



**AASW**  
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**Australian Association  
of Social Workers**

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*Submission to the Victorian Law  
Reform Commission  
Re: Review of the Adoption Act 1984*

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## Introduction

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### Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia.

We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians.

### The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge. Social workers practice in a diverse range of settings, including adoption and child protection fields.

Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and how they impact on a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may be having a negative impact, such as inequality, injustice and discrimination.

### Our submission

Children<sup>1</sup> are adopted for numerous reasons. For some it can be a result of parental abuse and neglect, resulting in the need for state intervention. Children who come into the care of the state are amongst the most vulnerable members of society. It is the position of the AASW that governments have a responsibility in the first instance to concentrate efforts on creating environments in which children and families are supported and assisted so that the various factors that contribute to the need for intervention by the state is substantially reduced.

For all children who are placed into state care, placement planning (including adoption as one of several options) must be focused on their needs and best interests. This must comply with the minimum standards set down in international conventions including the United Nations *Convention on the Rights of the Child* and the Universal Declaration of Human Rights. Planning should include parents, when possible, and recognise the right of children to maintain connection with their family, their culture and with other significant relationships regardless of the proposed placement arrangements, which may include reunification, legal guardianship and adoption. This is a complex and contentious issue but regardless of viewpoints and disagreements the AASW believes the best interest principle should be central to all decision making.

Social workers play a pivotal role in the adoption process and therefore, the AASW welcomes the opportunity to contribute to this inquiry.

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<sup>1</sup> Identified in the United Nations Convention on the Rights of the Child as every human being below the age of eighteen years.

## Response

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Given the short time frames for consultation, our response will focus on a select set of questions as found in the Consultation Paper.

### **2. Should the Adoption Act provide guidance about how to determine what is in a child's best interests?**

- 2.1. The best interest of the child is of paramount importance and the Adoption Act needs to provide greater guidance. Section 10 of the Victorian *Children, Youth and Families Act 2005* (CYFA) provides an appropriate framework for the Adoption Act, in relation to determining best interest principles. The CYFA provides an extensive list of issues and factors that need to be taken into consideration. This should include attention to a child's physical, emotional, social, educational needs and spiritual wellbeing. Planning for children's long-term stability should be a key objective in any case plan.
- 2.2. In order to determine what is in a child's best interest, decision making needs to occur in consultation and collaboration with the child (when appropriate) and family members. Planning should include parents, when possible, and recognise the right of children to maintain connection with their family, their culture and with other significant relationships.
- 2.3. Planning needs to be culturally appropriate. Specific attention should be given to cultural issues when placing Aboriginal and Torres Strait Islander children given their overrepresentation in state care.
- 2.4. The child's views and views should be given as much weight as is appropriate in the circumstances. The weight of the other matters should be determined through assessments conducted by appropriately qualified professionals, and in consultation with the child and key stakeholders.
- 2.5. The AASW supports the use of the term "best interests" of the adoptee, and not just "child's best interest", as it refers and better captures the effect of key decisions throughout the life of course, not just childhood.

### **7. Should any changes be made to the current consent provisions? If yes, what changes?**

- 7.1. One of the central concerns for the AASW in relation to consent is the lack of clarity and regulation as to who can provide counselling for all parties involved, including the child's birth mother and father.
- 7.2. Section 5 of the Act provides little clarification at a legislative level about who is an approved counsellor identifying an "approved counsellor" as "a person who in the opinion of the Secretary has such qualifications and experience as is appropriate for a counsellor for the purposes of this Act."
- 7.3. The absence of a definition within the Act about educational requirements and experience raises significant concerns about the quality of support that is being provided and the ability to regulate it. "Counselling" is a poorly regulated field and a commonly used term to describe a whole range of approaches. Given the complexity involved in supporting individuals and families through the adoption process, the Act has to ensure that those providing counselling have the necessary qualifications and experience.

7.4. While no Adoption Act in Australia provides clarity around qualifications or experience, the AASW favours the approach in Queensland's Surrogacy Act 2010<sup>2</sup>, which lists the appropriate qualifications as:

*appropriately qualified means—*

*(i) is one of the following—*

*(A) a member of the Australian and New Zealand Infertility Counsellors Association;*

*(B) a psychiatrist who is a member of the Royal Australian and New Zealand College of Psychiatrists;*

*(C) a psychologist who is a member of the Australian Psychological Society;*

*(D) a social worker who is a member of the Australian Association of Social Workers;*

7.5. We recommend the use of this model, and furthermore that the word “Accredited” could be added before the words “member of the *Australian Association of Social Workers*”. This gives a guarantee, backed by an AASW registered trademark, that the social worker is not only qualified but has a commitment to ongoing professional development.

**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?**

13.1. The full participation of children in all actions that affect them needs to be a key consideration for the Act. With a clear focus on the importance of self-determination, if the child does not consent to the adoption (and is deemed able to provide it) the process should not go forward.

13.2. The ability to determine whether a child can consent to an adoption is a complex process and the focus on a specific age does not appreciate all the varying factors that contribute to a child being able to provide an informed decision.

13.3. Children vary significantly in relation to maturity and understanding. A child's age is not a determinant of ability to understand what is occurring and the long term consequences of their actions. This is especially relevant for children in state care, who may have experienced significant trauma and disrupted attachment, which would significantly impact their maturity and decision making abilities.

13.4. The focus should be on having qualified and properly skilled professionals determine whether the child has the ability to understand and provides consent.

13.5. In the health setting the Gillick competency<sup>3</sup> principle provides a framework that is not age specific but looks to determine whether a child is sufficiently mature to understand and provide consent. The Gillick approach would be more suitable, instead of using a specific age.

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<sup>2</sup> <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SurrogacyA10.pdf> p.14

<sup>3</sup> <https://aifs.gov.au/publications/citizen-child-australian-law-and-childrens-rights/8-medical-procedures-children>

#### **48. Should there be increased requirements in the Adoption Act to provide post-adoption support?**

- 48.1. The AASW believes that governments have responsibilities to provide adequate and appropriate life-long post-adoption services for families, adoptive families and adoptees. There is a significant need for legislation to recognise that individuals and families involved in the adoption process require varying forms of support at different stages throughout the lifespan.
- 48.2. Given the degree of divergence in requirements and timeframes for people needing support, the Act should highlight its importance and identify it as a key consideration in the process, but not be prescriptive about how much or when it is required.
- 48.3. In its research into past adoption experiences, the Australian Institute of Family Studies (AIFS) found that mothers, fathers, adoptees, adoptive parents (and wider family members) had received inadequate support to assist them in dealing with issues arising from adoption and recommended that this area of support be re-examined.<sup>4</sup>
- 48.4. The AIFS research findings<sup>5</sup> mirror what our members have highlighted as necessary support options that need to be taken into consideration for key parties in the adoption process, including:
- 24-hour access to advice, support, information and referral services
  - availability of peer support groups, featuring a diversity of options for delivery
  - adoption-specific support services (post-adoption support), offering a "one-stop shop" for accessing information, search, contact and ongoing support/referral to appropriate professionals
  - availability of professional one-to-one support/counselling/therapeutic interventions, delivered by social workers, psychologists and other professionals who have had specialised training or experience in adoption-related issues, such as trauma, relational interactions, attachment and abandonment
  - priority access to medical, psychiatric and psychological services to address the physical and psychological health consequences of their adoption experience;
  - availability of professionals to support other family members
  - availability of primary and allied health services professionals who are trained to understand the potential effects of adoption on their service users as it relates to accurate and appropriate diagnosis and referral to appropriate support interventions

While it is beyond the scope of the Act to fund and deliver these services, it is important that legislation identify them as the key types of support that need to be considered when determining the lifelong needs of adoptees, their families and significant others.

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<sup>4</sup> <https://aifs.gov.au/publications/past-adoption-experiences>

<sup>5</sup> <https://aifs.gov.au/publications/past-adoption-experiences/executive-summary>

48.5. Determining eligibility for services needs to acknowledge that adoption affects a wide range of people directly and indirectly, sometimes in unexpected ways needing varying levels of support. While not an exhaustive list, eligible parties should include: the child, birth parents, adoptive parents, family members, persons significant to the child and the broader circle of family members. The Act should also acknowledge that new relationships formed through the lifespan may need access to support services.

## **Conclusion**

The AASW welcomes the opportunity to provide a submission and looks forward to working with the Commission towards modernising the Adoption Act, making it more reflective of the needs and best interests of children.

Submitted for and on behalf of the Australian Association of Social Workers Ltd



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