wish to use their birth certificate for routine identification purposes.

38. That the Adoption Act specifically prohibit changing the child/young person's given names, or removing their family name. However, the adoptive family's name may be added to the child/young person's name, if the child/young person requests it and it is determined to be in the best interests of the child/young person.

39. That an independent legal representative be provided to the natural parents to assist them with the consent and court hearing processes, and that provisions for this be specified in the *Adoption Act*.

40. That post-adoption services be provided free of charge to individuals affected by adoption in Victoria and that these services include: support to access information, assistance with search and contact, support for complex family relationships, mediation, counselling, peer support groups, and community education.

41. That community education include advertising: of the Adoption Information Register, of the rights of parties to an adoption to apply for their records, and of the services available to people affected by separation and adoption.

42. That post-adoption service providers be mandated and funded to lead and commission independent research.

43. That post-adoption services be made available to adopted persons who were born and/or adopted in Victoria, and parents whose child was born and/or adopted in Victoria, and, where appropriate, to other relatives; and that support and counselling services be provided to individuals now living in Victoria, wherever the adoption occurred.

44. That individuals seeking post-adoption services be provided with an informed choice of service providers, including the option to be supported by an organisation or organisations that are not and/or were not involved with arranging adoptions, past or present.

45. That post-adoption services be provided by organisations specialising in post-adoption support and which have search and contact expertise. Also, that counsellors are qualified and/or experienced in post-adoption counselling (rather than only in adoption counselling).

3. ABOUT VANISH INC.

3.1 Background to VANISH

VANISH Inc., the Victorian Adoption Network for Information and Self Help, is a secular community-based not-for-profit organisation. We have been working in Victoria for 27 years with people directly affected by adoption and, more recently, also by state care and donor conception. We draw our policy positions from our direct contact with the many thousands of clients to whom we provide, and have provided, services and our growing membership of 755 people from the adoption, donor conception and associated communities. Furthermore, the Committee of Management of VANISH comprises individuals with extensive professional experience in child and family welfare, adoption, counselling, family mediation and education. (Please refer to our website: www.vanish.org.au.)

VANISH was established in 1989 by people affected by adoption in response to the long waiting list of adopted adults seeking access to their adoption records (including original birth certificates and identifying information about their natural parents) consequent to provisions of the Victorian *Adoption Act 1984*. The introduction of the Act followed a comprehensive broad-based multi-disciplinary four-year review of adoption legislation in Victoria, which recommended more open and consensual adoption practices (as discussed in the *Consultation Paper*). Initially, VANISH received 800-900 new search requests per year, and this has gradually stabilised at around 300 new search requests annually.

VANISH's primary source of funding is the Victorian Government, which has funded our organisation continuously since 1990 to provide a specialised search service for adopted persons, as well as (individual and group) support services to those affected by adoption – including adults who were separated from their family as children and adopted; mothers and fathers separated from their children via adoption; siblings, grandparents and other family members; and adoptive parents. We also provide some services to people who spent all/part of their childhoods in state care, and to individuals who are affected by donor conception.

VANISH recognises strong parallels between the lived experiences of people in our different service user and support cohorts and the complexities they face throughout their lives. We thus take a vital interest in, and advocate on, policy, legislation and services in relation to adoption, donor conception and surrogacy.

VANISH has considerable experience and expertise in adoption. During the last 15 years, our organisation has evolved into a highly professional service, whereby we recruit qualified specialists who may also have an adoption experience. Our membership comprises individuals, predominantly those who have a direct experience of adoption, rather than organisations/groups with allied interests in adoption. We share many common interests and positive links with post-adoption groups and organisations in Victoria, interstate and overseas. We do not claim to represent the entire Victorian adoption community. We endeavour to represent the perspectives and views of our membership and service users.

3.2 VANISH's Position on Adoption

VANISH's position on adoption is embedded in our position on permanency for vulnerable children. We view adoption as a service for vulnerable children inasmuch as it is at the extreme end of the range of permanent care options potentially available to children deemed unable to be raised safely by their parents and extended families. That said, we also view adoption as a redundant permanency option in Victoria, given the existence of other less drastic legally-supported permanent placement options that better support the child's identity and connections with their family of origin.

VANISH is strongly committed to upholding the rights, as well as the 'best interests', of children, and we view these as integral to any consideration of permanency planning for vulnerable children. In this context, we envisage a future when adoption will also be considered by the wider Victorian community as an outdated practice.

Adoption legally removes one set of parents and replaces them with another set of parents, and the child is recognised in law "as if born to" the new parents. This compounds the child's loss of family by violating their rights to preservation of name, heritage, identity, and often also family relationships, across the life cycle. This is inappropriate and unnecessary, and it can and does occur even in 'open' adoptions. Research findings and personal testimonies over several decades demonstrate that these factors negatively impact the adopted person's identity development and well-being throughout their entire life, not just during childhood, and inter-generationally.

VANISH recognises and supports other more suitable permanent placement options available for vulnerable children in Victoria – in particular, the Permanent Care Order via the Children's Court.

VANISH believes that consideration should only be given to permanently removing children whose parents are unable to care, or resume caring, for them in an adequately safe, nurturing and secure manner after appropriate support services have been provided for a reasonable period of time. Sustained change can often require more than two years of service provision. Thus, we consider it inappropriate to impose an arbitrary time limit on reunification efforts, rather this should be assessed on a case-by-case basis, as appropriate to the individual circumstances and best interests of the child.

VANISH holds that appropriate housing, income support and family support/preservation services, including those related to substance abuse, mental health and domestic violence, should be made readily available to vulnerable families from the earliest point that parenting of their children comes to the attention of the Victorian child protection authorities. These services must be child-centred, affordable and accessible for such families (e.g. including the provision of transport and childcare).

Where it has been assessed by the child protection authorities and validated/decided by the Children's Court that a child is unable to be raised safely by their parents, VANISH holds that:

- the child's best interests must be ensured by timely provision of a suitably safe, nurturing and secure alternative family placement;
- it is imperative to commence as soon as practicable a permanency case planning process in order to consider the most suitable permanent placement option available for the child (kinship care or permanent care), and to minimise the number of placement changes the child will experience.

VANISH holds that implementation of Permanent Care Orders for children would be significantly enhanced by a child-focussed, rather than service-focussed, approach. This involves:

- an integrated case management model which seamlessly connects planning for vulnerable children from the time they are identified by the child protection system through to permanency planning and placement, as required; and
- a structural realignment of the out-of-home care system from a silo approach – which differentiates between prospective foster carers (respite, short-term and long-term), permanent carers and adopters – to a robust 'one-door' model of recruitment, training, screening, assessment and matching of carers to the vulnerable children entering out-of-home care.

VANISH acknowledges that more alternative family carers are required, as are improved carer retention rates, in Victoria's out-of-home care system. We recommend strengthening foster care/permanent care in Victoria via the following reforms:

- providing sufficient funding to the whole out-of-home care system;
- embracing a 'one-door' approach and actively marketing it to prospective carers;
- focussing on meeting the child's needs, minimising placement changes and maximising stability, maintaining relationships, and promoting the concept of belonging to families rather than being owned by only one family;
- considering introduction of a *guardian ad litem* system to strengthen advocacy for the child;
- standardising training and assessment processes to achieve best practice standards across the out-of-home care system;
- providing adequate financial compensation to carers, including between periods of having a child in their direct care;
- providing adequate ongoing support and training to carers and adequate ongoing support to the children and their families of origin – with a view to ensuring the maintenance of quality

contact between child and family of origin throughout the duration of the child's placement and beyond;
- conducting appropriate research regarding permanent care outcomes; and
- addressing any security, travel and inheritance issues in relation to permanent care, particularly from the perspective of the child, by amending the relevant legislation, as appropriate.

VANISH holds that, until such time as it is no longer available as an option, adoption should only be considered when all other placement options have been fully explored.

In the rare event that adoption is the selected placement option, then it should be done according to best practice principles, including:

- Honesty – adoption should only occur where informed consent from the child's parents has been obtained;
- Openness – the parents, if they so wish, should be involved in selection of the adoptive parents. Further, every effort must be made to ensure maintenance of ongoing, safe and, where necessary, supported contact and connection between the child and their parents, extended family and culture following adoption proceedings, which should be set out in the adoption order.
- Accuracy and transparency – the child must be provided with full and accurate information regarding the circumstances of their birth, adoption and family history. This necessarily includes that it is not appropriate to change the adopted child's registered birth details or birth names.

3.3 Implications for Current Review of *Adoption Act 1984*

In essence, VANISH's position is that adoption should not be treated as a family formation service, whether or not the child is known to those wishing to adopt him or her. From this perspective, it is a misuse of adoption for a child's non-biological/non-genetic/social parent to adopt the child in order to be legally recognised as the child's parent on the child's birth certificate. Such a practice is demeaning for the adoptee and reduces the purpose of a birth certificate to a deed of ownership. In sanctioning such an outdated practice, the government has a moral responsibility to ensure that no other less interventionist measure is available to ensure legal security of appropriate parenting arrangements for a child's upbringing. Research over many years has demonstrated the potentially significant adverse and lifelong effects of adoption on the adopted person and their identity. A child should not be required to pay this price in order to have clear legal parenting arrangements or to access a safe care environment. Less intrusive alternatives should be used, and there is a range of less damaging alternatives both for couples who wish to create a family and for governments with responsibility to protect children from harm.

VANISH's position that adoption should be undertaken as a last resort is consistent with the policy and practice in Victoria since introduction of the current adoption legislation in 1984, and particularly since implementation of Permanent Care Orders in 1992. Indeed, in his second reading speech for the *Children and Young Persons Bill* on the 8th of December 1988, Community Services Minister Peter Spyker described the provisions for Permanent Care Orders as follows:

> The Bill provides for the Family Division of the court to make a permanent care order in respect of certain children, such orders vesting guardianship and custody of a child in a new set of care givers or "parents". These provisions have been included as a means of providing children with another family when their own family is unable to provide for their long-term care-while enabling children to maintain maximum contact and involvement with members of their natural family. Permanent care orders also provide a means of dealing with "welfare drift".
>
> This problem, which arises when a child is temporarily taken into care by the State, has troubled child welfare authorities the world over. Child welfare systems do not generally make good "parents". As a result, some children drift on and become "lost" In the system, in some cases losing contact with their family altogether. Permanent care orders will enable these children to be cared for within a "permanent" family. (Spyker 1988, p. 1153)

From this perspective, an adoption order should be used for a child only in circumstances where no alternative less interventionist order (for example, a Permanent Care Order from the Victorian Children's Court or a Parenting Order from the Australian Family Court) could achieve a suitable alternative permanent parenting arrangement for the child.

> Morally, the removal of children permanently from their families is unconscionable when, through the provision of social support systems, most families can become able to care for their children without significant risk of harm. Moreover, pragmatically adoption is no longer desirable for the majority of children in care, given our belated recognition of the needs and interests of adopted persons and relinquishing parents for continuing knowledge and contact (Fernandez 1996, p. xvi).

VANISH's position is consistent with best practice principles for permanency planning from a perspective that values the child's connections to their natural family members, community and culture as a birthright and foundation to their identity. It is generally recognised and accepted that this principle applies to Aboriginal and Torres Strait Islander (ATSI) children, but it should equally apply to all children, irrespective of cultural background.

It is for these reasons that VANISH strongly oppose the prioritisation of adoption as the third option, ahead of Permanent Care, in the permanency placement hierarchy of the child welfare legislation implemented in Victoria from March 2016 (via amendments to the *Children, Youth and Families Act 2005*, or *CYF Act*). It is morally and ethically problematic to promote adoptions from out-of-home care, given adoption legislation is premised on the child's parents providing informed consent, and removal of children from parental care for reasons of child protection is inherently coercive and thus non-consensual.

As clarified in the *Consultation Paper*, an adoption order:

- severs the legal ties between a child and all of their biological/genetic family members – not only their parents, but their siblings, grandparents, etc., too;

- results in cancellation of the child's original birth certificate and issuance of a new birth certificate, and thus also a new identity, as if the child was naturally born to the substitute parents – this practice supports and promotes a manifestly false and discriminatory practice for the adopted person; and

- negatively impacts the likelihood of social relationships between the child and their family of origin members being preserved – even where a contact plan is in place at the time the adoption is finalised.

There are strong arguments that, in the context of child protection, an adoption order is punitive for the child and, with reference to the *United Nations Convention on the Rights of the Child (UNCROC)* (UNICEF 1989), violates fundamental child rights. Alternatively, Permanent Care Orders were designed to support preservation of the child's identity and relationships within their kinship network where unable to be safely returned to their parents for reasons of child protection. As emphasised in his second reading speech for the *Children and Young Persons Bill* in the Legislative Assembly on the 25th of May 1989, Noel Maughan said:

> We need to be careful that we do not adopt a heavy-handed punitive approach which is clearly inappropriate when dealing with children who are abused or neglected. We need to adopt a caring, understanding, considerate and helpful approach. (Maughan 1989, p. 2055)

VANISH's position that it is not appropriate for relative substitute parents to adopt a child is consistent with the policy and practice of the Family Court of Australia since 2006 when amendments were made to the Commonwealth *Family Law Act 1975*, which include a greater emphasis on a child's family and social connections. The reluctance to grant relative, including step-parent, adoptions is for reasons of distortion of existing genealogical relationships (as noted in s 3.55 of the *Consultation Paper*), and the associated high risk of identity confusion for the adopted person in the longer term.

Adoption proponents argue that modern, or 'open', adoptions do preserve children's identities and relationships with their natural family members. While this may be the case for some adopted people, it is VANISH's experience that this is not always the case. As the Commission noted in its *Consultation Paper*, only in some cases is there contact between the child's parents and the adoptive family during the first 12 months after the child being adopted is placed with the adoptive parents (s 3.105).

Recommendation 1:
That adoption be removed from the permanency planning hierarchy of the amended *Children, Youth and Families Act 2005*.

4. PRELIMINARY COMMENTS

In this section, we make some general comments about the review of the *Adoption Act 1984*.

4.1 Restricted Terms of Reference

VANISH is profoundly disappointed with the restricted terms of reference of this review. The current review represents the first comprehensive consideration of Victoria's adoption legislation in more than 30 years – an entire generation. VANISH anticipated that the review would encompass adoption policy, service provision and supporting legislation. This would necessarily include consideration of whether the practice of adoption should be continued in Victoria. However, the terms of reference "assume the ongoing existence of adoption in Victoria" (s 1.7). Hence, public consideration of fundamental moral and ethical concerns associated with adoption has been denied from this once-in-a-generation process.

Furthermore, a number of other highly relevant matters are expressly excluded from the review. In particular, we take issue with the exclusion of consideration of the recent amendments to the *CYF*

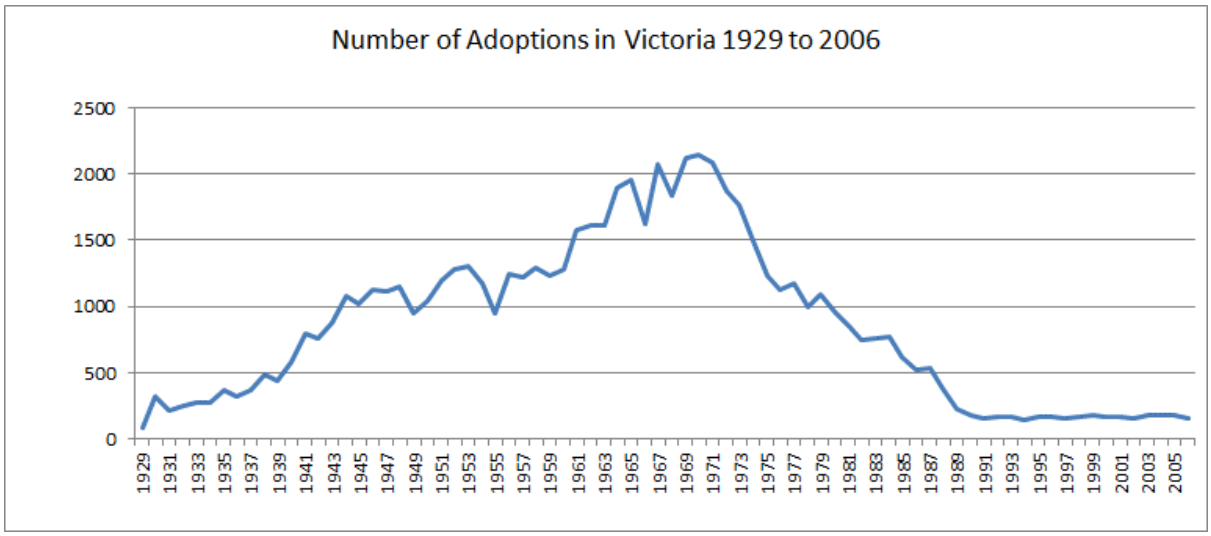
Act 2005, which came into effect on 01 March 2016. We also consider it inappropriate to omit consideration of intercountry adoption from this review, given that the *Adoption Act* applies to adoptions arranged through Intercountry Adoption Victoria.

4.2 Lack of Clarity about Who is Served by the Act

The *Adoption Act 1984* serves and/or may serve a range of Victorians. This includes:

- the many thousands of adults who were adopted in Victoria pre- and post-1984 who may yet seek access to their adoption records, and may require post-adoption support for a range of lifelong issues, in the future;
- the many thousands of parents who have been separated from their children through adoption, who are entitled to seek access to adoption records and may also require support for a range of lifelong issues;
- an unknown number of vulnerable children (including those 'drifting' in out-of-home care, and those living in families that are unsupported by legally recognised arrangements); and
- an unknown number of prospective adoptive parents.

The chart below indicates the magnitude of past adoptions in comparison to current adoptions. It is therefore important that this review ensures a careful balance in respect to the cohorts of people served by the Act.



It is clear that the vast majority of people served by the *Adoption Act* are affected by the sections of the Act relating to information and post-adoption support. Therefore, the review should take care to balance the needs of the thousands of people already impacted by adoption with the relatively few who may be impacted by future adoptions.

Recommendation 2:
That Victoria's adoption legislation be amended so as to properly reflect and respect the needs of the majority of people directly affected by adoption in the state, rather than favour the interests of

an anticipated, but unknown and likely relatively small, number of people affected by future adoptions.

4.3 Paradigm Shift Required

The review seeks to provide recommendations for "modernisation" of the *Adoption Act* and to "better reflect community attitudes". In the Victorian Parliament's 2012 Apology for Past Adoption Practices, Premier Baillieu undertook to "never forget what happened and to never repeat these practices." The Act is over 30 years old and this review is taking place in the post-Apology period. Therefore, a paradigm shift is required. There is a need to move away from a paternalist-protectionist model, which infantilises adoptees and stigmatises parents, to a rights and strengths-based model, which acknowledges the trauma of adoption, and better respects and addresses the lifelong needs of all parties involved.

4.4 Inadequate Timeline for Consultation

The 5-week period scheduled for public consideration of, and submission in relation to, the Commission's lengthy *Consultation Paper* is unfairly restricted and patently inadequate, given the complexities of the legislation involved.

4.5 Implicit Policy Shift on Adoption

Rather than ameliorate the controversial status of adoption in contemporary Victoria, the restrictions of this review serve to:

- ***stymie public education and meaningful discourse on adoption.*** As noted in the *Consultation Paper* (s 3.6), "The adoption process is not widely understood." It is a missed opportunity that the current review of adoption has not been used to educate the general community on the complexities and contentions inherent in adoption.

- ***undermine the official rhetoric*** that the 'best interests of the child are paramount' in relation to adoption.

  The expansion of eligibility to adopt children through passage of the *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* in advance of the current review of adoption legislation suggests a U-turn on adoption policy, prioritising the interests of prospective adopters, as has been common in the use of adoption in Western jurisdictions (see Cole 2009, Fronek 2009, O'Halloran 2015).

  VANISH is disappointed by this development on the strength of the Commission's review of the *Infertility Treatment Act 1995* conducted almost a decade ago. Our concerns do not relate in any way to the fact that this expansion of eligibility involves same-sex couples. What is of concern to us is that it suggests that the government supports the falsification of birth records to enable the parents of donor conceived offspring to act as if the children are naturally born to them.

- ***raise concerns regarding the government's intentions*** in relation to the changes to the permanency legislation effective from March 2016 for children residing in out-of-home care. The inclusion of adoption ahead of Permanent Care Orders in the 2014 amendments to the permanency planning hierarchy (in the *Children, Youth and Families Act 2005*, or *CYF Act*) *ipso facto* represents a clear and significant change in adoption policy by the Victorian Government towards increasing the number of adoptions from out-of-home care.

Recommendation 3:
That the Victorian Government clarify its policy on the use of adoption.

It is incongruous that a government with a progressive social agenda would avoid public consultation on the breadth of issues pertaining to adoption. For some time now, Australian legal, social work and history academics and practitioners – for example, Carney (1999), Parkinson (2003, 2008), Zito (2010), Cashmore (2000, 2001, 2014) and Quartly (2010) – have been writing on the conflict of rights and the subjectivity of determining a child's best interests that are inherent in Western child welfare systems and adoption laws. In contrast, conservative and neo-liberal think-tanks with no direct or professional expertise in the field have been advocating increased and expedited use of adoption from out-of-home care. The *Consultation Paper* refers several times to a book by one such proponent (Sammut 2015), which expounds arguments that reflect a "flawed and outdated ideology about child rescue" (Ainsworth 2016, p. 163).

In any event, "the research evidence is not conclusive that adoption necessarily provides for better outcomes for children than long-term stable foster care per se." (Cashmore 2014, p. 147).

With respect to the recommendations of The Senate Community Affairs References Committee on Out of Home Care (Committee 2015), VANISH is concerned with a focus on expediting the exit of children from out-of-home care without simultaneously focusing on remedying the reasons for more children being removed from their families and remaining in temporary placements longer. The Senate Committee noted that:

> One of the most contentious permanent care options examined by the committee was adoption. The committee heard both support and opposition to encouraging adoption as an option for children in out-of-home care. (p. 208)
>
> The committee heard particular concerns about the conflation of the concept of permanency with legal adoption. (p. 216)
>
> The committee recognises that 'permanency' can be achieved through a range of different placement options, including stable relative/kinship or foster care. In some cases, the committee acknowledges that legally permanent placement options, including guardianship orders and adoption, may be appropriate placement options for children and young people in long-term out-of-home care placements. However, the committee notes that there is little evidence to suggest legally permanent forms of care are effective in reducing the number of children and young people in out-of-home care, and that the focus for child protection authorities should remain on supporting families. (p. 217)

4.6 Experts

Finally, the *Consultation Paper* does not identify the "two experts in the field" from whom the Chair of the Commission has sought advice in regard to this review (s 1.22). Are these experts from Victoria, another Australian jurisdiction or an international jurisdiction? What are the fields of their professional expertise? The answers to these questions may have a significant influence on the direction of the Commission's recommendations to the Victorian Government on conclusion of this

review and, as such, should be open to public scrutiny. Furthermore, it would have been useful if a Bibliography/References section had been included to help the reader gain an overview of the breadth and depth of the material reviewed by the Commission.

4.7 Summary

In summary, VANISH is concerned about the overly restricted terms of reference for this review; the lack of balance regarding the groups affected by the Act; the lack of emphasis on the need for a paradigm shift in adoption policy in the post-Apology era; the inadequate time period for public consultation and submission; the omission of the contentious issue of adoption from out-of-home care; and the lack of transparency regarding the two experts being consulted by the Chair of the Commission in regard to the review. It is difficult not to conclude that this review is being rushed in order to expedite a predetermined agenda.

5. COMMENTS ON THE CONSULTATION PAPER: BACKGROUND CHAPTERS

In this section, we comment on some statements made in the *Consultation Paper*.

5.1 Glossary

The inclusion of a Glossary (pp. xi–xii) and a Terminology section (ss 1.8–1.20) in the *Consultation Paper* facilitate common understanding of key terms and concepts. However, there are some gaps and inconsistencies in the definitions provided in the Glossary, as follows:

- A definition is provided for the concept of an 'integrated birth certificate' (p. xii), but none for a standard 'birth certificate'.

- The definition provided for 'closed adoption' includes that it "is no longer practised in Victoria" (p. xi). VANISH contends that this is a matter of opinion rather than fact, given numerous anecdotal accounts of contact between natural and adoptive families breaking down relatively soon post-placement.

- The definitions provided for 'closed' and 'open' adoptions (pp. xi-xii), and the later section on 'What is open adoption?' (ss 2.42–2.45), do not explain that the introduction of open adoptions in a given jurisdiction does not preclude the ongoing practice of closed adoptions in the same jurisdiction (for example, in the US[1], 'open' adoption practices are the norm for private adoptions[2] in the majority of states, while 31 of the 50 states currently continue to practice closed adoptions from out-of-home care[3]), or vice versa (for example, New Zealand introduced an open adoption policy in the 1980s, in contrast to the 'clean break' policy underlying the *Adoption Act 1955*, which remains the primary adoption legislation in that jurisdiction – as discussed in s 2.82).

[1] 'US' is the acronym here used for the United States of America.
[2] The practice of private adoption is not legal in Victoria or, indeed, in any other Australian jurisdiction.
[3] This information was sourced from the American Adoption Congress Website, accessed on 16 August 2016: http://www.americanadoptioncongress.org/state.php.

- Similarly, the section on 'Open adoption in the *Adoption Act 1984*' (ss 2.46 – 2.47) states, "The Adoption Act establishes open adoption. Openness is built into the adoption process." However, it is not explained that the continuing practice of cancelling the child's birth certificate and issuing a new one, as if the child was naturally born to the adoptive parents, was carried over from the previous closed adoption era.

- The definition provided for the term 'forced adoption' does not mention that the term is highly divisive in the adoption community and that, from an adopted person's perspective, consent was never given. Furthermore, no definition was provided for 'past adoption practices'.

- The definition provided for 'special needs adoption' (p. xii) does not include a reference for the source of that definition, nor does it explain that different adoption authorities have different criteria for defining the adoptions of children with additional special needs. VANISH holds that all adoptions are 'special needs' adoptions, because they involve the trauma of separation. The Commission notes, "Adoption can be difficult to write about due to the trauma suffered by many people affected by past adoption practices in Australia" (s 1.8). VANISH contends that adoption is a difficult topic to write about because people separated from their natural families via adoption have lifelong vulnerabilities and special needs, irrespective of when their adoption took place or their age at the time.

5.2 Terminology

VANISH raises concerns regarding the use of some terminology throughout the document. These terms include:

- **touched by adoption** (s 2.2): Most individuals directly affected by adoption would say that the impacts of adoption are much more profound than indicated by the term "touched". The term "touched by adoption" is one employed by the American adoption industry, and is considered highly inappropriate and minimising by the Victorian adoption community.

- **birth mother**: The terms frequently used in the adoption sector for the natural parents are 'birth mother' and 'birth father'. This implies that their role was and remains related to the birth of the child. However, in reality when a child is relinquished or removed, the familial relationships already in place do not cease to exist. Whether or not contact is ongoing or frequent, the child is still genetically and psychologically connected to his or her parents, siblings, grandparents and ancestors. This does not change, even when the relationships are legally severed.

- **adoptive mothers** (s 1.11): VANISH strongly recommends that, in the post-Apology context, use of the term 'mother' (i.e. in reference to natural mother) should not be determined by the sensitivities of adoptive parents.

- **relinquishment** (s 1.3): In the context of past/closed adoptions, VANISH suggests that reference should be made to "relinquishment/removal", given contemporary understanding of the unethical nature of pre-1980s adoption practices.

- **given up** (s 1.10): Use of this term is confusing: is it possible for mothers to have "given up" their children forcibly? "Given up" suggests that the decision was voluntary, rather than 'forced'.

- **past adoption practices** (s 1.8): It is important not to assume that trauma from adoption has occurred exclusively in the context of pre-1980s adoption practices, which are referred to in the *Consultation Paper* as "past adoption practices."

5.3 History of Adoption Law in Victoria

The *Consultation Paper* states that a number of the recommendations from the Commission's *Assisted Reproductive Technology & Adoption* Report (2007) related to adoption, including that the *Adoption Act 1984* be amended to allow same-sex couples to adopt (ss 2.54–2.55). VANISH was very supportive of, and actively advocated for, many of the recommendations in that report, particularly those pertaining to access to information for donor conceived people.

However, VANISH was not supportive of any significant amendments to the *Adoption Act 1984*, particularly in relation to expanding eligibility for prospective adoptive parents, without first undertaking a broad review of the Act. This accords with our positions that adoption should not be treated as a family formation service for prospective parents; and that it is a misuse of adoption for a child's non-biological/non-genetic/social parent to adopt the child in order to be identified as the child's legal parent on the child's birth certificate. The decision by the Department of Premier and Cabinet to fulfil its election commitment by permitting "all couples to adopt, irrespective of gender or sex" (footnote 69, p. 18) without having first reviewed the *Adoption Act* indicates prioritisation of the interests of prospective adoptive parents ahead of consideration of the best interests of children.

Section 2.61 states an "estimated 140,000-150,000 adoptions occurred in Australia between 1951 and 1975". It would have been useful if a reference was provided for the source of that estimate.

The *Consultation Paper* states, "The Commission should not consider intercountry adoption programs or commercial surrogacy: these matters are more appropriately considered at a national level" (p. x). However, both these matters are regulated by Victorian legislation. Further, the *Consultation Paper* also discusses *UNCROC*, particularly Article 21 which "provides specifically for the best interests of the child in an adoption" (ss 2.98–2.91). As Quartly (2010) has explained, *UNCROC*'s

> focus here is very much on intercountry adoption, which was by 1989 a matter of international concern. The intention is not to establish any rights relating to adoption, neither a child's right to be adopted nor an adult's right to adopt. Rather the aim is to regulate and even restrict the practice of intercountry adoption.
>
> … the default position, the underlying assumption, is that the child's interests are best served within her natal family, and that state action is a poor, if occasionally necessary, alternative. These principles were spelled out in much greater detail in the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (United Nations 1993). This instrument is seen by some agencies acting on behalf of prospective adopting parents as actively anti-adoption in intention and effect. (pp. 39-10)

Intercountry adoptions from a number of countries that are domestically arranged in Victoria require finalisation in the Victorian County Court. Similarly, it is well known that many Australians, including Victorians, travel overseas to engage in commercial surrogacy practices, which are

specifically prohibited in all Australian states and the ACT. There are contentious issues pertaining to the nature and accuracy of the children's birth certificates and their access to identifying information about their biological/genetic parents with both intercountry adoption and surrogacy arrangements. Thus, it is arbitrary and inappropriate to exclude all consideration of intercountry adoption and commercial surrogacy in the current review.

In addition, the VLRC review team will be aware that many Australians, including Victorians, adopt children when residing temporarily overseas. These adoptions come under Commonwealth laws, but they are only superficially scrutinised by the Department of Immigration and Border Protection when the adoptive parents seek to return to Australia with their adopted child. Not only are expatriate adoptions not subject to the same high standards of education, screening and assessment that apply to adoptions arranged in Victoria, but on their return to Victoria there is no automatic linking of the new adoptive families to post-placement monitoring and support services. VANISH has long been concerned by this situation, and it is a missed opportunity to not consider the challenges faced by these adoptive families and the specific needs of the children in the current review.

Finally, s 2.93 outlines key human rights which may be relevant to the *Adoption Act*. Cancellation of a child's birth certificate and issuance of a new one as if they were naturally born to their adoptive parents discriminates against an adopted person's right to recognition and equality before the law. Removing such legal discrimination should be prioritised above enabling a social parent to adopt a child so as to be included on the child's birth certificate.

5.4 Current Law and Practice in Victoria

S 3.2 in Chapter 3 of the *Consultation Paper* states that this "chapter only discusses adoption of children born or situated in Victoria through the Victorian legal system." As stated in the previous section, this should include overseas adoptions given some adoptions arranged via the Victorian Government's intercountry adoption program (Intercountry Adoption Victoria) need to be finalised in the County Court, and the *Adoption Regulations* apply to all prospective adoptive parents who apply through Intercountry Adoption Victoria.

Footnote 2 on p. 23 of the *Consultation Paper* notes that the "annual report [of the County Court of Victoria] does not identify how many adoption orders were for local adoption and how many for inter-country adoption." In fact, this information is maintained by the Victorian Department of Health and Human Services (DHHS) and is published by the Australian Institute of Health and Welfare (AIHW) each year.

However, no statistics are disseminated by DHHS in relation to the number of adoption and Permanent Care order breakdowns, as measured by children coming to the attention of the child protection program and subsequently being placed in the out-of-home care system. A key way to accurately measure the outcomes of any change to children protection, out-of-home care or adoption policy is to analyse the relevant information, but this is severely hampered where routine collection and/or dissemination of relevant information is not prioritised.

Recommendations 4 and 5:
That measures be implemented to collect and maintain comprehensive data on all aspects of Adoption and Permanent Care Orders and their outcomes as they are dealt with by the relevant courts, child protection program and out-of-home care system in Victoria. This includes collecting

and recording a child's adoption/permanent care status on entry to the child protection and/or out-of-home care system.

That anonymised aggregated (i.e. statistical) data regarding the adoption/permanent care information collected and maintained by the courts and DHHS be made publicly available on an annual basis.

S 3.55 states that known-child adoptions "are generally discouraged, because they can alter and distort family relationships." In fact, adoption, particularly known-child adoption, always distorts the child's genealogical relationships and causes identity confusion.

S 3.114 states, "People may require support after an adoption is finalised." VANISH contends that most people will require support after an adoption is finalised, and this should not be under-stated. This need for support can occur at any stage during the lifetime – adoption is permanent, and so the impacts of adoption are experienced lifelong. Adoptions are made with respect to children, but the children become adults and subsequently spend most of their lives in adulthood.

5.5 Adoption in the Child Protection Context

VANISH is alarmed that the recent amendments to adoption in the *CYF Act 2005* are deemed by the Commission to be "outside the scope of the review and the Commission is unable to consider submissions on the provisions of the CYF Act" (s 4.4).

This specific exclusion was not indicated in the 'Scope of the reference' sub-section in the Introduction of the *Consultation Paper*. This decision reinforces public perception that the Victorian Government intends to increase the rate of adoptions from out-of-home care, and/or to enable people who have children via assisted reproduction using donor gametes/embryos to adopt the children born via those interventions.

6. QUESTIONS AND ANSWERS

In this section, we respond to the specific questions for which the Commission has requested feedback in the *Consultation Paper*. Due to the tight consultation timeframe and the large number of questions involved, VANISH has not been able to provide the level of consideration and/or detail that is required in responses to many of the Commission's questions. This is unfortunate, given the import of the changes under consideration and the rarity of the opportunity to have such input.

6.1 The Best Interests and Rights of the Child

6.1.1 Question 1: Should the Adoption Act use consistent terminology to guide decision makers in a decision relating to adoption?

As highlighted in section 5.2 of this document, the terminology used in adoption is a sensitive subject.

Notwithstanding, consistent terminology should be used in Victoria's adoption legislation to guide decision makers. VANISH holds that the principles of 'best interests' and 'rights' of the child are vital, but also highly subjective, concepts that are prone to being differently understood by different people at different points in time. There is no universally accepted definition of either concept, despite the development and widespread ratification of *UNCROC*. The 'best interests of the child' principle is a minimum, but not sufficient, basis from which to make determinations in relation to adoption. Child 'rights' are not as clearly expressed as civil rights; they are really 'welfare rights' which reflect the complexity and interdependency of the child's rights in relation to the rights and responsibilities of their parents. Children rely on their parents to effectively fulfil their parental responsibilities in order for the child's rights to be upheld. However, not all parents are entirely capable and/or willing to exercise their parental responsibilities.

Further, there is a fundamental flaw in seeking "to ensure that the best interests and rights of the child are the foremost consideration in any decision under the Adoption Act" (s 5.1), being that this principle does not take a sufficiently long-term view of the potential adopted person's best interests.

Adoption is permanent, with lifelong implications and impacts. However, the circumstances that require permanency generally exist only during the adopted person's childhood (i.e. until the age of 18). Adoption is an intrinsically patriarchal and protectionist concept (*parens patriae*), just as is the 'best interests of the child'. In combination they reach too far in endeavouring to resolve what is, in fact, a temporary – albeit critical – circumstance in the life of the child, who will spend a greater proportion of their life as an adult. Other legal permanency orders can achieve stability and security for the child, without risking the long-term negative impacts for the individual associated with a change of identity and loss of contact with their natural parents and extended family members. Mistakes in social policy and unintended consequences are more likely when only a limited range of options are considered, and this is equally true in regard to permanency planning.

VANISH holds, therefore, that the decision to proceed with an adoption must be viewed in the context of prevailing ideology. Even the most 'politically correct' and consistent terminology cannot disguise or remediate the consequences of adoption.

As highlighted in Recommendation 2, the terminology used in the *Adoption Act* should not only be consistent, but should also reflect the reality that many of the provisions in the Act apply to adults who were adopted as children. Further, the terminology must also account for the fact that, despite the best intentions at the time, an adoption order granted under the 1984 legislation may not have been, or resulted in, an open arrangement.

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

VANISH considers that the *Adoption Act* should include clear definitions and guidelines to assist official and judicial decision makers. This is imperative in order to promote the upholding, particularly, of the (potential) adopted person's rights, and to facilitate consistent decision-making and practices in considerations of adoption.

If yes: (a) What should decision makers be required to consider?

The primary consideration in any potential adoption proceeding should be whether any other less drastic legal order could achieve a stable long-term family placement for the child/young person until they achieve adulthood. If the child/young person and their permanent care family wish to make their family arrangement endure after the child reaches 18, the option of adoption remains an option for them at that time – when the young person is legally deemed an adult and able to make an informed decision in relation to the lifelong ramifications of being legally adopted. Consideration could also be given to amending the legislation regarding Permanent Care Orders so as to provide for an enduring connection between the young person and their Permanent Care family beyond 18 years of age.

Recommendation 6:
That the Adoption Act be amended to enshrine that the primary consideration in any potential adoption proceeding is whether any other less drastic legal order could achieve a stable long-term family placement for the child/young person until they achieve adulthood.

If current 'temporary' caregivers express a wish to permanently care for a child/young person but only via adoption (and similarly, if adoption applicants express a wish to adopt a child but only from overseas), the suitability of such caregivers must be seriously questioned. The suitability and matching of applicants to a child must include rigorous assessment of their motivation and capacity to prioritise the long-term best interests of the child/young person above their own, and to recognise that relational rather than legal security is the most important aspect of their relationship with the child/young person (Freundlich, Avery et al. 2006, Walsh 2015).

It is obviously also very important to consider the wishes of the child/young person in regard to *who* they wish to reside with.

However, it is both unrealistic and unfair to place the onus on the child/young person to choose between adoption and another legal order as the mechanism to ensure their own permanent placement. As noted in the *Consultation Paper* (s 3.6), "The adoption process is not widely understood." Given adults generally lack an understanding of adoption, and children and young people are developmentally less able to understand the long-term consequences of various courses of action than adults, how can a child/young person be reasonably expected to appreciate the gravity of the lifelong implications of such a choice? The impacts of adoption are, in many ways, more significant than those of marriage. In contemporary Victoria, do we consider it appropriate for a child as young as 12 years, or even 10 years (see s 5.144–5.155), to decide that they wish to marry? Do we consider it appropriate for a child's parent/guardian to decide on their behalf that the child should marry as young as aged 10?

VANISH is aware that many prospective and foster parents, including those who have become Permanent Care parents, wish to adopt the children placed with them. Children generally do not wish to displease their caregivers; they seek to fit in; they feel obliged to agree with their caregivers, even when they do not understand the range of options that may be available or the full implications of their 'choice', particularly if feeling anxious that their placement may terminate should they disagree with their carers' preference. Such a scenario does not lend itself to assurance that a child/young person is in a position make a free and informed decision to be adopted.

(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?

VANISH recognises that sibling relationships are often the longest and most significant relationships people have in their lives (Gupta-Kagan 2015). Therefore, consideration of the impact of an adoption on a person's relationships with their siblings, in particular, should be weighted heavily in any adoption proceedings.

Preservation of the child/young person's relationships (with family and friends), and continuity of their school, community and recreational activities are the factors that should be weighted most heavily.

6.1.3 Question 3: Should the Adoption Act have requirements about the age difference between the adopted child and any other children in the family? If yes, what requirements?

VANISH supports existing adoption policy and practice in relation to children's age differences. The adopted child should always be the youngest child to join the adoptive family, including in the case of siblings. In other words, the eldest adopted sibling should be younger than the youngest child already in the family before the adoption. This is to ensure that existing children in the adoptive family are not displaced and to avoid setting up competition between children for the adoptive parents' attention, given that adopted children are vulnerable and have special needs.

There should be a minimum two-year age gap, but preferably larger, between the youngest existing child in an adoptive family and the adopted child. Further, it is important that the adoptive parents do not introduce a (or a further) biological child into their family after they adopt a child/sibling group. The adoptive parents must be able to focus fully on the adopted child(ren) and must be able to commit to this, otherwise the adopted child/sibling group is likely to experience displacement in the adoptive family.

Notions that adopted children can be successfully interspersed with existing children in the family; or that it is in a child's best interests to have a same-age sibling, to be as close as possible in age to siblings, or to be adopted together with another child befriended in out-of-home care ("bonded pair"), are popularist notions. In reality, such practices often present unfair challenges to the child and create difficulties with their integration into the family.

VANISH supports enshrining in the *Adoption Act* requirements relating to fertility, pregnancy and spacing of children, which are already adoption policy and comprise part of the suitability assessment of prospective adoptive families in Victoria. All third party family formation methods require tight regulation and close monitoring, and thus we strongly support the maintenance and implementation of rigorous suitability and matching criteria where adoptions are concerned.

Recommendation 7:
VANISH recommends that the stringent suitability criteria for prospective adopters that are currently used in practice be enshrined in the adoption legislation and regulations.

6.1.4 Question 4: Should the Adoption Act include a principle requiring decision makers to consider placing siblings for adoption in the same family?

Yes, sibling relationships are often the longest and most significant relationships that people have in their lives, as discussed in *6.1.2 (b) and (c)*. Therefore, the placement of siblings together should always be prioritised, regardless of the legal nature of the placement, as research indicates that placement with siblings is a resilience factor for vulnerable children (e.g. Akin 2011, Boddy 2013, Gupta-Kagan 2015). Further, this is a way to ensure that siblings do not needlessly lose contact with each other and that their biological relationships are not arbitrarily severed by law, both of which are likely to happen when siblings are placed in separate permanent placements – especially adoptive placements. The need for siblings to stay together is well researched and well understood by the agencies concerned (e.g. refer to DHHS's out-of-home care policy, Berry Street, etc.).

Recommendation 8:
That the *Adoption Act* include a principle requiring decision makers to consider placing siblings for adoption in the same family.

6.1.5 Question 5: Should there be a greater obligation to identify and contact the father of the child to obtain his consent to an adoption?

Yes, there should be a greater obligation to identify and contact the father of the child to obtain his consent to adoption.

From the adopted person's perspective, it is a violation of their birthright to not be provided with the identity of their biological/genetic father and for his details to not be included on their birth certificate. Many fathers have also experienced profound loss following exclusion from the birth and adoption of their child, including those not informed of the pregnancy in the first place. These disappointments and losses are compounded if such a scenario eventuated because those authorised to arrange the adoption did not take reasonable steps to accurately identify the adopted person's father, irrespective of the nature of the relationship between the father and mother at the time (for example, see Coles 2010).

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

It is too easy for fathers to be excluded from adoption proceedings involving infants, and thus difficult to identify circumstances in which the father's wishes should not be ascertained in an adoption proceeding – apart from cases of rape or incest. Even then, depending on the specific circumstances, it is not necessarily correct to assume that the father would not be motivated and/or capable of contributing in some positive way to the child's long-term care and well-being if he was approached.

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

VANISH understands that, while the Act mandates a minimum time frame of 14 days after birth before consent can be given, in practice there is usually a much longer period required to ensure parents receive information – especially about alternatives to adoption and the long-term effects of adoption on the child and themselves; and to have sufficient time to consider what is the right decision for them and their child. The Act should reflect this, and it should also extend the minimum time after birth before consent can be given to at least 30 days, with the capacity to extend this for a further 30 days.

VANISH strongly recommends that consent provisions for adoption in Victoria enshrine the current practice of asking the court to dispense with consent only if the child's parents cannot be located after reasonable efforts to locate them over a reasonable period of time, and no extended members of the child's natural family are known. There are other legally permanent placement options available in the event that a natural parent does not consent to their child being adopted, and thus planning for a child's permanency need not be adversely impacted. We note that applications for dispensation of consent are very rare in Victoria, and only occur is unusual and special circumstances.

Obtaining a genuinely informed and unfettered consent within the context of protective intervention, which is inherently coercive and non-consensual, is problematic. While a parent may be assessed by child protection authorities as unable to adequately undertake their parental responsibilities, this does not necessarily also mean that they do not love their children; do not wish to be able to meet their full parental responsibilities; and do not wish to 'fight' for their children. These are all important considerations for the child to be aware of as he/she matures into adulthood and beyond.

So long as the Victorian Government is keen to persist with legislation that legally severs a child's relationships with their family of origin and falsifies their identity, the government must be confident that adoption in the child protection context is necessary, and also that all reasonable efforts are undertaken to locate the parents, assess their parental capacity to consent, and to assess the wishes and/or suitability of close relatives of the child (see *6.1.8* below) before a decision is made to dispense with that consent. VANISH is aware that this is standard practice now in cases where the child has been abandoned and the identity of the parents is unknown, and that the courts would not grant a dispensation unless this happened.

VANISH further recommends that both parents should receive counselling from, and (in the event that they decide to proceed with an adoption) to provide their consent to, an independent and appropriately qualified and experienced counsellor that is not involved with the agency that is arranging their child's adoption.

Further, VANISH strongly recommends that both parents should be informed about the rights of other parties to access the information about the adoption in future. It should be the responsibility of the caseworker to ensure that both parents sight all the relevant records and sign to confirm that they do not dispute the contents. This position has been formed in response to the distress caused to mothers and fathers upon finding out what has been disclosed to their relatives about them.

Recommendations 9–11:

That the consent provisions for adoption provide for a longer minimum period (at least 30 days) after birth before consent can be given, with capacity for this to be extended for at least another 30 days.

That the legislation be amended to enshrine the current practice of asking the court to dispense with consent only if the child's natural parents cannot be located after reasonable efforts to locate them over a reasonable period of time, and no extended members of the child's natural family are known.

That both natural parents be provided with counselling by an independent and suitably qualified professional, including advice about their information rights and involvement in signing off the information maintained on the adoption file about them.

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

VANISH recognises the profound losses experienced through adoption by the person who is adopted and their family of origin members, including biological parents, siblings, grandparents, aunts, uncles, cousins, etc. One, or even some, of these parties may be willing and suitable to raise the child for whom relinquishment is being considered if aware of the situation. While bearing in mind the provisions of the Act which protect the privacy of the child's parents, reasonable efforts should be made to support the parents to inform the extended family of the child's situation where this is appropriate (i.e. except where this would place the child in danger); and to ascertain the wishes/consent of the maternal and paternal grandparents of the child in relation to adoption, and also of any adult siblings and aunts and uncles of the child's parents, where the parents have informed them of the situation.

Recommendation 12:
That provisions for counselling be strengthened in order to better support the natural parents and enable appropriate involvement of their extended families in any consideration of adoption.

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

Dispensation of parental consent is a counter-productive means to achieve a stable loving placement that preserves a child's identity and relationships with family of origin members, as it exacerbates what is already an adversarial and coercive situation.

Please refer to sections *6.1.5* through *6.1.8* above for further discussion in relation to this question.

6.1.10 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 a 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.

VANISH is not aware of any research regarding the extent of ongoing contact in 'open' adoptions, or of the outcomes for any or all of the parties, particularly in the Victorian context. However, there is anecdotal evidence that contact actually diminishes or ceases over time. It is thus inappropriate to assume that the best intentions and commitments at the time of the adoption will result in preservation of contact and relationships between the child and their parents and family of origin.

For these reasons, VANISH believes that the court should always specify conditions for ongoing contact between the adopted child and their family of origin members. Provisions should enable these conditions to be varied over time, in regard to the nature and frequency of contact, as the child matures and their needs change. There should also be provision for parties who were not able to participate in the adoption proceedings to apply to have contact with the child: for example, a parent who was incarcerated; a father or paternal family member who was not informed of the pregnancy; or any siblings of the adopted child who are permanently placed in another family.

Recommendations 13 and 14:
That the court should always specify the conditions (including parties to have contact, nature and frequency of contact) for ongoing contact between the adopted child and their family of origin members (a contact plan) when an Adoption Order is made.

That there be provision for parties to apply for variation of the contact plan over time as circumstances change, until the adopted child/young person reaches 18 years of age.

6.1.11 Question 11: How should adoption law provide for the child's contact with family members other than the parents?
For example: (a) Should contact arrangements be considered as part of a best interests principle?

Contact arrangements between an adopted child and their family of origin members are integral to any best interests principle in relation to the child. Such contact is integral to upholding the child's rights as enshrined in *UNCROC*, and research evidence has long demonstrated (i.e. since permanency planning was developed in the US in the 1970s) that children experience better outcomes when such contact is maintained (Fernandez 1996).

(b) Should a decision maker, such as DHHS, be required to consider contact with family members other than parents after an adoption?

VANISH holds that contact between the adopted child and their parents and extended family of origin members should be considered, supported, monitored and regularly reviewed after finalisation of an adoption. DHHS is not necessarily best placed to perform these roles. DHHS's own resources are oriented to child protection activities, which VANISH contends is a key reason that foster care drift occurs in the first place. Research evidence shows that contact between children

and their family of origin members can quickly break down from the time a child enters out-of-home care if not adequately supported (Fernandez 1996). Therefore, VANISH recommends that post-adoption contact should be supported by an independent post-adoption support (including mediation) agency that is adequately resourced and independent of DHHS's child protection program. DHHS should focus its efforts on supporting regular and positive contact for the child and their natural family members during the period of child protection proceedings.

(c) Should the court be required to consider making conditions for contact with family members other than parents after an adoption?

The importance of measures to ensure that an adopted child's relationships and contact with all their significant family of origin members are legally maintainable and maintained after adoption cannot be overemphasised.

6.1.12 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?

It is evident that the general community is unaware of the lifelong impacts and issues associated with adoption from the perspectives of those most affected. As the Commission noted, "The adoption process is not widely understood" (s 3.6). This means that the term of reference seeking for the *Adoption Act* to "better reflect community attitudes" is somewhat fraught, without there having first been a deeper public discourse and education process in regard to the rights, best interests and long-term well-being of vulnerable children.

6.1.13 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?

Notwithstanding that the child/young person's wishes should always be sought and considered in adoption proceedings and that the child/young person's involvement should be facilitated to the fullest extent possible, VANISH opposes any provision that places the onus on the child/young person to have to consent to being adopted – given adoption is a legal institution with a more profound influence throughout the adoptee's adulthood than marriage.

Please refer to our comments under *6.1.2 (a)*, *6.1.15* and *6.1.16* for further comments relevant to this question.

6.1.14 Question 14: In what circumstances, if any, should a child have separate legal representation in adoption proceedings?

VANISH strongly recommends that the child should have separate legal representation in any adoption proceedings, on the basis of the profound lifelong impact that adoption has on the entirety

of the adopted person's life. If the principle of the 'best interests of the child' is paramount, and the endeavour to uphold the child's universal rights is genuine, then independent legal representation should be mandatory in every case where adoption or a post-adoption contact plan is being considered.

VANISH also recommends that the child's natural parents should always have independent legal representation in any adoption proceedings.

Recommendation 15:
That in any adoption proceeding, the child be provided with an independent legal representative.

6.1.15 Question 15: Should the Adoption Act provide guidance about the duties and role of a legal representative?
For example, should a lawyer act in what they think is the best interests of the child, or should they follow the instructions of the child even if they don't think this is in the child's best interests?

The *Adoption Act* should provide clear guidance in regard to the role and duties of the child's legal representative, so as to minimise the subjective aspects inherent in considerations of adoption and to facilitate fairness and consistency in practice. In addition, VANISH recommends that a *guardian ad litem* (e.g. a specialist social worker or psychologist) should also be appointed for the child, in order to assist the child to instruct their legal representative so as to ensure that the child's views and best interests are maximally informed and supported and that no undue pressure is placed on the child to express preference for a particular outcome. The child's legal representative should be required to act in liaison with the *guardian ad litem* in a combined direct representation–best interests model, depending on the age, maturity and capacity of the child.

Recommendation 16:
That in any adoption proceeding, the child also be provided with an independent non-legal *guardian ad litem* who is appropriately expert in adoption.

6.1.16 Question 16: Should the Adoption Act provide for non-legal representation or support of a child in adoption proceedings?
If yes, what kind of representation or support should this be?

Yes, VANISH believes that, in addition to having separate legal representation, a non-legal representative – a *guardian ad litem* – should also be appointed to support the child in any adoption proceedings. Please refer to our comments in *6.1.15* above.

6.2 Aboriginal and Torres Strait Islander Children and the Best Interests Principle

6.2.1 Questions 17-22

VANISH supports the ATSI child placement principle, and acknowledges and respects the perspectives and roles of Aboriginal and Torres Strait Islander (ATSI) people in determining the

rights, best interests and long-term well-being of ATSI children. As such, we do not offer any specific responses in regard to questions 17–22 of the *Consultation Paper*.

VANISH contends that the equivalent principle to the ATSI child placement principle should apply to children of each and every culture within the Victorian community.

6.3 Eligibility, Suitability, Contemporary Attitudes and the Law

Consideration of eligibility and suitability to adopt a child must be seen through the lens of the best interests of the child to be adopted, both during childhood and throughout the person's entire life. Broadening eligibility and amending suitability standards are only acceptable if they relate to enhancing the life chances of a child for whom no other type of care is possible.

Placement of a child with an adoptive family has serious and long-term consequences, and the Commission properly recognises the need for appropriate criteria to ensure the child is raised in a stable and positive family environment.

Adoptive parenting involves parenting a non-biological child and as such has a number of additional challenges and pressures. The current review provides the opportunity to recognise these more clearly in legislation, and to spell out eligibility and suitability requirements along with assessment processes in a more transparent way.

6.3.1 Question 23: Is a co-habitation requirement consistent with contemporary family life and the best interest of the child?

To be able to adopt, couples in domestic relationships are required to prove that they live together and have lived together for two years. This requirement does not apply to other couples such as married couples.

If there is any confusion in the Act with regard to co-habitation of adoptive applicants, this has been clear in adoption practice. Requiring adoptive applicant couples – whether married, de facto or same-sex – to live together is entirely consistent with contemporary family life, and clearly in the best interests of children.

In contemporary society, being married does not necessarily indicate greater stability for a child than other committed relationships. Therefore, VANISH recommends that co-habitation for a minimum of two years be a requirement for eligibility to adopt, whether or not the couple are married.

If yes, should a co-habitation requirement apply to all couples equally?

The co-habitation requirement should apply to all couples equally, and the Act should reflect this requirement more clearly.

Recommendation 17:
That the Act enshrine co-habitation for a minimum of two years as a requirement for eligibility to adopt, whether or not the couple are married.

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

The Act privileges couples over single people in terms of eligibility to adopt, and the reasons for this are historical and pragmatic. Anecdotal evidence and practice has identified that many adopted people benefited as children from having two adoptive parents, especially if their relationship with one adoptive parent was problematic. In addition, natural parents who are unable to provide a family for their child routinely request a two-parent adoptive family, and this request should be respected.

However, extending eligibility to adopt to single people provides a broader pool of potential adoptive parents for children, and may be in the best interests of some children.

Should this requirement be amended? If yes, what criteria should apply to adoptions by single people?

In principle, change is only supported by VANISH if it clearly relates to the aim of enhancing the suitability of the pool of adoptive parents potentially available to children, not in order to meet the needs of people otherwise unable to parent a child.

However, VANISH notes that the numbers of locally born children adopted in Victoria remain consistently at about 20 per year, with a smaller number of adoptions by step-parents. Therefore, there is no need to greatly enhance the pool of adoptive applicants to meet this small demand. On the other hand, there is a great need for foster and Permanent Care parents (single and partnered), and for alternative permanent parents for children with special needs whose parents are unable to care for them.

6.3.3 Question 25: A religious body that provides adoption services may refuse to provide services to same-sex couples and people who do not identify with a specific sex or gender, if the body acts in accordance with its religious doctrines, beliefs or principles. Is this consistent with amendments to the Adoption Act that enable same-sex couples, and people who do not identify with a specific sex or gender, to adopt?

VANISH assumed that any questions regarding adoption by same-sex couples were outside the terms of reference of this review.

Nevertheless, on the basis of the small number of adoptions that take place each year in Victoria, it can be argued that there are too many organisations currently authorised to provide adoption services in the state. Should the government be concerned about the ideology of a particular adoption service, then it should not continue to contract such an agency to provide this service. A religious body is free to express its religion, but it is not free to discriminate in adoption proceedings against people based on their sexuality.

Some 10 reviews of Victoria's adoption and permanent care services conducted or contracted by DHHS over the last two decades or so have consistently recommended centralisation of Victoria's adoption services, including integration of the local and intercountry adoption programs, due to the highly specialist nature of adoption. It is understandable that several agencies were contracted to

provide adoption services in the peak period of adoptions in Victoria (indeed, in Australia) prior to the 1980s. However, this number of adoption service providers is no longer necessary.

VANISH strongly supports reform of adoption services provision in Victoria, along the lines recommended by the many DHHS instigated reviews. In the post-Apology context, it is morally problematic for non-government organisations (NGOs) that were involved in the provision of adoption services prior to 1984 to continue to arrange adoptions, irrespective of whether they have made a formal Apology for their past unethical practices or whether they now provide a post-adoption information service. It is not acceptable that such organisations continue to be funded by the Victorian Government to provide adoption services (for new adoptions) on the basis that they have a long history in the adoption sector, particularly when a significant period of that history involved practices that were, at the very least, unethical. Many people who were directly affected by those practices will continue to be forced to engage with the same NGO that arranged their adoption in order to access their adoption records post-adoption, and it is antithetical that the same NGO continues to arrange adoptions in the post-Apology era. VANISH is aware that the NGOs involved in the adoption sector are very attached to their adoption work. However, VANISH asks whose best interests were and is adoption intended to serve? The interests of NGOs should not be primary in this debate.

Further, VANISH recommends that only one agency be authorised to provide adoption services, and that this authorised agency not be a contracted NGO, religion-based or otherwise. Rather, VANISH holds firmly that the relevant government department should, on behalf of the Victorian Government, take full responsibility for the practice of adoption in Victoria and operate the centralised adoption service. This would deliver targeted specialisation of the professional expertise required to deliver adoption services to the highest standard; efficiency of resource allocation for adoption service provision; consistency in implementation of adoption policy, practices and standards; enhanced capacity to introduce any changes to adoption policy and processes; enhanced monitoring of adoption practices, processes, numbers and outcomes; and enhanced capacity to identify and take responsibility for responding to adoption and related matters that currently fall between program areas (e.g. the service needs of people affected by expatriate overseas adoptions).

Recommendation 18:
That there be reform of adoption services provision in Victoria, including centralisation of adoption services to a single authorised provider, namely the responsible government department (i.e. DHHS).

6.3.4 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?

VANISH is opposed to adoption by step-parents and relatives. Step-parent and relative adoption can never be in the best interests of children. This position is inconsistent with contemporary family relationships and arrangements.

Adoption by a relative distorts existing familial relationships, legal and social ties, and is not necessary to provide legal recognition or to protect children's rights or best interests. Furthermore, other more appropriate legal orders are available. With children placed in the permanent care of relatives as part of child protection intervention, a Permanent Care Order granted by the Children's

Court provides recognition and legal certainty. With other families caring for relative children, the Family Court is an appropriate path.

VANISH does not believe that adoption by a step-parent is necessary to provide legal recognition or relationship certainty to a child when a parent remarries or establishes a new domestic relationship. VANISH agrees with the Commission's statements in the *Consultation Paper* (ss 7.79–7.83), and in its 2007 report on Assisted Reproduction Technology and Adoption, that the Family Law Act provides for these situations. Divorce, re-partnering and blended families are increasingly common in society and the use of adoption, which erases the natural parent's legal relationship with the child, is far too extreme a remedy in these situations. It is inappropriate in these circumstances to issue a new birth certificate and to change the child's legal connection with their broader natural family.

Recommendation 19:
That adoption of a child/young person by relatives or step-parents not be permitted under any circumstances. Alternatively, parenting arrangements in such cases should be made through Parenting Orders in the Family Court, so that the child's identity and existing biological relationships are preserved.

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

The existing criteria provide a good basis for the assessment of suitability to adopt.

Should any criteria be added, removed or changed?

Recommendation 20:
That there be a minor amendment to "the applicants have a suitable appreciation of the importance of: contact...and exchange....", by inserting "and acceptance" after "appreciation".

Over time, a number of additional requirements have been developed and are expressed in policy. It may be appropriate to include these in legislation; to make the requirements transparent; and to underline the significance of the decisions made. These include that at least one of the adoptive parents be an Australian citizen. This is especially relevant with intercountry adoption, but also relates to the need for adoptive parents to be committed to remaining in Australia and to facilitate ongoing contact with natural family.

In addition, as most adoption applicants come to adoption after demanding and exhausting medical interventions for infertility, which are acknowledged as having a significant impact on couples as individuals and on their relationships, the *Adoption Regulations* should include consideration of their readiness for adoption (e.g. the extent to which they have resolved their loss and grief) in the suitability matters.

Children who are adopted always experience separations and loss before being placed with adoptive parents, and adoptive parents have not had the period of pregnancy to bond with the child. Policy has required adoptive parents to commit to one partner caring full-time for the child for at least the first 12 months after placement, in order to facilitate bonding and attachment. Parenting an adopted child requires an understanding of trauma and specific skills/competencies. These requirements should be recognised in regulation.

6.3.6 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?

Some adoptive applicants, while acknowledging assessment is necessary, reflect that the process is long, burdensome and intrusive. Setting out the steps and requirements in regulation makes it clear, minimises the need to explain why certain processes are necessary, and assists applicants to prepare necessary paperwork, etc.

6.3.7 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 clear?

Please refer to our comments under *6.3.6*.

6.3.8 Question 30: Could any other improvements be made to the assessment process?
If yes, what improvements could be made?

VANISH has no further comment to make in regard to the assessment process.

6.3.9 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?

VANISH believes that the Act and Regulations should be strengthened to recognise, support and enhance an active and informed role for natural parents in the selection process for adoptive parents. This is a respectful and empowering approach; contributes to the development of a positive working relationship between both set of parents; and is in the best interests of children by ensuring some commonality and acceptance between the adults involved in their life.

Recommendation 21:
That the Act and Regulations better recognise, support and enhance an active and informed role for natural parents in the selection process for adoptive parents of their child.

6.3.10 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?

VANISH supports continuance of the current matters about which the natural parents can express wishes, and recommends extending it to include all the suitability criteria to be set out in the Regulations.

Relinquishment of a child to be raised by another family is a significant decision made by a very small number of natural parents after a period of counselling and provision of information about alternatives. Such a decision is not made lightly and is always made in order to offer the child the

opportunity for a "better life". Natural parents must be permitted the opportunity to be an active partner in decisions about the permanent care of their child, and this must include the characteristics of the family to raise their child.

VANISH believes a decision to selectively remove the opportunity to express wishes about some characteristics of a family while allowing others is inappropriate and legalistic, and not in children's best interests.

6.4 Information and Identity

6.4.1 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?

One of the issues associated with discussing rights to adoption information is that the terms *adoption information* and *identifying adoption information* are not defined. Furthermore, how should we distinguish between *adoption information* and *information relating to personal affairs*? These terms need to be properly defined in the Act.

Another issue associated with discussing rights to adoption information is that there are so many complex scenarios regarding who may seek information that it is impossible to foresee every circumstance. Clear guidelines are thus required.

VANISH understands that adopted people and natural parents are the only parties with the right to apply for and receive identifying information without the consent of the other party. Adopted people and natural parents should remain the only people with this right, unless one or both parties are deceased.

Natural relatives – such as a child, natural sibling, or natural grandparent of an adopted person – should have the right to apply for adoption information when consent has been granted by the natural parent or the adopted person who would be entitled to search. For example, the child of an adopted person should have the right to apply for the adoption information about their parent with the consent of that parent.

When consent has not been granted by the person who is entitled to search (i.e. the adopted person), a natural relative applicant should have the right to apply to the Adoption Information Service (AIS) for non-identifying information, and to request the AIS contact the person sought to seek their consent to release information to, and/or have contact with, the applicant.

All attempts should be made to make contact with, and gain consent from, the adopted person or natural parent before the release of adoption information about them to a natural relative. The principle here is that it is highly preferable that the first contact is between the parties directly involved in the adoption.

If consent is not obtained within the current 21-day period, an interview/counselling session should take place with the applicant to inform them of privacy and confidentiality obligations and the ramifications of proceeding without consent.

In complex cases where a natural relative requests adoption information and consent is strongly declined by the adopted person or natural parent, VANISH suggests that the AIS should refer the applicant and the party (who has the right to apply for adoption information) for counselling or mediation in an effort to bring the parties together to avoid breakdown of family relationships

between the applicant and the said party. This would provide the opportunity for resolution around access to information and potentially enhance the possibility of inclusion and positive contact in the future between all parties involved.

There are many reasons why a natural relative might want information and/or to contact an adopted person or a natural parent. 'Just wanting to know' is the most common reason cited, but there are also more practical reasons – such as disclosing life threatening medical information, or the applicant was aware of the adoption and would like to find the adopted person (i.e. their sibling, grandchild or nephew/niece). However, VANISH is also aware of many situations where contact without consent has resulted in the adopted person and natural parent becoming isolated and disconnected from each other, as well-meaning relatives circumnavigate the relationship between the primary parties. For example, where natural siblings wanting to contact the mother's son/daughter override their mother's wishes, or the wishes of another natural relative (such as a grandfather or aunt) circumnavigate the relationship between a mother and her son/daughter, leaving the excluded party feeling disenfranchised, ostracised and ultimately without contact with her son/daughter or siblings. We have seen this in both closed adoption and open adoption situations.

It is not desirable that a request from other extended natural relatives (e.g. aunts/uncles/cousins) overrides the wishes of the primary individuals or immediate natural relatives, unless there are extenuating circumstances and this will not jeopardise the relationship between the primary individuals (i.e. mother/father with son/daughter). A hierarchy of rights to information for natural relatives, either in the Act or the Regulations, would be helpful.

Children under the age of 18 should be entitled to their adoption information, as they will have been adopted post-1984 in the 'open adoption' era whereby records are open for all primary parties. Adopted children should have the right to their full identifying information without the requirement for their adoptive parents' consent, unless there are exceptional circumstances as to why this cannot be the case (e.g. it is deemed unsafe to do so). Similarly, mothers and fathers (if living) should have access to information about their child, unless there are exceptional circumstances as to why this should not be the case (e.g. it is deemed unsafe to do so).

A person who is adopted and whose natural mother is also adopted should have the same right of access to adoption information relating to their natural mother/father, and the same right of access to BDM as an adopted person whose natural mother/father was not adopted. Currently this cohort does not have access to BDM records because of the adopted status of their natural mother/father. In this case, the AIS must locate the person sought, and with their consent release information and/or connect these natural relatives.

In the case of other people, access to adoption information should be subject to the consent being obtained from the adopted person or natural parent, and only if 'circumstances exist which make it desirable' that the applicant receives the information and it is seen to be in the best interests of the adopted person or natural parent. For example, if there are no known living relatives and a spouse or partner, stepfamily relative, or an adoptive family relative makes the request.

If the release of adoption information is extended to include other people who do not currently have these rights, the AIS should consider the privacy of the direct parties concerned.

6.4.2 Question 34: Do any problems arise when people seek adoption information through an adoption information service?
If yes, what are the problems and what legal changes, if any, are required to address them?

Yes, problems do arise and legal changes should, therefore, be made. The mandatory 'counselling' interview before information is released is often considered problematic by individuals separated by adoption.

Adopted persons argue that the application process is discriminatory in that they are unable to access their original (i.e. pre-adoption) birth certificate held at BDM without first applying to an AIS and having a mandatory interview. This process is discriminatory because no other individual is required to have an interview before they apply for their original birth certificate.

The argument that the pre-records release interview should not be mandatory and that the applicant should have a choice about it is not a new one. For example, in 1983, Pauline Ley, the founder of the Geelong Adoption Program, advocated for the interview to be optional (please refer to Appendix I). Further, in her submission to the VLRC's Birth Certificate and Birth Registration review in 2012, Carolyn Woodley described that:

> The administrative act of accessing information becomes a psychological test, an Oprah-style confessional to be explained to strangers with overly sympathetic expressions. It is beyond condescending. It is offensive. (Woodley 2012, p. 5)[4]

VANISH recognise that the interview process can be of benefit to the applicant, as it allows the AIS the opportunity to provide support around the release of their records. However, based upon the feedback received, VANISH is of the view that a choice should be provided with regards to either whether they want an interview and/or who this interview should be with. This is because many adopted people report the application and release of information processes to be disempowering; they report feeling vulnerable and upset that they are not considered 'fit' or 'responsible' enough to receive their records without the mandatory interview.

There needs to be clear and consistent guidelines regarding the redacting of records. This is so that one person does not receive more or less information than another, and also so that the person receiving the records is provided with a clear explanation regarding how much and what type of information has been removed and why. VANISH can refer to many reports by service users that they have applied for their file on more than one occasion and subsequently received different amounts of information, or where the fact that many pages had been redacted only became apparent to them upon receiving the PDF version of their file.

Another problem faced by both adopted people and natural parents is the lack of records available upon request because they have been lost in transition, destroyed by flood or fire, or destroyed because of the institution's 30-year policy. Individuals deserve a full explanation, given the importance of the records to them. VANISH, therefore, recommends it be legislated that where a file is 'lost' the agency is required to provide a full explanation of the avenues pursued to find the file. If the file has been destroyed (either on purpose or by fire, etc.), the agency should be required to provide the details regarding when and why this occurred.

The protection of records is the responsibility of the agencies, and it should be legislated that they must adequately preserve and maintain adoption records, at their own cost.

[4] Weblink for this reference:
http://www.lawreform.vic.gov.au/sites/default/files/Submission_3_CP_Dr_Carolyn_Woodley_25-10-12.pdf

Mothers also report that they have found the experience of applying for and receiving information about their son or daughter difficult. This was especially so for those returning to the agency that processed the adoption. In the presence of a social worker who has authority and who represents the social worker figure at the time of the adoption, many mothers report having re-lived the humiliating experience of their past and are traumatised by it.

There are also concerns about the content of information released, which goes beyond 'identifying adoption information', and information which is termed 'information relating to the personal affairs'.

Recommendations 22– 26:
That adopted people be enabled to apply for their original birth certificate from BDM without first being required to have a 'counselling' session with an Adoption Information Service (AIS).

That a choice should be provided to adopted people and natural parents applying for their adoption records applicants as to whether or not they want a counselling interview and/or who this interview should be with.

That clear guidelines be introduced for AISs in relation to the redacting of records released to applicants.

That the legislation reflect that the protection of records is the responsibility of the agencies, and that they must adequately preserve and maintain adoption records at their own cost.

That, where an adoption file has not been able to be located, the AIS be required to provide the applicant with full details of the efforts employed to find the file; and where the file has been destroyed, the AIS be required to provide the applicant with the details regarding when and why this occurred.

6.4.3 Question 35: Are the rights to adoption information and the limitations on those rights fair to all people involved in the adoption process?
If not, what changes are needed?

There needs to be a clear distinction between *adoption information*, *identifying adoption information* and *information relating to personal affairs* in the guidelines to match the legislation that determines who has the right to information about an adoption. Currently the right to *adoption information* overrides the right to privacy in 'certain circumstances'. The legislation must give clear guidance regarding the 'certain circumstances' that warrant this override, so that it is not left up to an individual agency to interpret, as this leads to inconsistencies in practice.

Adoption has an inter-generational impact, and there is much evidence regarding the impact of separation through adoption.[5] Therefore, it is in the best interests of people affected by adoption to have information about their son/daughter, natural mother/father or relative. However, in regard to relatives, the legislation should enshrine the right to privacy for the person about whom the information concerns.

Rights to Information:

[5] For example, see Kenny and Higgins (2014).

There is no question that adopted people and natural parents should have the right to apply for and receive identifying adoption information about their son/daughter or mother/father, and that this does not need to involve the consent of the other party.

However, there is an imbalance concerning the rights of all parties involved in the adoption process, and there is considerable debate as to whether the limitations are fair to all parties. The mandatory interview is an example of a limitation on the rights of an adopted person and a natural parent, as neither party can access any identifying adoption information, or BDM certificates, without this interview and subsequent receipt of the Certificate of Interview.

There is currently a six-month waiting period before an application for adoption information is processed by FIND. It is unacceptable that an adopted person or natural parent must wait this long before they have access to identifying information about the other party. This is particularly important given the age bracket of the main cohort of people being sought (72 years). Thus, a specific timeframe should be introduced in the legislation for release of documents.

An adopted person can access their natural parent's birth certificate, marriage certificate and death certificate to enable them to locate their natural parent. A natural parent can now obtain identifying information about their son or daughter at the time of the adoption. However, a natural parent is unable to access their son or daughter's marriage certificate from BDM. This particularly discriminates against natural parents of a daughter who was adopted and, in many cases, natural parents are not able to locate their son or daughter without this more recent information. Further, if an adopted person is now deceased, natural parents cannot access their son/daughter's death certificate, unless it is now a public document (i.e. over 10 years old).

The *Adoption Act* currently allows the adult child of a deceased adopted person inherited rights to the adopted person's adoption records, and thus to identifying information. However, the adult child of an adopted person does not have the same rights to BDM records as their deceased adopted parent would have had. The adult child of an adopted person who is deceased should have the same rights as their parent would have had.

Recommendations 27–30:
That the meanings of *adoption information*, *identifying adoption information* and *information relating to personal affairs* be agreed and clearly defined in the adoption legislation.

That the legislation set out more clearly what adoption information must be released and in what circumstances.

That clear guidelines regarding the 'certain circumstances' in which the right to adoption information overrides the right to privacy be developed and incorporated into the relevant Acts, Regulations and Guidelines.

That applicants who have a right to identifying information without consent from the other party be able to directly access from Births Deaths and Marriages (BDM) the relevant certificates, which will identify the applicant's natural parent or son/daughter.

6.4.4 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?

Although certain individuals have rights to adoption information under the Victorian *Adoption Act 1984*, the person about whom the information relates has no rights concerning the content or extent of information released. The person who is the subject of the information application should be informed that adoption information about them is to be released.

This is of particular concern when the adoption was processed during the closed adoption period when mothers and fathers were stripped of their rights, and were often unaware that information was recorded about them. As the records were closed, they were also not aware that such records may be released at a later date.

The argument is not that the records should have remained closed, rather that now the records are available to people with the right to that information, the *Adoption Act* overrides privacy legislation and there is no guarantee that *information relating to personal affairs* will be treated sensitively and confidentially once it has been released.

Privacy (s 8.67): This section of the *Adoption Act* provides that AISs must ensure that any information given does not 'unreasonably' disclose 'the personal affairs' of a natural parent, relative or any other person. There is no limit as to where the information is reproduced, either verbally or in print; it becomes the property of the applicant who can share it publicly with as many people as they choose, including friends, and on social media and public family trees, breaching privacy with no right of recourse.

It is essential that information released to individuals who have the right to receive it be specifically restricted to identifying information (including relevant information to assist with a search) and some social history.

In order to protect individual privacy, adoption information should NOT include information relating to the personal affairs of a natural parent, relative or any other person. Adoption records, particularly in relation to pre-1984 adoptions, were judgemental, denigrating and, in some cases, included outright lies about natural parents; and this information is potentially damaging to future relationships. For future adoptions, provisions need to be made to ensure that case notes are a fair

and respectful appraisal prior to the adoption, which would also alert the natural parents and/or adoptive parents that the information will be available to other parties in the future.

A natural mother/father should have the opportunity to disclose personal information to their son/daughter personally. Such information should not be released without the permission of the mother/father.

If for some reason an adopted person believes they should have access to that information and consent cannot be obtained from the mother/father, there should be an administrative process by which an adopted person can have their case reviewed.

Recommendation 31:
That consideration be given to a two-step process whereby:

. minimum identifying adoption information (excluding unnecessary personal information) is released to the applicant, in accordance with their right to apply for such information; and

. where the applicant is unable to make contact with the natural parent or son/daughter (either because they cannot locate that person or because that person is deceased) and further information is essential in order for the applicant to learn more about their biological background or their son/daughter, the applicant be able to apply for further adoption information to be released.

The rights to adoption information and the limitations on those rights are not fair to all people involved in the adoption process. Changes needed are as follows.

Recommendations 32–34:
That a party's wishes for release of adoption information and/or contact should be recorded on a contact register and the applicant advised.

That anyone about whom adoption information is to be released should be informed of this.

That in future adoptions, relinquishing and adoptive parents be provided with the opportunity to sight the case notes concerning the adoption; and to sign indicating that they have sighted the case notes, do not dispute the contents, and that they have been advised that the records may be released at a later date.

6.4.5 Question 37: What factors should be taken into account in deciding to release identifying information about a person?

As discussed previously, the factors that should be taken into account in deciding to release identifying information about a person include:

- Whether or not the applicant has the right to apply for *identifying adoption information* or *adoption information* under the Adoption Act.

- Clear definitions and guidelines for release of *adoption information*, *identifying adoption information* and *information relating to personal affairs*.

- If a direct party to adoption (adopted person or natural parent) is unable to locate and meet the person they are seeking (natural parent or adopted person) and it is deemed that information about *personal affairs* or further information is essential in order to locate the

person, the applicant should be able to request a review of their application on the basis of circumstances deemed essential to them either locating their mother/father or son/daughter or, if deceased, locating the nearest living natural relative of the person for whom they were searching.

6.4.6 Question 38: Should the provisions of the Adoption Act relating to the release of adoption information be made clearer? If yes, what changes are needed?

Yes, as discussed previously, the provisions of the *Adoption Act* relating to the release of adoption information should be made clearer.

The Act must clearly define *adoption information*, *identifying adoption information* and *information relating to personal affairs*, and these definitions should be incorporated into the procedures concerning release of information and who has the rights to information.

Adoption Information agencies must comply with the Act and their guidelines must be uniform, so that the upholding of a person's rights to information, and the specific information that is released to them, will not depend on which agency processed their application.

AISs must always (not just 'usually') record and convey the wishes of one party to the other party, rather than leaving it to the discretion of the individual staff person (unless it is determined that conveying such wishes would be detrimental in a particular case).

Specific guidelines are required in the legislation in regard to AISs in order to avoid discrepancies in the implementation of releasing records and the experiences of applicants, depending on the agency. Currently there is little guidance to AISs and it is our understanding that each AIS has their own procedures and guidelines.

The community as a whole is not aware of the specifics of the current adoption legislation, and even many individuals who have a direct experience of adoption are not aware of their rights to adoption information under the provisions of the *Adoption Act*. Therefore, it is imperative that FIND advertises regularly and broadly, so that individuals know their rights and/or can inform others of their rights.

It should be legislated that natural parents are informed if their adopted son or daughter is deceased, similar to the Western Australian adoption legislation.

BDM fees should be waived for adopted people and natural parents, as certificates from BDM are essential in the search process and can be extremely costly if the applicant needs to search in several states for records.

As in other states, fathers should have the right to be included on their son/daughter's birth certificate if they are able to satisfactorily confirm their paternity.

There must be more clarity concerning privacy rights when information is released that has no bearing on identifying information.

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

The matter of birth certificates is one of the most contentious in considerations of adoption, particularly for adult adoptees who comprise the vast majority of adopted people in Victoria – obviously, this is because adopted people spend more of their lifetime in adulthood than childhood. However, consideration of birth certificates is a wider debate than concerning only adoption; it also impacts people born from assisted reproduction interventions (i.e. donor conception or surrogacy).

There is no simple or single response to how a person's identity should be reflected on their birth certificate, and this topic quickly generates lively debate amongst adopted people. Just as there is a range of adoption experiences, there is also a range of opinions regarding what information should be included on an adopted person's birth certificate. VANISH notes that much of this debate is the result of a lack of clarity regarding the purpose of a birth certificate. Is it to accurately record the facts of one's parentage and birth; to legally recognise the parenting arrangements for the child; and/or to provide a legal identity document for the person born? Indeed, what is the purpose of a birth certificate if it does not accurately reflect the details of one's biological/genetic heritage and birth?

However, VANISH notes substantial agreement with the notion that the information recorded on a person's official birth record should accurately and comprehensively reflect all the facts of one's parentage and birth, regardless of whether one was conceived (naturally or via IVF) and born to their biological/genetic parents, donor conceived and/or born of surrogacy, or adopted. VANISH strongly supports this perspective, which holds that a person's official birth record should also not be able to be altered as a result of a change of legal status, such as marriage or adoption; and should only be able to be amended if requisite information was not provided, or was inaccurately recorded, at the time the child's birth was originally registered.

As recognised by the National Forced Adoption Apology Reference Group, VANISH understands that many adoptees want their pre- and post-adoption birth certificates to be integrated, so as to link their original (or genealogical) identity with their adoptive identity in one official document. This would assist those adoptees to integrate their individual identity – a developmental task throughout both childhood and adulthood that those raised by the same parents from who they were conceived and born mostly take for granted.

However, VANISH is also aware that many adoptees do not want an integrated birth certificate if it means this is the legal document they must produce in everyday circumstances when identification is required (such as opening a bank account, or applying for a driver's licence or passport). Rather, they would prefer to keep their accurate birth registration document private, and be able to use another legal identity document that provides an extract of their identifying details.

People adopted in Victoria prior to 1984 were issued with an extract of their amended birth registration details known as a 'Sixth Schedule' (rather than a birth certificate) by BDM. A discriminatory aspect of this document was that it was issued only to people who were adopted. In many cases where the adoptive parents had not disclosed to their child the latter's adopted status, the adopted person inadvertently discovered this during adulthood on presenting their *Sixth Schedule* for identification purposes to someone unrelated to them in the community. VANISH is aware of numerous examples of people having discovered they were adopted only upon making application for the Age Pension or a passport.

VANISH also notes substantial agreement in the adoption community that, for future adoptions, a child's original birth certificate should not be cancelled, and neither should a new birth certificate be issued that identifies the adoptive parents as if the child was naturally born to them. The practice of cancelling the child's original birth certificate and issuing a new one which changes the child's name and identity is an outdated remnant of the secrecy and shame associated with the pre-1980s 'closed' adoption era. It would be a lost opportunity in the context of the current review of the *Adoption Act* to not remedy this draconian practice, which clearly violates an adopted person's rights to preservation of identity and knowledge of their biological parents.

Currently, Victoria's adoption legislation conflates legal parenting arrangements, or parenting responsibilities, for a child with the child's genealogical heritage. There is no need to legally extinguish the biological parents' relationships with the child, in addition to their parental rights for custody and guardianship. The impacts of this practice ripple through the adopted person's life – they are not merely confined to childhood, the period during which legal clarity of parenting arrangements and responsibilities is required.

Recommendations 35–37:
That the primary purpose of a birth certificate be to provide an accurate and comprehensive record of the facts of a person's genetic and/or biological parentage and birth, and changes to presentation of the relevant information on all birth certificates be made accordingly.

That in future adoptions, cancellation of a person's original birth certificate and issuance of a new one (as if the adoptee was born to the adoptive parents) not be permitted under any circumstances.

That provisions be made to issue:
- an 'integrated birth certificate', which incorporates accurate identifying details of the natural parents and adoptive parents, for adopted people who request them; and
- an alternative identity document for people who were adopted (or born of assisted reproduction interventions, such as donor conception or surrogacy) who do not wish to use their birth certificate for routine identification purposes.

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

This answer to this question cannot be properly considered until there is clarification and agreement as to the purpose of a birth certificate. However, each potential answer assumes that a birth certificate is a legal document, irrespective of what information is included on it. If the purpose of a birth certificate is to provide an accurate and comprehensive record of all the details of a person's parentage and birth, then people who are donor conceived or born of surrogacy may also not wish to use such a document for identification purposes, given that more than two parents would be listed on it.

VANISH believes there should be consistency in the identification document available to people who joined their family by third party methods, so as not to discriminate against adopted people, as has historically occurred in Victoria up until now.

6.4.9 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?

The answers to these questions require further consultation and deliberation, including with BDM. Please refer to our responses for *6.4.7* and *6.4.8* above.

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

VANISH holds that it is never in an adopted child's best interests to change his/her given names, as it changes the child's identity, which is associated with identity confusion throughout the person's lifetime.

VANISH further maintains that it is never appropriate to remove a child's original family name (surname). Rather, we recommend adding the adoptive family's surname if requested by the child; the child is considered to be of an age, sufficient maturity and capacity to understand the implications of changing their family name; and such change is considered to be in the best interests of the child. This would better enshrine the principle of openness in contemporary adoption practice, and would ensure that the adoptive parents are honest with their adopted child about their adopted status and biological parents from the earliest stage of the adoptive placement, thus facilitating preservation of the child's identity.

Recommendation 38:
That the Adoption Act specifically prohibit changing the child/young person's given names, or removing their family name. However, the adoptive family's name may be added to the child/young person's name, if the child/young person requests it and it is determined to be in the best interests of the child/young person.

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

VANISH believes there are no circumstances in which it is appropriate to change an adopted child's given names, as it changes the child's identity, which is associated with identity confusion throughout the person's lifetime. Please refer to our comments for *6.4.10* above.

6.5 Modernisation and Operation of the Adoption Act

6.5.1 The Court jurisdiction for making Adoption Orders

The court jurisdiction for making Adoption Orders was not raised in the Consultation Paper. However, this matter deserves consideration. In Victoria, the Family Court of Australia makes Parenting Orders, the County Court of Victoria generally makes Adoption Orders, and Permanent

Care Orders are made by the Children's Court. All of these orders change the guardianship of the children to new caregivers.

The reasons for the different jurisdictions for these various orders are possibly historical. VANISH does not have a firm view as to whether adoptions should continue to come under the jurisdiction of County Court or under the jurisdiction of the Children's Court, but raises this issue for deliberation by the Commission.

VANISH makes the following points in relation to the differences in decision-making between the County Court and the Children's Court. Parenting Orders by the Family Court are not included, as Commonwealth legislation governs these.

As a 'higher' court, adoption proceedings in County Court are presided over by a judge, whereas Children's Court magistrates generally make Permanent Care Orders. However, as the President of the Children's Court is a judge, the President could hear adoption matters to reflect the legal significance of the decision. In the Children's Court, as a specialist court in child and family matters, a part of the decision-making process is generally to look at whether all reasonable steps have been made to reunify the child with their parents. However, it is unclear how this is determined in the County Court, given consent to adoption is given by the natural parents prior to the application being made to the court at a certain point in time.

The reasons and the processes for relinquishment in Permanent Care and adoption are generally different, and this is reflected in both the court processes and the provisions for consent. In the case of Adoption Orders, parents voluntarily consent to not raising and remaining the legal parents of their child, except in the rare circumstance that the child's parents cannot be found/located and the order is made without consent. As previously discussed, the case can be made that the rate of adoptions is low and not of concern. This is because, in contemporary society, adoptions are rare given adoption is no longer 'forced' and it is rare that, in the absence of natural parents being provided with other options, they voluntarily choose to relinquish their children. In the case of pre-1980s adoptions, women were punished by society for becoming pregnant by removal of their child for adoption. But in accordance with contemporary values, we accept that parents should take responsibility for pregnancy and birth and be given the support to raise their children, irrespective of religious or cultural values or, indeed, an absence of family support. In fact, it is interesting that where children (e.g. 14-17 years of age) who are still in care (i.e. on child protection orders) become pregnant and give birth, the Children's Court expects support to be provided to enable these parents to raise their child unless significant protection concerns exist. Being young, unmarried, pregnant or, indeed, living under statutory care[6] are no longer grounds for adoption as was the case in the past.

In contrast, a Permanent Care Order is generally an involuntary decision[7] made due to protective concerns being proven, and restoration to the parents for whatever reason not being realised. The Children's Court, on the basis of the evidence presented over time, decides these matters. In other words, Permanent Care differs from adoption in that the Children's Court examines and reviews the matter over time, whereas Adoption Orders are considered at one point in time following consent by the natural parents. This is perhaps an advantage of the Children's Court jurisdiction in that it examines evidence over time.

Of concern in the process of relinquishment in adoption is that there is a difference in the independence of the advice given to natural parents in the County Court compared to the Children's

[6] In pre-1980s adoptions, a young woman in care would have had no choice or say in the adoption process.
[7] VANISH was unable to locate data on the number of Permanent Care orders made with natural parent consent.

Court. In the making of a Permanent Care Order, natural parents are generally entitled to legal representation to the Permanent Care application in the Children's Court, whereas this does not appear to be the case in the County Court due to the differences in the way consent is obtained, namely:

> Adoption counsellors are legally approved to arrange adoptions in Victoria. The purpose of counselling is to assist you in making an informed decision about options for the care of your child by providing support and information, and by assisting in exploring relevant issues. (DHS 2008, p. 8)[8]

and

> Consent is given in the presence of a court official and the counsellor from the adoption agency. This takes place at an office of the County Court or, in the country at the County and Magistrates Court. Your counsellor will explain the arrangements for giving consent and will be able to provide you with copies of the forms which are to be signed. The counsellor and the court official need to be certain that you understand the ways in which you and your child will be affected if you give consent to adoption. (DHS 2008, p. 10)

VANISH has previously in this submission recommended that adoption counselling be undertaken by a qualified professional, independent of the adoption agency, to ensure parents are given the opportunity to consider and be offered alternative supports to relinquishing their child, and to avoid the perception of a conflict of interest by the counsellor being the one to provide both counselling around decision–making and the witnessing of consent.

VANISH also recommends, given the serious and permanent decision made by natural parents at a point in time, that in giving consent to an adoption application a legal representative be provided to natural parents and be part of the consent and court hearing processes.

Recommendation 39:
That an independent legal representative be provided to the natural parents to assist them with the consent and court hearing processes, and that provisions for this be specified in the *Adoption Act*.

6.5.2 Question 44: Should the Adoption Act include a section identifying the main object of the Act?
If yes, how should the main object be described?

The Victorian *Adoption Act 1984* is clearly in need of review and expansion to provide clearer direction to all those who work with it. It should include a section setting out the objects and purpose of the legislation, and include principles to guide practice. There needs to be debate about just what these principles should be, as there has not been any formal debate in Victoria about this since the last review more than 30 years ago. Further, there needs to be clarification of the different parties served by the Act.

[8] Source: http://www.dhs.vic.gov.au/__data/assets/pdf_file/0010/573193/Information-parents-adoption.pdf.

6.5.3 Question 45: Should the Adoption Act include general principles to guide the exercise of power?
If yes, what should these principles be?

Please refer to our comments for *6.5.1* above.

6.5.4 Question 46: Is there terminology in the Adoption Act that should be changed because it is unclear, outdated or inconsistent with other law?
If yes, what are the issues and what changes would be appropriate?

VANISH acknowledges that it is easy to become immersed in issues associated with the use of language in adoption, given each person's experience of adoption is unique and their integration of it evolves over the lifetime. We recognise the very sensitive nature of adoption, and the capacity for particular terminology to trigger such sensitivity. While at no time is the language used by VANISH intended to cause offence, we need to balance our awareness of the sensitivities of language with the need to communicate to a wide audience that includes people who have no prior knowledge of the issues associated with adoption. VANISH endeavours, in the first instance, to respect the wishes of mothers, fathers and adopted people whilst acknowledging that they may differ. We appreciate that some people will be dissatisfied with the terminology we use and that we will not always get it right. We continually aim for a balance between sensitivity to individuals and clarity for the wider audience. To this end, we have developed our own policy on use of language.

6.5.5 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?

These questions apply more broadly than to the adoption sector and would, perhaps, be more appropriately answered by the relevant government departments.

Notwithstanding, Gazettal seems an old fashioned and ineffective way to publicise the approval of counsellors and of adoption agencies. However, VANISH recognises that it is a public record that can be searched over time.

The Secretary of DHHS should continue to approve counsellors, as currently per section 5 of the Act. If this information is no longer to be published in the Gazette, it still needs to be published in such a way that archives are maintained, available and accessible.

Approval of adoption agencies is a significant decision and, as such, requires a rigorous process, and it would be appropriate to publish such an approval in mainstream newspapers, as well as in the formal government records.

Regarding Offenses…current Division 2 s 116 to 129: It is recommended that section 119(2) (c) be removed as it is never appropriate for any payment to be made by adoptive parents to the child's natural parents. Such provisions create the opportunity for undue influence or pressure to be placed on the mother, even leading to "buying" a child. Section (e) is sufficient should there be any extraordinary situation whereby such payment could be countenanced.

In addition, there should be no time restriction on allowing prosecutions to take place.

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

Based upon 27 years of delivering post-adoption services, it is our strong position that yes, there should be increased requirements in the *Adoption Act* to provide post-adoption support.

VANISH agrees with the Commission's review team that the interests of the adopted person need to be supported and safeguarded throughout their life (s 9.49). Research from many years has demonstrated the potentially significant adverse and lifelong effects of adoption on the adopted child/person and their identity. As far back as 1943, psychiatrist Florence Clothier (1943) wrote an article in which she detailed the impact of the loss of the relationship with the mother and how this affects relationships into adulthood.

Although in Australia research into outcomes for adoptees is scarce, studies have been undertaken in other Western countries showing that adopted persons are over-represented in prisons, the juvenile justice system, addiction recovery services, psychiatric facilities, and other mental health services. The higher rate of suicide amongst adopted persons has been observed most recently in research in Minnesota by a team led by psychologist Margaret A. Keyes (2013) who found that adopted offspring were nearly four times more likely to attempt suicide than non-adopted offspring. These studies, and based upon the thousands of adopted persons with whom VANISH has worked over the past 27 years, lead us to strongly argue for access to post-adoption support appropriate to the life-stages of an adopted child, adolescent, then adult.

Separation from one's child or children is similarly not a single event but rather a lifelong experience and so requires ongoing support. "Mothers do not forget their child. Most go on thinking about their child for the rest of their lives, Mothers yearn in particular to know about their child's welfare – is their child alive and happy?" (FIND 2013).[9] Van Keppel and colleagues noted that a mother's "sense of loss is typically strong and long-lasting", an observation that parallels a finding of the 1984 study by Winkler and van Keppel, which showed that approximately 50 per cent of a group of birth mothers studied reported an increase in their feelings of loss over time: "relinquishing a child for adoption was the most stressful life-event birth mothers had ever experienced" (Van Keppel 1987, p. 3). Many experienced secondary infertility (that is, they did not have subsequent children).

The impact of relinquishment and removal of their child on mothers was studied most recently in Australia by the Australian Institute for Family Studies (Kenny, Higgins et al. 2012). The researchers found:

> Mental health and wellbeing measures used in the survey indicate a higher than average likelihood of these mothers suffering from a mental health disorder compared to the general population, with close to one-third of the mothers showing a likelihood of having a severe mental disorder at the time of survey completion.

Fathers were also noted to experience loss and grief and symptoms of PTSD (post-traumatic stress syndrome). So then, a high proportion of primary parties to a separation and adoption suffer grief and trauma and the effects are lifelong.

[9] Weblink for this source: http://www.dhs.vic.gov.au/__data/assets/pdf_file/0007/591505/myth-and_reality.pdf.

According to various studies, some of the adverse effects on individuals include depression, anxiety, panic attacks, post-traumatic stress; suicidal thoughts and feelings; health and physical problems (e.g. sleeping difficulties; somatic complaints, including headaches; substance abuse problems, prescribed, legal or illegal); body image issues; food disorders; obesity; low self-esteem; anger and hostility; self-destructive behaviours; identity problems; problems in relationships; and parenting difficulties, among others.[10]

Silverstein and Kaplan (1986) refer to the seven core issues faced by the primary parties to adoption: loss, rejection, guilt and shame, grief, identity, intimacy, and mastery/control. More contemporary studies have led to trauma being included on this list. These issues are often unrecognised in society and even by professionals. It has been suggested that this relates to the ability of those affected to 'present well' because this is what has always been required of them (Robinson 2001, p. 2). Without detailing them all, some main themes highly relevant to post-adoption support are outlined below.

Loss. The parents lose the child to whom they are genetically, biologically and psychologically connected. They lose the opportunity to raise their child, and fulfil the traditional parenting role. The mother and the father may also lose one another, if, prior to the adoption, they enjoyed a meaningful relationship. Adopted persons lose their parents, ties with extended family, genealogical continuity and everyday evidence of their identity and heritage. At the cancellation and replacement of their birth certificate, they may lose their name, which is then replaced by an adoptive name.

Grief. These losses require recognition and permission and support to be grieved during the separation and adoption process and beyond. This is necessary, "Grief is not only the *expected* response to a loss, but it is also a positive and beneficial response, because grieving allows us to process our loss" (Robinson 2001, p. 2). In an adoption setting, this grief is disenfranchised. Disenfranchised grief is described by Doka (1989) as the grief connected with a loss, which cannot be openly acknowledged, publicly mourned or socially supported.

Guilt and shame. Many parents report feeling guilt and shame about the pregnancy, not being seen as fit to parent, not having fought to keep their child(ren), and not having recovered from the loss of their child(ren) as they were told they would/should do. Many adopted persons report feeling ashamed of being 'not wanted' and of being adopted, and guilty for causing upset in their family of origin, for not fitting into their adoptive families, for wanting to know about their original families, and/or for not having been the perfect adoption success story. Secrecy and lack of openness in adoption exacerbate guilt and shame. These feelings are carried into adulthood and, unless addressed, affect different aspects of a person's life for many years, if not decades.

Rejection & Intimacy. As Silverstein and Kaplan (1986) explain, "The multiple, ongoing losses in adoption, coupled with feelings of rejection, shame, and grief as well as an incomplete sense of self, may impede the development of intimacy for triad members. One maladaptive way to avoid possible re-enactment of previous losses is to avoid closeness and commitment". As one submitter to the Senate Inquiry into Forced Adoptions put it, "To strip a mother of her baby is a cruel, cruel act. But to leave a baby alone is another. And that's how I am, alone. Feeling as if I do not have the capacity to love, because it took me a long time to learn it." (Committee 2012, p. 77).

Identity. Forming identity without the opportunity to see resemblances – someone who looked, walked or talked like them or shared their natural talents and traits, resulting in confusion about their identity and sense of self, presents enormous challenges for adopted persons. As Kenny and Higgins note, "regardless of the quality of upbringing they experienced from their adoptive families, the majority of participants said that their adoption had some negative effects on their lives. Identity

[10] Discussed in the VANISH Training Manual (2013).

issues were one of the most challenging of these" (Kenny and Higgins 2014). Identity issues also present for natural parents who have been denied their parental role.

Trauma. The trauma experienced, including separation, can be triggered throughout an individual's lifetime. For the infant or young child separated from her or his mother, although they might not have cognitive recall of the event, it is remembered (Sunderland 2011). It interrupts a child's emotional and sometimes physical development, and causes fear and stress sensitivity. For parents separated from a child, the experience is traumatic. Over half the mothers (57%) participating in the AIFS Study into Past Adoption Practices received scores that indicated they had many PTSD symptoms. That mothers suffer from PTSD is barely recognised, nor do some grief counsellors realise that this affliction can be related to adoption separation.

It is important to note that some of the research cited above includes data relating to recent adoptions from the 'open' adoption era. VANISH receives requests for support and/or search assistance from individuals whose adoptions were open, and their difficulties mirror those of 'past' adoptions. It is therefore important not to bundle the needs of people affected by past adoption practices into one category and assume that more recent and current adoptions have different outcomes; they might not.

(b) What type of post-adoption support should be provided?

VANISH was established 27 years ago to provide post-adoption services to adults over 18 years of age. As noted above, we support individuals who have been separated, or affected, by adoption to deal with the many and complex issues they face in life, including but not only search and contact.

Given the complex issues individuals affected by adoption grapple with, and described above, VANISH advocates specialist services aimed at ameliorating the negative impacts on individuals and families. The Report of the Senate Inquiry into Forced Adoptions (2012, p. 220) states:

> It is clear that there is a real need to make counselling and support services available to all the parties affected by adoption. These services can provide opportunities for people to talk about their experiences to explore inner pain and find a capacity for inner healing, which may help improve their quality of life.

The Report describes two ways in which services might be provided: (1) that they be delivered at low cost; and (2) that there is a need for specialised post-adoption counselling. The Senate Committee recommended that "the Commonwealth, states and territories urgently determine a process to establish affordable and regionally available specialised professional support and counselling services to address the specific needs of those affected by former forced adoption policies and practices." (p. 231)

VANISH concurs with this view and argues that the following types of post-adoption support should be provided for in the Adoption Act:

Support to access information. Issues relating to access to information are described in sections *6.4.1–6.4.6* above**,** responding to Chapter 8 Information & Identity of the *Consultation Paper*. Individuals (children and adults) require support to access and understand information, both in terms of the content and the context. Finding out about relatives or about the circumstances of separation is very important to many of those affected. Accessing records from hospitals, baby homes, and adoption and welfare agencies can often be hindered by laws, polices and rules, or by

records being scant or lost. This can cause frustration and despair for adopted people wanting to know their identity and medical history or wishing to connect with their family of origin, and for parents who want information about their child. Services that support those affected to access and understand their information can reduce the distress involved in these processes.

Assistance with search and contact. Searching and making contact or being contacted, where this is possible, can be a complex and sensitive process. Reconnecting can bring joy and relief. However, it may bring further rejection and loss. It is an intensely emotional experience and can trigger trauma-related issues. The nature of contact and quality of relationships can have a significant bearing on the well-being of those involved. Sensitively delivered support and relevant information regarding specific issues that can arise, some of which can be very confronting (such as genetic attraction[11]), can make a difference to how these issues impact upon individuals and their families.

Support for complex family relationships. Having more than one family, or a child living with a different family, creates complexities and unique challenges which require sensitive specialist support. For an individual (child or adult) to be able to relate with the various family members (children, parents, siblings, grandparents, etc.) in such a way that they can benefit from those relationships requires understanding and integration, rather than confusion and overwhelm. Having a professional support worker who is respectful of, and focussed on, the individual's needs and interests can assist with navigating the relationships and complexities inherent in adoption.

Mediation. In some situations, when agreements become difficult to keep or relationships become strained and parties to an adoption find it difficult to understand each other's perspectives, a professional mediator is required to support them to negotiate. This is important to ensure adults keep the best interests of the child(ren) at the centre of their decision making; for example, contact arrangements. It can also be beneficial when adoption reunions have stalled or broken down and require external support to help the parties involved to communicate more effectively and strengthen mutual understanding. Other circumstances where mediation might be required are where new family members become involved (e.g. step-parents, spouses of natural parents, etc.) or where the individuals involved are unsupported by their other family members or fearful of their reactions. In some cases, it is appropriate for a mediator to support an outreach to a family member when reconnecting after decades of no contact.

Counselling. A skilled counsellor can offer individuals an opportunity to connect with and explore their difficult feelings and find their own capacity for healing. Finding a counsellor who has the requisite skills, training and understanding and who can be trusted to validate grief and tend to the trauma experienced is of high importance to those affected. An experienced counsellor can support them to work on underlying causes of physical, emotional and spiritual problems and to address separation, rejection, loss, trust, identity and self-esteem issues. It is important to recognise that adoption counselling and post-adoption counselling are different skill-sets, and an adoption counsellor might not be best placed to provide post-adoption counselling. Post-adoption services should therefore be provided by professional specialists in post-adoption support and counsellors qualified and/or experienced in post-adoption counselling.

Although there is provision in the Act for relatives and parties to an adoption to receive counselling as part of the process of access to information, VANISH understands this to be a single mandatory

[11] Whereby strong feelings of attraction emerge out of contact with genetic relatives.

interview provided by the AIS when releasing records. We are aware that, in specific circumstances, additional and ongoing support has been provided to some individuals, although it is not clear who qualifies for this or how. VANISH does not regard the single session to be 'counselling' *per se*, although we recognise it can be helpful at what is a very emotionally sensitive time/event. In our response to Chapter 8 of the *Consultation Paper*, we raised concerns about the mandatory nature of this 'counselling' and recommended that direct parties to adoption be allowed an informed choice, rather than it being an imposed prerequisite for accessing information to which they are entitled (see section *6.4*).

In September 2011, VANISH was funded by the State Government through DHHS for a pilot counselling brokerage scheme, whereby individuals were funded to see recognised adoption sensitive counsellors for a limited number of sessions. This scheme was highly successful and over-subscribed, with the total funding committed by February 2012. VANISH sought to have this program continued, but funding was not made available. Following the Victorian Parliamentary Apology for Past Adoption Practices and the many accounts by Victorians of their trauma and loss, the Government provided funding for a two-year workforce capacity development project (counsellor training) and enhanced support services for those affected. As a result, VANISH provided a two-day training program to counsellors and health professionals; established a modest in-house counselling service; and set-up a counsellor register, which can be searched online. A proportion of funding was provided again by DHHS for the continuation of these services. This was welcomed by the community but they are still extremely modest services and in no way meet demand.

The requirement that post-adoption counsellors have specialist training and experience in post-adoption support cannot be over-emphasised. VANISH has many times heard examples of where health and mental health professionals have displayed ignorance and insensitivity with regard to adoption, with frequent reports of counsellors and psychologists dismissing adoption as irrelevant to the presenting issues. This matter was also referred to in the Senate Inquiry into Forced Adoptions (p. 217). Given the trust issues faced by many individuals affected by separation and adoption, it can be extremely stressful looking for a counsellor who will not do more harm than good. It is therefore important that individuals be offered counselling (and counselling referrals) by a service with a sound understanding of post-adoption issues and a solid track record of providing sensitive support. Some individuals affected by past adoptions feel strongly that it is not appropriate that post-adoption services be run by organisations that are associated with past adoption practices or the institutions that were responsible for them.

It is important to recognise that many individuals who have been through the traumatic experience of separation from a child or from their mother/father/parents, find the requirement of a mental health plan in order to access support insulting. For mothers and fathers who are separated from their children, whether their consent has been obtained or not, to have to then be diagnosed with a mental health issue in order to access grief counselling is felt to be inappropriate. For adopted persons who had no say in their removal, they report a system whereby they are required to see a GP and accept a diagnosis to be demeaning. Some adopted persons report the process as triggering in that it relates to there being 'something wrong' with them, a common source of feelings of rejection and abandonment. Similarly, some mothers report finding it distressing that they are required to tell their GP about such a personal experience in order to access support.

Peer Support Groups. Many individuals find peer support groups and organisations extremely helpful, as these provide a space for honest discussion about their experiences, thoughts and

feelings where they can be listened to with empathy and understanding. Hearing from others who have been through similar events can help an individual to more fully understand their own experiences and feelings, and to help them realise they are not alone. This is particularly valuable for those who have felt socially isolated or who have found that their family and friends cannot understand their perspectives. This was picked up in the AIFS research: "Our experience of conducting the focus groups, in terms of how easy it was to coordinate, how much participants valued it, and how the vast majority were in favour of such avenues for peer discussion being available in their local area, provides a strong indication that such groups could be readily established and supported … There are and have been a number of groups established in metropolitan areas; however, data from our study suggest a high level of need for such groups in regional and rural areas." (Kenny, Higgins et al. 2012)

Having operated peer support groups for 27 years, VANISH strongly supports this. Furthermore, in 2013, VANISH undertook a survey to gain insights into potential demand for outreach activities in Victoria, particularly support groups and presentations. The survey was sent to members (two-thirds of whom we correspond with by post) and circulated via social media. In all, 123 individuals responded. In reply to the question, "Would you be interested in attending a post-adoption support group in your area?" 63% said yes, 25% said possibly, and 14% said no. When asked how far they would you be willing to travel to attend a support group, 15% said less than 10km, 49% said up to 20km, 18% said up to 50km, and 17% said up to 100km. That Victorians are willing to travel up to 100km to meet and share with other people with allied experiences indicates the extent of isolation and need.

Community Education. Many individuals affected by adoption say they feel that society has no idea about the real impact of adoption and that this, together with the fairy tale stereotyping that occurs, prevents them from being able to engage in honest conversations with their friends and family about how they feel and what they are struggling with. Greater understanding amongst the general public and validation of the issues faced by those involved would help to ameliorate the shame and stigma still associated with relinquishment/removal and adoption. Community education can also help increased understanding between family members who have been separated – particularly in relation to the circumstances surrounding separation and adoption, and the lifelong impacts. VANISH has undertaken some community outreach in terms of regional information sessions and at these events always receives feedback about how enlightening and useful the information is. At the last presentation in Albury, a woman told the presenter afterwards that she now realised she knew quite a lot of people who are adopted and had never thought about these issues before. This response is not uncommon.

Community education and awareness-raising includes public advertising of the Adoption Information Register; of the rights of parties to an adoption to apply for their records; and of the services available to people affected by separation and adoption. This is incredibly important, as many of those affected by adoption remain unaware of their right to information, particularly mothers and fathers given how recently the legislation changed. Many adopted persons do not realise that they have an original birth certificate, and (usually) an original name. This can come as an enormous shock to them when they find out. Community education would ensure these matters are more commonly known amongst the general public and relevant professionals.

Given the significant numbers of persons affected by separation and adoption (as referenced in section *4.2*) and bearing in mind that, for every adoption, there is an adoptive person, two parents and two adoptive parents (plus siblings, grandparents spouses etc.), VANISH recommends that the potential need for post-adoption support services be recognised.

Adequate post-adoption support early on could ameliorate potential long-term damage and go some way towards individuals involved having better outcomes in terms of health, mental health, addictions, etc. Similarly, adequate post-adoption support for adults could help them to get the validation and healing they need, so they are able to tap into their own capacity for well-being. This, in turn, represents a saving to the economy in terms of health and mental health services.

Unfortunately, the waiting period for individuals to get their records from FIND (currently 6 months) does not convey a sense that post-adoption services are prioritised by the State Government. Given the age cohort of the majority of people being sought, this lack of urgency and priority has potentially dire consequences and is of great concern to VANISH.

Research. As has been noted earlier, there is a dearth of research into outcomes of adoption and the issues faced by individuals affected by separation and adoption. Through the work of VANISH, we are aware of a range of issues that warrant enquiry and that could inform policy and practice. We therefore recommend that post-adoption service providers be funded to lead and commission independent research.

Recommendations 40–42:

That post-adoption services be provided free of charge to individuals affected by adoption in Victoria and that these services include: support to access information, assistance with search and contact, support for complex family relationships, mediation, counselling, peer support groups, and community education.

That community education include advertising: of the Adoption Information Register, of the rights of parties to an adoption to apply for their records, and of the services available to people affected by separation and adoption.

That post-adoption service providers be mandated and funded to lead and commission independent research.

(b) And in what circumstances should post-adoption support be provided?

As noted above, for the adopted child-adolescent-adult, and for parent(s) separated from a child or children, the impact of separation is lifelong. Post-adoption support therefore needs to be available over the lifetime of individuals affected, to assist them to deal with issues as they emerge according to their developmental stage and life experiences.

VANISH is of the view that the services outlined above need to be provided to all direct parties to adoption, regardless of how the adoption came about. Adoption always involves loss and, as Silverstein and Kaplan (1986) point out, “These seven core or lifelong issues permeate the lives of triad members regardless of the circumstances of the adoption”.

(c) Who should be eligible for post-adoption support?

Our recommendation is that post-adoption support services be provided to primary parties to a Victorian adoption and their families, as follows:

Support to access information. Anyone who is eligible to adoption information should receive support to access it.

Assistance with search and contact. Anyone who is eligible to adoption information should receive search assistance, information and support in dealing with the findings of their search.

Support for complex family relationships. Direct parties to adoption should be provided with support to navigate and negotiate complex family relationships.

Mediation. Mediation services should be provided to family members involved in an adoption and/or adoption reunion. By this we mean the primary parties to an adoption and other family members who need to be brought into mediation with those parties; for example, natural relatives.

Counselling. Counselling should be provided to the primary parties of an adoption and natural relatives, as defined in the Act. Where there is a waiting list or limit to resources, priority should be given to the primary parties.

Peer Support Groups. Support groups should be made available to the primary parties and other family members. It should be recognised that separate groups for each cohort can be beneficial; for example, mothers only, adoptees only, etc.

Community Education. Obviously this service is for all members of the community.

We also recommend that funded services be provided on a reciprocal basis to direct parties to an adoption in other states and territories. This is because:

- single mothers were often sent or moved interstate during their out-of-wedlock pregnancies (to hide their shame and/or minimise embarrassment to parents). This means that many searches involve accessing records through interstate agencies; and
- adoptive parents frequently adopted a child or children in one state/territory and then brought them home to their place of residence, or they moved interstate with the adoptive children.

The level of mobility in adoption means that it is necessary for post-adoption support services providers to provide support and counselling services to individuals affected who live in the state/territory where they operate. For example, in the last financial year (2015-16), 28% of new people registering for VANISH services lived interstate and 10% overseas. VANISH provides search support and telephone counselling to these service users, however they will also draw upon counselling, support groups and other services in their state of residence. Similarly Victorian providers should provide services to those living in Victoria regardless of where their adoption occurred.

Recommendation 43:
That post-adoption services be made available to adopted persons who were born and/or adopted in Victoria, and parents whose child was born and/or adopted in Victoria, and, where appropriate, to other relatives; and that support and counselling services be provided to individuals now living in Victoria, wherever the adoption occurred.

(a) Who should be responsible for providing this (post-adoption) support?

VANISH is of the view that it is the responsibility of the State Government to ensure that adequate post-adoption services are made available and that individuals affected are aware of those services. The government may choose to seek financial contributions from organisations that were involved in past adoption practices to support the funding of these services, as recommended in Recommendation 10 by the Committee in the Senate Inquiry (Committee 2012).

In terms of who should deliver post-adoption services, they need to be delivered by organisations that are qualified and mandated to do so. Adoption is complex, and post-adoption support requires a specialist skill-set, including a contemporary understanding of the impacts of separation and adoption. Similarly, post-adoption support that involves search and reunion requires expertise in that area so that individuals do not get the wrong advice about the relevant laws or protocols or, worse still, inaccurate search results.

The *Consultation Paper* references "a range of groups" (s 9.40) and "agencies such as VANISH" (s 9.41), which could be read to mean that there are numerous organisations offering post-adoption services in Victoria. In reality, there are very few organisations operating in this field, particularly professional organisations whose core mandate is for post-adoption services (VANISH, PCAF, Link-Up). Possibly because, as the Commission points out, adoption is not well understood; the sector is under-recognised; and, VANISH would argue, under-resourced. This issue needs to be highlighted through the review process with a considered look at what services are available in relation to potential demand.

It is important that funded post-adoption support services are delivered by organisations independent of those who arranged the adoption, and that parties to an adoption are offered a genuine choice of service providers, so that they may, if they choose, receive support from the government or a non-government agency that arranged the adoption, or from an independent organisation, such as VANISH or Link-Up. It is important that individuals are made aware of the possible risks and benefits of receiving services from the organisation that arranged their adoption. In many cases, individuals have reported to VANISH that they were well supported and highly satisfied with the service they received from the NGO they retrieved their records from. However, we have also received reports where individuals are initially grateful for the sensitive way in which their records are released, but after they have fully absorbed their information, then feel anger that they were required to access this service from the agency involved in their adoption. They see this as a clear conflict of interest.

Recommendations 44 and 45:
That individuals seeking post-adoption services be provided with an informed choice of service providers, including the option to be supported by an organisation or organisations that are not and/or were not involved with arranging adoptions, past or present.

That post-adoption services be provided by organisations specialising in post-adoption support and which have search and contact expertise. Also, that counsellors are qualified and/or experienced in post-adoption counselling (rather than only in adoption counselling).

7. CLOSING COMMENTS

Adoption is a highly complex, nuanced, sensitive and contentious topic with social, cultural, moral, ethical, legal, ideological and political dimensions. Research tells us that the detrimental impacts of separation from family or from a child and the changing of a person's identity are lifelong and inter-generational. As summarised by Pauline Kenny and Daryl Higgins of the Australian Institute of Family Studies (2014):

> If we use a public health perspective to examine the effects of past adoption practices, we can see that the social and economic costs and consequences of preventable health issues are borne not only by the individuals but by the entire community. Studies have consistently shown that population-level prevention and early intervention are cost-effective and can positively alter risk and protective factors that affect individuals.
>
> In this context, if we consider some of the child protection reforms being considered across Australia at present …, it is certainly important to bear in mind the potential longer term implications for children whose connection to their parents are severed, as well as their mothers, fathers and wider family members. An urgent policy issue for consideration therefore, is the lessons that can be learned from past adoption practices that can be applied to intercountry adoptions, adoption and permanent care for children in statutory out-of-home care, anonymous donor conception and surrogacy.
>
> Research on past adoption practices can provide timely cautions about the potential effects on future generations of children if attention is not paid to their needs for identity, connection and access to information. (p. 37)

Adoption is an outmoded and draconian arrangement for parenting children. It is the most paternalistic and protectionist of the permanent placement options available in Western jurisdictions, rooted as it is in 17th–century doctrines that were designed to address property inheritance. Open adoption arrangements in Victoria under the *Adoption Act 1984* have perpetuated the legal fiction of the adopted child having been born to the adoptive parents, as introduced in the context of the closed adoption era which preceded it. Cancelling the child's original birth certificate and issuing a new one, falsified and condoned by the state, violates the adopted child's rights to preservation of their identity and relationships with family of origin as enshrined in Articles 7 and 8 of the *United Nations Convention on the Rights of the Child* (UNICEF 1989).

Victoria has a history of being progressive in relation to legislation on adoption. However, the current review risks being tokenistic instead of progressive, given the mandate to 'modernise' the *Adoption Act*, rather than to review it in the broader context of the future role of adoption in contemporary Victoria. The latter approach would necessarily include a review of adoption policy, adoption and post-adoption services, and legislation; and would also require significantly more time, and more community education and consultation.

A key question should be addressed by the Victorian Government in regard to adoption policy before it amends the *Adoption Act 1984*, namely whether it's intention is for adoption to be a

measure to satisfy the interests of prospective parents or to be a measure of last resort for ensuring a safe family environment for a child.

VANISH strongly advocates that demand for adoption by prospective parents should not drive adoption policy, in accordance with the intentions of the United Nations *Convention on the Rights of the Child* (UNICEF 1989) and *Guidelines on Alternative Care for Children* (UNICEF 2010). VANISH further argues that adoption is not necessary to ensure the care of vulnerable children in Victoria, as other options exist – including Permanent Care Orders – which have less detrimental impact on the rights of the child.

A common theme in the series of Apologies from 2008 through 2013 to people impacted by past family separation and adoption practices is the commitment by governments to learning from past mistakes in child and family welfare policy and practice, and to never repeat them. The Victorian community and Government will need to continue dealing with the legacies of poor past adoption practices for several decades to come, given that the peak of adoption numbers occurred in 1971-72; and adoption is no longer required as a permanency option for vulnerable children. The *Adoption Act* is complex and requires significant amendment. Therefore, this restricted review should focus on redressing the worst aspects of the Act in regard to the thousands of parties directly and detrimentally affected by adoption, and on ensuring that such outcomes will not be repeated.

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APPENDIX I: Newspaper Article: 'Adoption Changes Worth It' (1983)

Adoption changes "worth it"

MOST of the amendments to the State Government's Adoption Bill, presented in Parliament last week, were worth considering Mrs. Pauline Ley, co-ordinator of the Geelong Adoption Program (GAP) says.

There were five amendments, four of them major.

The fifth dealt with the advisability of the word "Aborigine" going into the adoption legislation.

There had been debate as to whether there should be special provisions for Aborigines and how to define them.

Aborigines looked after their own kith and kin, as an extended family unit, Mr. Hayden Shell MLA for Geelong West said.

Mrs. Ley believes Aboriginal people identify more with their own culture than with the white society and "they are best able to handle matters within their own community."

"They have shown in recent years they are very capable of doing it.

"Aboriginal Child Care Services (ACCS) has provided an excellent service for their own people.

"GAP has referred one Aboriginal adoptee to ACCS and they were superb," she said.

On mandatory counselling for all parties, Mrs. Ley said she thought while in most cases counselling was beneficial, it was difficult to impose on reluctant people. Some handled the procedure well alone. It could cause resentment and therefore there was little to be gained from enforcing it.

As for the provision to allow adoption to de facto couples: Church groups have been very opposed to it. I would support their view that a more solid background is provided by a married couple.

"But there are rare cases, where children who were fostered by a de facto couple before they wished to adopt it and that might then be best for the child," she said.

On the amendment giving relinquishing parents the power to determine the kind of home (religious, etc) school and access for the baby — the conditional consent amendment — Mrs. Ley said: "The Adoption Parents Association feels that in special cases, when children already know the parents who cannot for some reason look after their children, possibly in an institution, where the present adoption laws mean cutting off ties completely, conditional consent is acceptable.

•Geelong Adoption Program (GAP) co-ordinator, Mrs. Pauline Ley — adoption amendments "worth considering."

By Ellen Anderson

"But we don't want conditional consent for traditional new babies' adoption.

"I believe there should be some form of contact for the relinquishing mother and the child, if they feel comfortable about it.

"Of course, it can be sabotaged by adoptive parents, but it can be important for the adopted child's emotional development to know something of its birth parents, circumstances and physical appearance.

"And it will also help the relinquishing parent in that it sees the child is secure and safe within its adoptive relationship."

On access — for the relinquishing parents — and immediate family Mrs. Ley said there was no need for adoptive parents to feel threatened by access.

"As adoptive parents they are the primary parents — social, legal and psychological.

"Fostering is for short term, but adoption is forever," she said.