

## Online submission to the Victorian Law Reform Commission

### Adoption Act 1984

<b>Number</b>	35
<b>Name</b>	OzChild
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#### Chapter 5 The best interests and rights of the child

The Commission is seeking the views of the community on any changes that may be required to the Adoption Act 1984 to ensure that the best interests of the child are paramount.

<b>Question 1</b>	<b>Should the Adoption Act use consistent terminology to guide decision makers in a decision relating to adoption? If not, in what circumstances should terminology other than the best interests of the child be used?</b>
<b>Response</b>	Yes we believe that there should be consistent terminology.
<b>Question 2</b>	<b>Should the Adoption Act provide guidance about how to determine what is in a child's best interests? If yes:</b> <b>a. What should decision makers be required to consider?</b> <b>b. Should all the matters have equal weight or should some be weighted more heavily than others</b> <b>c. If some matters should be weighted more heavily than others, what are they?</b>
<b>Response</b>	<p>We would support The Adoption Act 2000 (NSW) which gives guidance about how to determine the best interests of the child. (Please refer to page 52 of the Review of The Adoption Act 1984, Consultation Paper August 2016).</p> <p>All matters need to be considered however the weighting would appear to be individually influenced based on the child's needs and wishes. For example if the child is a baby or if the child has a significant disability.</p> <p>It would appear that the suitability and capacity of the proposed adoptive parents to meet the child's emotional developmental and social needs should be heavily weighted and as above others considered based on the child's circumstances.</p> <p>Yes as per outlined in The Adoption Act 2000 (NSW).</p>
<b>Question 3</b>	<b>Should the Adoption Act have requirements about the age differences between the adopted child and any other children in the family? If yes, what requirements?</b>
<b>Response</b>	No we do not believe that there should be requirements about the age differences between the adopted child and any other children in the family but instead place the child with the adopted family in their best interests.

<b>Question 4</b>	<b>Should the Adoption Act include a principle requiring decision makers to consider placing siblings for adoption in the same family? If not, in what other ways could the Adoption Act ensure that sibling relationships are considered in decisions about adoption?</b>
<b>Response</b>	Yes we believe there should be a principle requiring decision makers to consider placing siblings for adoption in the same family and that maintaining siblings together should be wherever possible the preferred outcome. If this is not possible arrangements should be made for contact to occur.
<b>Question 5</b>	<b>Should there be a greater obligation to identify and contact the father of the child to obtain his consent to an adoption? If yes, what steps are reasonable to try to obtain a father's consent?</b>
<b>Response</b>	In our experience there can sometimes be minimal effort in establishing the identity of the father which can then significantly impact the child's opportunity to establish a relationship. We would support a greater obligation to identify and contact the father and would consider the following steps to be reasonable; <ul style="list-style-type: none"> <li>• Follow up with the paternal and maternal side of the family including extended family to establish possible identifying information</li> <li>• Electoral role search (if name is known)</li> <li>• Centrelink search</li> </ul>
<b>Question 6</b>	<b>Are there any situations when no attempts should be made to contact the father to seek his consent to an adoption? If yes, what are they?</b>
<b>Response</b>	If there is unacceptable risk of harm to the mother or child if the father is informed then we believe that no attempts should be made to contact the father to seek his consent to an adoption. This may involve when there has been significant family violence perpetrated by the father including threats to kill or significantly harm the mother or child. We would also view where there has been situations of rape or incest that there would not be a requirement to seek contact or consent.
<b>Question 7</b>	<b>Should any changes be made to the current consent provisions? If yes, what changes?</b>
<b>Response</b>	No changes recommended.
<b>Question 8</b>	<b>Should any other people be consulted about, or required to consent to an adoption? If so, who?</b>
<b>Response</b>	We would support that there is a provision that promotes consultation with extended family members to explore possible alternative care arrangements within the child's kinship network. From our experience in kinship care we are aware of the significant contribution that kinship carers can make for a child in need of long term care.
<b>Question 9</b>	<b>Are the grounds for dispensing with consent appropriate for adoption in contemporary Victoria? If not, what changes should be made?</b>
<b>Response</b>	Yes these appear appropriate.

<b>Question 10</b>	<p><b>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:</b></p> <ol style="list-style-type: none"> <li>a. <b>the court has dispensed with the consent of a parent but it is in the best interests of the child to have contact with the parent or with relatives of that parent</b></li> <li>b. <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.</b></li> </ol>
<b>Response</b>	No response
<b>Question 11</b>	<p><b>How should adoption law provide for the child's contact with family members other than parents? For example:</b></p> <ol style="list-style-type: none"> <li>a. <b>Should contact arrangements be considered as part of a best interests principle?</b></li> <li>b. <b>Should a decision maker, such as DHHS, be required to consider contact with family members other than parents after an adoption?</b></li> <li>c. <b>Should the court be required to consider making conditions for contact with family members other than parents after an adoption?</b></li> </ol>
<b>Response</b>	In our view while contact with a family member would be seen as ideal this in fact changes the focus of the principle of adoption and would likely impact on those families considering adopting. This could also pose confusion for the child around their sense of belonging. While we acknowledge the importance of a child's identity to be maintained the stability that adoption can provide for a child should not be underestimated.
<b>Question 12</b>	<b>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?</b>
<b>Response</b>	No response
<b>Question 13</b>	<b>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?</b>
<b>Response</b>	Our view is that there should not be the pressure on children aged 12 and over to consent to an adoption but that in line with the best interest of the child that their circumstances and views are taken into consideration. We would support the steps currently taken in the Family Law Court where the child's views are considered through a report prepared by a family consultant (a psychologist or social worker who specializes in the area) or by appointing an independent children's lawyer.
<b>Question 14</b>	<b>In what circumstances, if any, should a child have separate legal representation in adoption proceedings?</b>
<b>Response</b>	We believe that a child should be legally represented in adoption proceedings and this is in line with article 4 of the United Nations Conventions on the Rights of the Children which reinforces the protection

	of rights for children. This is also in line with the Children’s Court and Family Law Court divisions.
<b>Question 15</b>	<b>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?</b>
<b>Response</b>	From our experience in observing the Children’s Court we believe that there should be guidance about the duties and role of a legal representative for a child and these should be based on the best interests of the child. In our experience we have observed children being pressured to provide certain instructions around returning to parental care which are not always based on their best interests.

### **Chapter 6 Aboriginal and Torres Strait Islander children and the best interests principle**

**The Commission is seeking the views of the community about whether the Adoption Act provides appropriately for the best interests of Aboriginal and Torres Strait Islander Children.**

<b>Question 16</b>	<b>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?</b>
<b>Response</b>	Having the option to appoint a <i>guardian ad litem</i> would allow for those cases where there are added complexity an additional layer of safeguarding and representing the interests of the child. We therefore believe that the Adoption Act should make provisions as in New South Wales for the appointment of a <i>guardian ad litem</i> when there a special circumstances that warrant the appointment and the child would benefit.
<b>Question 17</b>	<b>Should there be a positive duty on the Secretary of DHHS to make reasonable inquiries as to whether a child to be placed for adoption is an Aboriginal or Torres Strait Islander child? If yes, what type of inquiry might be reasonable?</b>
<b>Response</b>	Our view is that the Secretary of DHHS should definitely make all reasonable inquiries to determine whether a child to be placed for adoption is an Aboriginal or Torres Strait Islander child. These inquiries should include exploring extensive background information about the child and extended birth family. Liaison should occur with the Aboriginal Controlled Child Care Agency to determine if the family is known within the agency.
<b>Question 18</b>	<b>Should there be separate rules and guidelines that apply only to the adoption of Aboriginal and Torres Strait Islander children? If yes, is the child placement principle in the Adoption Act (section 50) an appropriate mechanism? If, not what changes should be made?</b>
<b>Response</b>	We would support there being separate rules and guidelines to apply for the adoption of Aboriginal and Torres Strait Islander children and are aware of past Government practices that have had significant impact on Aboriginal people. Our view would be that adoption of Aboriginal and Torres Strait Islander children should occur when parents have expressed their wish for the child to be adopted within the relevant Aboriginal and Torres Strait Islander community.

<b>Question 19</b>	<b>Should there be a requirement that in any adoption of an Aboriginal or Torres Strait Islander child the first preference is to place a child for adoption with Aboriginal or Torres Strait Islander extended family or relatives? If not, what should the order of preference be for placing Aboriginal and Torres Strait Islander children for adoption?</b>
<b>Response</b>	Yes as stated above we believe an Aboriginal or Torres Strait Islander child should be placed with an Aboriginal or Torres Strait Islander extended family or relatives if being adopted.
<b>Question 20</b>	<b>Should the Adoption Act require that adoption be considered for Aboriginal and Torres Strait Islander children only where there is no other appropriate alternative?</b>
<b>Response</b>	Yes, adoption should be seen as a last resort for Aboriginal and Torres Strait Islander children to avoid repeating mistakes of the past. As highlighted in the <i>Bringing Them Home Report</i> , Aboriginal and Torres Strait Islander people lost their sense of culture, connection, identity and suffered significant trauma and abuse from being separated from their family of origin.
<b>Question 21</b>	<b>Should there be different principles for the adoption of Aboriginal children as compared to Torres Strait Islander children? For example, should there be a separate child placement principle for Torres Strait Islander children as compared to Aboriginal children as is the case in New South Wales adoption law?</b>
<b>Response</b>	No response
<b>Question 22</b>	<b>Should parents of Aboriginal and Torres Strait Islander children retain the ability, that parents of other children do not have, to put conditions on their consent to the adoption of their children? If not, what options should there be to protect the connection of Aboriginal and Torres Strait Islander children to country, kin, language and community?</b>
<b>Response</b>	We would support parents of Aboriginal and Torres Strait Islander children to have additional abilities to give consent for conditions around contact including contact with the members of the Aboriginal and Torres Strait Islander community which could assist with connection to culture and country being maintained.

**Chapter 7 Eligibility, suitability and contemporary attitudes and law**  
**The Commission is seeking the views of the community about who should be eligible to adopt, and whether current suitability and eligibility requirements are consistent with contemporary views and expectations about family.**

<b>Question 23</b>	<p><b>Couples in domestic relationships are required to prove that they live together and have lived together for two years, to be able to adopt. This requirement does not apply to other couples such as married couples.</b></p> <ol style="list-style-type: none"> <li>a. <b>Is a co-habitation requirement consistent with contemporary family life and the best interests of the child?</b></li> <li>b. <b>If yes, should a co-habitation requirement apply to all couples equally?</b></li> </ol>
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<b>Response</b>	Our view is that there should not be a co-habitation requirement and that decisions made as to the placement of a child with any person is made in their best interests and not connected to how long someone has co-habited for.
<b>Question 24</b>	<p><b>Single people can adopt a child only if there are ‘special circumstances in relation to the child’ which make the adoption ‘desirable’.</b></p> <p>a. <b>Is this requirement consistent with the best interests of the child?</b></p> <p>b. <b>Should this requirement be amended? If yes, what criteria should apply to adoptions by single people?</b></p>
<b>Response</b>	Our view is that single people should be able to adopt without any restrictions and that this is in line with permanency legislation under the Children, Youth and Families Act 2005. We would support that there is no distinction between single people and couples under the Adoption Act. In our experience we are aware of a number of single foster carers and kinship carers that provide exemplary long term care to children and have a strong support network to draw upon.
<b>Question 25</b>	<b>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?</b>
<b>Response</b>	Our view is that single people should be able to adopt without any restrictions and that this is in line with permanency legislation under the Children, Youth and Families Act 2005. We would support that there is no distinction between single people and couples under the Adoption Act. In our experience we are aware of a number of single foster carers and kinship carers that provide exemplary long term care to children and have a strong support network to draw upon.
<b>Question 26</b>	<b>Step-parents and relatives of a child can only adopt a child in their care in limited circumstances. Parenting orders under the Family Law Act are the preferred option in these situations. Is this appropriate? If not, what changes are needed?</b>
<b>Response</b>	Our view is that the Family Law Court provides an appropriate legal avenue for step-parents and relatives of a child to secure their care arrangements.
<b>Question 27</b>	<b>Are the suitability criteria in the Adoption Regulations appropriate? Should any criteria be added, removed or changed?</b>
<b>Response</b>	Our view is that suitability criteria should be extended to include consideration of chronic health or deteriorating health conditions for their impact on the best interests of the child.
<b>Question 28</b>	<b>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?</b>

<b>Response</b>	We believe that they are clear.
<b>Question 29</b>	<b>Should the steps in the assessment process be set out more clearly in the Adoption Act and/or Adoption Regulations? If yes, what changes are required to make the assessment process clearer?</b>
<b>Response</b>	Yes we believe as in Queensland, Tasmania and New South Wales that the steps involved in the assessment process should be included and that those steps listed on page 106 of the Review of The Adoption Act 1984, Consultation Paper August 2016 should be included in the legislation and also not just relate to infant adoption but specify where there may be additional requirements depending on the age and needs of the child.
<b>Question 30</b>	<b>Could any other improvements be made to the assessment process? If yes, what improvements could be made?</b>
<b>Response</b>	We are aware in our work in the child and welfare sector that often delays in decision making around permanency for children significantly impact on their wellbeing. It would appear critical that the assessment process has clear timelines and that this are adhered to. This would ensure that children are able to be placed in a secure and stable living environment in a timely manner.
<b>Question 31</b>	<b>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?</b>
<b>Response</b>	No response
<b>Question 32</b>	<b>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?</b>
<b>Response</b>	Our view would be that parents should be able to express their wishes about the religion, race and ethnic background of the adoptive parents and while these wishes should be considered that the decision making is based on the best interests of the child and the parent's wishes do not override this.

### **Chapter 8 Information and identity**

**The Commission is seeking the views of the community on who should have rights to adoption information under the Adoption Act and how an adopted person's identity should be reflected on their birth certificate.**

<b>Question 33</b>	<b>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?</b>
<b>Response</b>	No response
<b>Question 34</b>	<b>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?</b>

<b>Response</b>	No response
<b>Question 35</b>	<b>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?</b>
<b>Response</b>	No response
<b>Question 36</b>	<b>Is the balance in the Adoption Act between providing access to information and protecting people's privacy appropriate? If not, what changes are needed?</b>
<b>Response</b>	No response
<b>Question 37</b>	<b>What factors should be taken into account in deciding to release identifying information about a person?</b>
<b>Response</b>	No response
<b>Question 38</b>	<b>Should the provisions of the Adoption Act relating to the release of adoption information be made clearer? If yes, what changes are needed?</b>
<b>Response</b>	No response
<b>Question 39</b>	<b>How should an adopted person's identity be reflected on the person's birth certificate?</b>
<b>Response</b>	Our view is that a child's identity is a fundamental right and highlighted in article 8, 'Preservation of identity' in the United Nations Convention on the Rights of a Child. We would support the New South Wales legislation that <i>'An adopted person can receive an adopted person's birth record. This is a single certificate that certifies details about both birth and adoption'</i> . In this way we believe that a child's true identity is preserved but also allows for connection with the adoptive family by introducing an integrated birth certificate.
<b>Question 40</b>	<b>If a different form of birth certificate were available to adopted people, what legal status should it have?</b>
<b>Response</b>	Our view is that the integrated birth certificate should be able to be used as legal proof of a person's identity.
<b>Question 41</b>	<b>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?</b>
<b>Response</b>	Ensuring that an integrated birth certificate is accepted as legal proof may require an amendment to the <i>Birth, Deaths and Marriages Registrations Act 1996</i> .
<b>Question 42</b>	<b>Is changing a child's given names consistent with the best interests of the child?</b>
<b>Response</b>	Our view is that depending on the child's age and particularly if they are older, changing a child's name is not consistent with the best interests of the child and that this is in line with the United Nations on the Rights of a Child article 8 around preservation of identity.
<b>Question 43</b>	<b>In what circumstances (if any) should the Adoption Act allow a child's given names to be changed?</b>



<b>Response</b>	Our view would be that the only circumstance when it would be appropriate to consider changing an older child's names if failing to do so placed them at risk or if their name had an offensive meaning. We recognize that sometimes children themselves want their names changed and their wishes needs to be considered.
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**Chapter 9 Modernisation and operation of the Adoption Act**  
**The Commission is seeking the views of the community on modernisation of the Adoption Act and also on how to ensure that the procedural and operational requirements in the Act are suited to contemporary society and consistent with other laws.**

<b>Question 44</b>	<b>Should the Adoption Act include a section identifying the main object of the Act? If yes, how should the main object be described?</b>
<b>Response</b>	Yes we believe that the Adoption Act 2000 (NSW) clearly articulates the objectives of their act as described on page 135 of the Review of The Adoption Act 1984, Consultation Paper August 2016. and this could be adapted to be specific to the Victorian jurisdiction.
<b>Question 45</b>	<b>Should the Adoption Act include general principles to guide the exercise of power? If yes, what should these principles be?</b>
<b>Response</b>	No response
<b>Question 46</b>	<b>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?</b>
<b>Response</b>	Yes we believe that the use of the term 'whole blood' or 'half-blood' should be removed when defining a relative. We also believe that the term 'Aborigine" is offensive towards Aboriginal people and should no longer be used.
<b>Question 47</b>	<b>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?</b>
<b>Response</b>	It would appear as highlighted that the process of having to publish notices in the Government Gazette is outdated and requires review.
<b>Question 48</b>	<b>Should there be requirements in the Adoption Act to provide post-adoption support? If yes:</b> a. <b>Who should be responsible for providing this support?</b> b. <b>What type of post-adoption support should be provided, and in what circumstances?</b> c. <b>Who should be eligible for it?</b>
<b>Response</b>	Our view is that post adoption support should be part of the Adoption Act and acknowledge that circumstance of children adopted and their adopted families can change over time. It would appear that being able to access support from an agency that have experience in managing adoptions and is well versed in this area should be able to respond to individual needs. For some people this may involve individual counselling or attending a

	support group or receiving information and advice. We would support anyone that has gone through adoption or is an adoptive parent be eligible for accessing post adoption support.
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