



## **Submission to Victorian Law Reform Commission – review of adoption laws from ARMS(Vic)**

ARMS(Vic)'s position is that adoption should no longer exist: there is no need for it under any circumstances.

The rights of the child as outlined under the UN Convention are paramount and are not served by the continuation of adoption. Adoption serves adopters, not adoptees, by giving them legal 'ownership' of children. No-one has the 'right' to another person's child. The notion of entitlement to a baby has to stop. Even if protection of a child is paramount and that child needs an alternative family, guardianship or stewardship are preferable to adoption. Adoption has always been seen as a "prize" by those who are unable to give birth to their own children. Custody orders and guardianship orders should be seen like adoption – these orders should also be seen as the 'prize'. People think of permanent care or foster care as second best or not secure enough, but an adoption order should never be preferred over a permanent care order.

If we reframed permanency, the people wishing to provide this kind of care would see it in a different frame. We would look for people who can commit emotionally to caring for a child for the rest of their life while accepting that the child still has another family.

Adoption is not a static concept. It follows a child throughout their lifetime and this needs to be considered in any legislative reforms.

There needs to be a presumption of ongoing engagement in a meaningful way to support the families involved in an adoption.

In the past 20 years, adoption has been talked about in a completely different way, but the status of adoption lasts for a lifetime. We have to think about how we ameliorate that position. How can we talk about being raised by people other than your natural family in a way that will make people feel a sense of comfort?

Adoption severs the child's connection to its family of origin which has been shown to have disastrous consequences for adoptees, and certainly for the mothers. It legally removes the child's right to its family, culture and heritage; creates a new (false) identity and birth certificate for the child; declares the lie that the adopters are the parents as if the child were born to them. It has been widely acknowledged that many adopted people feel a disconnect and identity confusion. Adoption is a status that affects an adoptee when they are a child and at all stages of their life. This status stays with them and makes them different. Cultural norms will make a set of assumptions about a person who has been adopted as a result of that status. In an

article in The Age in 1993 Louise Bellamy reported that Brother Alex McDonald, a Jesuit who has worked with homeless young people in St Kilda for 10 years, says of the 147 suicides of young people caused by drugs and abuse in the area over the past decade, 142 came from adoption backgrounds. In 1998 an adoptive mother, whose adopted son had committed suicide, wrote to Woman's Day asking to hear from parents who had lost an adopted child to suicide. She received 186 letters.

When ARMS Vic first articulated the idea of open adoption in the 1980s, the proposal we put forward was that instead of adoption, people could be appointed as a guardian and have a custody order that lasted a lifetime, not just until a child turns 18. However this was opposed by adoptive parents.

ARMS Vic went back to the drawing board, and our fall-back position was open adoption. It took a long time to get adoption agencies on board. The agencies were in a difficult spot - they'd lined up babies for infertile couples and their clients were not prepared for open adoption. The education program was re-designed, but the social workers and people in the department didn't always accept it.

When the first open adoptions went through the County Court, the judges narrowed contact opportunities for the natural parents to 4 visits a year. This was never intended in the Act but the 4 visits per year arose out of judicial decisions and was later included in the Regulations.

Open adoption is not working. Children can be manipulated not to see their natural parents, adoptive families can move interstate or overseas. There is no legal power for natural parents to insist that contact continue.

ARMS (Vic) would argue strongly that adoptive parents are not well-prepared for placement of a child into an open adoption and that the picture often given to them is that this can be minimised: it's only 4 times a year and if the child's sick they don't need to visit. They hear this from other adoptive parents.

Once a child gets to an age when they're asking the hard questions (around 4-6 years old) then all of a sudden the excuses are made by adoptive parents to miss contact dates: the child is too sick to see the natural mother; the child becomes upset after the contact; something else comes up; it's a constant pattern. The openness starts closing. If we prepared adoptive parents for contact it would be very different. If there were more contact there would be more familiarity and less fear and insecurity.

Adoption legislation needs to be changed to enable adoptions to create a new legal relationship while retaining recognition of the relationship with the family of origin. This principle is applied in adoption in countries such as France, Ethiopia and Thailand and called 'simple adoption'.

Any placement has to protect the natural and adoptive families' relationship which needs to be supported by professionals.

### **Best interests principles in the Act**

ARMS (Vic) believe there should be guidance in the Adoption Act and the best interests of a child should be paramount. These principles should apply to the adoptee for their whole life and not just for the period of time concerned with the adoption arrangement.

The best interests of the child should be weighted according to the following order:

1. Extended family: if extended family is available then the wishes of parents and whether any kinship care is available is first priority
2. Alternatives: look at the alternatives to adoption
3. Siblings: siblings should always remain together.

There should be principles in the Act that acknowledge the value of adoption, that it means permanency '*these are your parents for life*'. Principles should also acknowledge the value of meaningful contact between a child and their natural parents.

## **Identity**

Even if adoption were to continue there is no reason to change a child's name. This takes away a child's identity. Adoptive parents can obviously call the child by another name if that's what they want to do, but if a child's name is not changed legally, the child will still hold a sense of their identity in a meaningful way. It's about identity and connection. Changing an adopted child's name harks back to the 'clean slate' and 'clean break' theories. These have both been shown to be erroneous. Even if an adoptive parent has always wanted to name their first child after their grandmother, this child they have brought into their family already has a name (ironically perhaps even due to the same reason) which is part of that child's identity. We respect the right of others to parent a child but they have no right to change that child's identity.

## **Birth certificates**

Birth certificates are legal, identifying documents and as such need to be truthful. Current birth certificates for adopted people are not. They state that the child's name is something other than that given to them when they were born; it names the adoptive parents as if the child were born to them. There is some debate about what adoptees' birth certificates should look like. While keeping in mind that adopted people have more right to speak about birth certificates, the bottom line is that they need to be truthful. This truth needs to be told while considering the feelings and sensitivities of those involved. ARMS(Vic) believes that the original birth certificate should be used as the formal identification for the child with full legal status and a parenting or adoption certificate used by the adopters, as is done with guardianship. The problem with integrated birth certificates is that they would look completely different from the usual birth certificates and could therefore invite unwanted comment and scrutiny. It contains the adoptee's personal information that not everyone needs to know. The fact that a person is adopted would in most cases be irrelevant to the reason for the birth certificate needing to be shown. We need to be sensitive to their feelings.

## **As if born to**

There is no need to say "as if born to" in legislation as that is obviously part of their parental rights, duties, obligations and liabilities. Adding "as if born to" is superfluous and creates a false impression in the minds of the adoptive parents. This is a legal

and actual lie. The law should not support this lie. How we describe adoption is important. The reality is that they are parenting another family's child and the relationship will never be "as if born to".

## **Jurisdiction**

Adoptions should be under the jurisdiction of the Family Court, not the County Court as is currently the case. Adoption is a family matter, whether it is a new baby being adopted or a child coming through the Child Protection system. All parties need to have independent legal representation. Considering the fact that a woman would have legal representation if she were buying a house, it is ludicrous that this does not happen when she is giving her baby up for adoption. Currently the adopters may have legal representation but there is no mention of the mother even being there at the time of finalising the adoption, let alone having legal representation. The mother should have legal representation before giving consent right through to the legalisation of the adoption and final consent should be made in front of a judge. Currently the adoptive parents go to court, but there is no mention of the mother, who is not a party in proceedings. This assumes that a child's interests are not in some way served by their natural family.

## **Consent**

It is very hard to find a reason why we would dispense with consent.

P.29 3.62 'the County Court decides to dispense with the need for...consent'. This opens the door to a new wave of forced adoptions. Troubled families must resolve their problems within 12 months or their in care children will be placed for adoption. There are often insufficient services (rehab, housing, anger management, etc.) available within the short time frame mandated.

The consent revocation period needs to be longer. Currently the revocation period is up to 6 weeks after the birth. This is too short, in particular given the mother's position of emotional distress. The person giving consent must have received counselling from an approved counsellor as well as receive independent legal advice. The approved counsellor should not be from the adoption agency and the legal representative needs to be someone with specific training in adoption, not just any lawyer. We would advocate that for infant adoption the consent period should be extended to 6 months and the baby placed in pre-adoptive foster care or with potential adoptive parents for that time. Consent should be given from the mother and father where possible/appropriate. The consent should be able to be withdrawn any time during the 6 months.

A natural parent must be a party to the adoption order. This should be articulated in legislation: although they're giving consent they're still a party and can enact their right to contact. It shouldn't come as a shock to the adoptive parents or the agency when a natural mother realises she no longer wants to put her child with a family who are not allowing contact.

There should be legal support at the consent period when the natural mother can tell contact arrangements will not work due to the attitude of the prospective adoptive parents.

Agencies often do not tell the natural mother that her wishes need to go in the adoption order for them to have any legal weight, so natural mothers often don't know they need to go to court and are not represented. Therefore adoptive parents are completely within their legal rights to deny contact, albeit it morally wrong. This shows the necessity for legal representation for the natural mother.

Consent should be required from both the mother and father if appropriate and possible (unless there is for example violence, incest, rape). Unless there are serious reasons why it shouldn't happen, the father and/or his extended family should have the opportunity to keep the child.

If it's an infant adoption, currently the principal officer has up to within 2 days of consent being given to write to the father if he's known. That is far too late. If we're realistic that child's interests are being best served when raised with the natural family, why wait two days after the child is placed in non-biological placement? He should be contacted as early as possible in the process, with the above exceptions.

We allocate a status to the mother which is clearly different from the status of the father. The father should be involved from the moment the mother decides she wants to give up her baby. We know there are plenty of fathers (in past adoptions) who would have had a different response or weren't allowed to be involved.

Wishes of extended family should also be taken into consideration particularly if they are in a position to care for the child or to have an ongoing relationship with the child. There would be many instances of extended family members who would be willing to provide kinship care, which is placed above adoption in the 2015 reforms to the Victorian Child Protection laws. Adoption not only severs any legal relationship between the child and his/her parents, but also siblings, grandparents and other extended family.

If a severely disabled woman is about to give birth and it will be difficult for her to care for the baby then the legal guardian should be consulted. If you have a special needs parent the legal guardian is *in loco parentis* and their consent should be sought. Additionally they could be asked if they would be prepared to care for the baby themselves. This would facilitate the child having meaningful ongoing contact with their father and family. Under the Hague Convention the child has the right to be raised in their natural family

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

The question is really: if consent needs to be dispensed with, why adoption rather than any other care option?

Concerning the issue of a court being able to put conditions on an adoption in a broader range of circumstances if it is the best interests of the child (Question 10), the conditions should be broader than those in the question in that there should be a *presumption* of contact between the two families. It is always desirable for the child to have contact with the family. Adopters should not be asked to agree that an adoption order be made subject to certain conditions – it should be the mother's right to include conditions. The issue of consent having been given but the adoptive parents and the mother giving consent have not agreed about contact or exchanging information about the child illustrate the importance of the need for legal representation for the mother, thus minimising the possibility of this occurring.

## **Adoption agencies**

Non-government agencies are usually religion-based which does not provide a neutral starting point. Often judgments are informed by unconscious values. There are common assumptions that two parents are always better than one and heterosexual couples are better. If an agency is of the view that contraception should not be allowed, these views impose a way of engagement that doesn't necessarily meet the interests of a woman, making counselling and support options within the agency redundant.

We're in a modern era and this means same-sex couples, children across a range of families and donor gametes. The concept of 'family' is changing and religion-based agencies need to take this on board. It can be difficult for them to change their long-held beliefs and views, which is why there should be a neutral body such as an ethics committee overseeing these processes and delivering this kind of service. This would enable a different picture in a permanency environment. Permanency is a different language and has a different cultural history and environment than adoption.

Of great concern to ARMS is the advertising of children for adoption on Barnardos NSW's website and FaceBook page. This is commodification of children, even if they do use models and not the actual children they wish to place in adoption.

Victoria needs to be very wary of going down the path of the NSW adoption model where adoption is seen as a quick fix for infertile couples and a financial saving to the Government when a child is moved from foster care (which is paid) to adoption.

On the other hand, Queensland is trialling a guardianship model where they ask couples not to adopt, called "Open Homes".

## **Funding**

A major problem of the current system is the funding cuts and under staffing of Government agencies such as FIND and BDM resulting in long waiting time for interviews, searches, etc, There is currently a 6 month waiting list at FIND even though recent legislation mandated that searches should be resolved within 8 weeks. There were 860 applications for searches through FIND in 2015/16 compared with 400 – 500 in previous years. Funding must be improved as a major priority.

## **Post placement support**

Support can make a significant difference to a placement – currently adoptive families are given a baby and are expected to get on with it. There needs to be a lot of support around a family for a long period, including when the child becomes an adolescent and other points in their life and on-going on a needs basis. There needs to be proactive and ongoing engagement with families. The agency needs to see it as their role to stay involved with a family.

There are some circumstances where a natural family is unable to manage a child and we should respond to this not with something that results in a long-term catastrophic outcome for the mother,(ie. adoption) but rather by doing something that will allow the mother to have knowledge and access.

Support should be provided at all stages and should not just be reactive, but proactive. There needs to be an ongoing commitment so that agencies remain involved. An agency's role should be involvement with the whole family. There needs to be a presumption of ongoing engagement in a meaningful way to support the families.

Adoptive parents may be hesitant to ask for support because they will worry that the agencies will not think they are good enough.

The natural mother, her family and the father all need ongoing support.

Also there would be a number of prospective adoptive parents who wouldn't have come to the terms with the grief of not having their own babies. This could be an ongoing grief which plays a part in their parenting and they need to be helped with it.

Agencies also need to stay involved to ensure that contact orders are meaningful and adhered to.

### **Siblings**

Every effort must be made to place siblings together, particularly if they are placed at the same time. If a family can't take the brother or sister then that family shouldn't be given either sibling.

If, down the track, the natural parents have another baby and the adoptive family can't take it then there needs to be contact. This is critically important and should be established from the very beginning.

If it is impossible to place them together they must have contact with each other and with their original family.

If a woman receives an adopted baby it should be at least 12 months before she receives another. However if the adopted child is older and his/her sibling becomes available for adoption then the priority is sibling unification.

### **Access to information**

Children under 18 should be entitled to information about their natural families. If we have open adoptions then a child must know their natural family. A child has a right to identifying information about their natural family at all stages of their life and should definitely NOT have to ask the adoptive parents' agreement.

If the child is in an open adoption there should never have been any secrecy, as was the case during the forced adoption period. Adoptive parents have no right to withhold information about a child's original family nor to keep information about the child from the natural parents, except in cases of safety as outlined in **Consent**.

Natural parents should be notified if the adult child of an adopted person is seeking to receive identifying information about them and it needs to be monitored very carefully.

### **In summary:**

While ARMS (Vic) is open to the possibility that there are benefits in placing a child outside of their natural family, the question becomes: '*do you make that placement an adoption placement?*' If adoption includes 'guardianship' decisions we would make (about schooling, religion etc) and 'custody' decisions, then those are

responsibilities that flow out of the legislative underpinning we need to provide to a couple to take care of a child.

If we no longer have secrecy as the baseline of adoption and support contact with the original family, it is still better for mental health and identity (even in the worst case scenario) not to have adoption. Having a law that provides for openness and contact is not a sufficient reason for putting this child in another family and saying the law is as if that the child was born to them.

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