

## **Submission to the Review of the Victorian Adoption Act (1984)**

**Submitted by Thomas Graham**

### **Personal background**

I am an adopted person from the closed adoption era who has had to live life with the secrecy and uncertainty of a fractured identity and disenfranchised grief. Adoption has marked my psyche deeply and affected multiple decisions in my life.

My mother suffered too from her loss and separation at a time when pregnancy out of wedlock was seen as a stain on a family and a blight on society. Adoption was the sanction to punish her and release me from the shame of illegitimacy.

My adoptive parents suffered their own losses through an infant miscarriage. They stepped in to extend their parental responsibility to compensate for this loss, rallying to the adoption call of the time to help society deal with a moral burden and release the state of a financial liability.

In the lottery that is adoption, I was raised by good, loving adoptive parents who gave it their best shot notwithstanding receiving no guidance or support in how to raise, or address the complex world, of an adopted child.

It cost us all - my mother, myself and my adoptive parents - on many levels, psychologically, emotionally, financially, socially, inter-generationally.

The various national and state apologies have acknowledged the injustices contained in these former policies and practices which were not solely applicable to Australia but occurred globally where there was a British Commonwealth footprint.

### **Context of my submission**

In reading the consultation paper to modernise the Victorian Adoption Act there is a definite undertone of adoption being repackaged as a child protection measure, rather than a method of family formation, although the latter is a natural consequence of an adoption order.

Similar to the most recent changes of the NSW Adoption ACT, the consultation paper's underlying message is to reshape adoption to deal with the contemporary crisis in family breakdown. To shield the shame of battling parents who struggle to hold their families together as a consequence of domestic violence, substance abuse, poverty or homelessness resulting in in tens of thousands of children shifting to out-of-home care across Australia. An uncomfortable situation that has become a moral, logistical and financial burden for many governments.

The supply of children, in need of protection, is at an all time high. Government care costs are high and rising. Demand is low and needs to be stimulated. Reforms to make adoption easier, quicker, cheaper, simpler ... are all designed to stimulate demand, as are the lobbying of pro-adoptionists. Adoptive parents are once again being looked to, to take on the financial and social responsibility, and other risks incumbent, in raising someone else's child.

One of the great myths about adoption is that has a happy endings for all, all the time. That there are no long term costs or harmful effects. Our indigenous people are the most compelling example of the devastating effects the sustained removal of children from their parents, over many decades, has on families. The social consequences have been devastating on a personal, family and social level, costing the nation billions of dollars each year.

Modernising adoption to increase its frequency and numbers will not stem the flow of children INTO out-of-home-care; it simply highlights that many families are broken, parents are floundering and their children are screaming for help. Adoption doesn't address the issue of struggling families and parents it just preys on their children.

There is no argument that all children need care, protection and hope for their futures. They need to be protected from neglect and abuse on one hand and given loving homes and opportunities on the other. That is a given. What isn't a given is that adoption is the go-to, default solution and that there aren't better or workable alternatives.

Children can be protected, cared for, loved, provided with opportunities, have parental figures and given homes through either permanent care orders or via parenting orders. Victorian Government statistics currently show this with 277 permanent care orders vs 24 adoptions in the last financial year.

Given that adoption rates, both domestic and intercountry, are declining internationally as family dynamics become more diverse and fluid, with society more accepting of single parenthood, greater support is available to single parents, and the long term hurts and harms of adoption are being spoken about through the voices of adopted people and their birth parents, who for decades have been marginalised into silence and compliance, it is then better public policy to strengthen and improve the alternatives to adoption, which in the long term are less hurtful and harmful to those directly impacted.

The focus on updating or modernising the Victorian Adoption Act should be on improving permanent care options as inclusive models that support and nurture children, provide support for their families, and do not require, as adoption does, the severance of first kin.

Adoption is built on deception. The notion that your first identity is flawed, your parents are flawed, and that these need to be wiped clean. Permanently. In the rush to offer protective frameworks for children - which is neither challenged nor in question - legislators and pro-adoptionists often lose sight of the long term impacts that bear heavily on the child who eventually grows into an adult. Little thought is given to the relational and identity needs of this person, long term. Children are not frozen in time, they become adults who have to deal with the consequences of those who made irreversible decisions, supposedly in their best interests. Adoption is permanent. It's a life sentence.

Legislative acts do not, and cannot, erase biology. Children live with, and are connected with, family and other people, they don't live in legislative frameworks. The fact that the later can, and might, change our names, our identity, our family, our heritage and our ancestry does not, through the passing of an adoption order, negate or dissolve these markers as lived stages or experiences in our lives.

Adoption orders force children to navigate through mine fields of split identities and dual families - with one denied or pushed aside and another newly created and elevated in importance. And I'm not convinced that the tagline 'open adoptions' makes a difference, as power lies firmly in the hands of adoptive parents on whose goodwill children are reliant upon for acknowledgement and contact with first families. Adopted people spend enormous amounts of energy (psychological, emotional, financial, intellectual, spiritual) trying not to step on the land mines as they navigate uncertainty through life.

Once the adoption threshold is crossed the adopted person is handed a complex network of factors they have to battle through, often with hurtful and harmful effects. Separation. Loss. Guilt. Shame. Mistrust. Identity confusion. Intimacy withdrawal. Rejection and divided loyalty. Factors that when not adequately addressed manifest into negative beliefs and behaviour patterns leading to self harm, substance abuse, broken relationships and in the worst cases, suicide.

Abuse and neglect of children is not solved by stripping a child of its name, identity, parents, and wider family and replacing these with a new name, identity, parents and a so called 'forever family'.

Alternatives, like permanent care orders and parenting orders, better lend themselves to providing care and protection and supportive relationships without having to deny or remove first identities, families or innate biology that is the starting point of a persons's life.

Adopted people always have two families whether their parents are alive or dead, present or absent in their lives, dysfunctional or nurturing, rich or poor. There are always two sets of families - something which needs to be acknowledged and recognised, not pretended or legislated not to exist.

Adoption - whether 'open' or 'closed' - is not free of harmful effects or long term consequences. Therefore, it needs to be applied with caution, ideally as an option of last resort, a status that should be reflected when updating the Victorian Adoption Act 1984.

## **I offer the following comments on specific sections of the Consultation Paper**

### **1. Principles Section (Re Chapter 9)**

I am in favour of a principles section to provide guidance to decision makers when assessing the best interests of the child. Principles modelled on those of Queensland rather than NSW are preferable given the former of more adopted child/adult focused.

A required key principle to include is that adoption is one of several arrangements that may offer children a family and/or protection. Adoption is not the only option.

Ideally, the Act include a clause that when considering the welfare of children at risk, other arrangements, for example, permanent care order and parenting orders be considered first, and a justification provided as to why these mechanisms are being ruled out in favour of adoption, and this statement be included in the person's adoption file.

### **2. Best Interests of the Child. (Re Chapter 5)**

The 'best interests of the child' concept has become a nonsense as everyone involved in adoptions makes the claim they are working in the 'child's best interests', whether they sit in a legal-, medical-, administrative-, family- or either a pro-adoption- or anti-adoption lobby-group.

The very person who needs to have a say - the child - is silent. Timing necessitates they have to be. The infants or young babies involved being of an age and a maturity where they cannot possibly make decisions of this nature. By default others make decisions on their behalf.

And there lies the first hurdle as an arm wrestle ensues, with 'self interest' competing with the 'best interests of the child', and the ones coming out on top are usually those who are able to exert the most influence.

Adoption is a lottery at the best of times, getting some clear principles around what is meant by the 'best interests of the child' is an area the review committee should invest time and in.

The starting point should be the United Nations Convention on the Rights of the Child.

### **3. Children giving consent to their adoption (Re Chapter 5)**

At what age is it reasonable to expect a child to know the full implication of adoption and consenting to it?

The consultation paper makes reference to the age of 12 (as it is in some NSW cases) when a child can make a call on their adoption. This is far too young.

If we take into account the other significant milestones in a person's life that society has set minimum legal age benchmarks, for example, driving a vehicle, having sex, being able to drink alcohol, get married, work full time, vote and be sent to war - all are way beyond the age of 12.

How on earth can we then expect a 12 year child to make an informed decision on the scale and complexity of being permanently removed from their parents and having their name and identity changed, and on top of that fully understand the long term impact this will have on their life, and the lives of their children and grandchildren? It's crazy.

The minimum age by which a child can give consent to their adoption is something the review committee should give attention to.

A related matter is that some permanent carers who have children in their care, and have essentially acted as their parents with close attachment over many years, and who are essentially family, have said that when the child becomes a young adult and the permanent order expires at age 18, they feel, and in some cases the young adult also feels, they no longer have the status of a family and would like it to be more formally recognised.

As I am a supporter of permanent care orders this does open the question of whether in circumstances like these, young adults and their carers, can, before the order expires when they turn 18, be given the opportunity to have their family status changed, via an adoption order. In other words when the affected person, as a young adult (17 or close to 18) is at a point of their lives, both in terms of age and lived experience, when they can make an informed call on the impact of adoption, and would like to follow that path, they be given the option to do so.

#### **4. Hierarchy of Permanency Objectives (Re Chapter 4)**

The CYF Act has a hierarchy of permanency objectives, namely:

1. Family preservation
2. Family reunification
3. Adoption
4. Permanent care
5. Long-term out-of-home care

When reviewing the Adoption Act, and offering guidance for care pathways, I recommend adjusting the order of these objectives.

Respecting and preserving families needs to remain on top as it is the bedrock of a healthy nation and community.

I acknowledge that in some instances parents are incapable of looking after themselves let alone their children, as a consequence of domestic violence or substance abuse, and that children in these situations need safe havens. In these situations the child AND the parent need help.

Family reunification, needs to remain as a aspirational goal notwithstanding the challenges some families face.

Permanent Care options need to replace Adoption to be third in the hierarchy when considering options for children at risk or for adoption. Permanent Care options do provide children with a pathway for protection, care, love, parental figures, opportunity etc without the finality of permanently replacing identity, family and extended kin.

To place Adoption above Permanent Care would highlight that little has been learnt from past practice, the hurt and harm it causes, and relegates the National and State Apologies as passing gestures of little substance.

Children should not have to languish in Long Term Out-of-Home Care indefinitely. It is critical that politicians, administrators, legal and medical practitioners acknowledge that neither Permanent Care options nor Adoption stop children entering the out-of-home-care system. More, much more, needs to be done to inform, educate and train people to be effective, loving, caring parents. It's an essential life skill that is absent in many households and needs greater attention.

In addition, much more needs to be done to address domestic violence, substance abuse, unemployment, poverty and homelessness as all these contribute to exposing children to unacceptable levels of neglect and abuse.

These issues are obviously outside the terms of reference of the Adoption Act review but as adoption does not exist in a social vacuum it would be expedient of the review to inform other areas of government responsible for family matters to work harder with communities in finding ways to reduce the number of children entering out-of-home-care. Adoption and Permanent Care orders are band-aids to festering family wounds, they address symptoms not causes.

## **5. Birth Certificates (Re Chapter 8)**

One of the few remaining recommendations of the Federal Senate Committee into Past Adoption Policies and Practices that needs to be implemented is the issuing of integrated birth certificates to adopted people, upon request, as legal proof of identity. The implementation of this recommendation has stalled and Victoria has the opportunity to lead Australian jurisdictions by providing adopted people with the option of having an integrated birth certificate that reflects their status of having two sets of parents.

Obviously, only one of these identities is to be designated and accepted for official purposes, i.e. formal proof of identity for voting purposes, for drivers licence, name on marriage certificate, for opening bank accounts, tax purposes, ownership of property, on death notice etc. This needs to be clearly stated on the birth certificate, while at the same time clearly providing birth family names, where these are known.

This is an important issue for many adoptees and the review committee needs to investigate further and find a solution where integrated birth certificate serve as an official form of identification AND a record and acknowledgement of person's biological heritage so that they don't have to live the lie that they are born to someone else when this is not the case. Living with a fractured identity is a burden adopted people shouldn't have to bear, as seldom, if ever, have they consented to this name or identity change.

## **6. Post Adoption Support (Re Chapter 9)**

Raising an adopted child requires parenting plus.

For children who come into new families via the out-of-home-care system they are likely to have suffered a litany of trauma, including neglect and abuse (which could involve trauma from physical, emotional, or sexual abuse).

In addition, infants may have suffered from the effects of drug or alcohol addiction of their mother during pregnancy.

Children in these categories are likely to require ongoing medical attention and psychological counselling at various points in their childhood, if not in their adult lives.

This would be in addition to the general factors adopted people traditionally have difficulty with during the course of their lives, for example, attachment; sustaining ongoing relationships; trust/mistrust; fear of intimacy, fear of change, fear of inner states of mind; dealing with anger and rage; guilt and shame; deep sorrow and loss that manifest into negative belief or behaviour patterns leading to tendencies of self harm, ranging from self-neglect, substance abuse, or attempted or successful suicide.

The State, as the architect and legal owner of adoption, has a duty of care to provide adequate support services so that adopted people and adoptive parents don't have to walk the adoption journey alone.

The State cannot step aside, or outside, and transfer all risk, responsibility and costs to the adoptive parent, while the child is growing up, or to the adopted persons, when as an adult, they have to deal with the ongoing legacy issues of their adoption. Support services need to be designed to limit the adverse consequence of creating welfare dependency e.g. taking advantage of adoptive parenting as a way of getting ongoing financial handouts.

Part of this support is to ensure that medical practitioners are better trained to understand and better deal with adoption related issues, starting with a simple question, 'Are you impacted by adoption?' on registration forms for all new patients, to alert the practitioner of the presence of adoption history, as this could be an underlying cause of a specific mental or physical issue.

Post adoption service agencies, like VANISH, who have developed a good record of offering support over decades need to be better resourced and their service offerings expanded.

An essential part of post adoption support is adopted people be given full disclosure of their personal information as this is an essential for healthy well-being, self-identity and self esteem. One of the biggest obstacles adopted people from the closed adoption faced - and many still do - is accessing their personal information about original kin and medical records at birth. Many have toiled for years, at great financial and emotional cost, seeking what is theirs. Adopted people have a right to their personal and medical information and privacy considerations need to work for this occurring not against it.

## **7. Assessment and Training of Potential Adoptive Parents (Re Chapter 3)**

Not everyone is suitable to be a parent, particularly an adoptive parent.

Parenting a traumatised adopted child is a challenge and potential adoptive parents need to be told this in advance. In addition, parents need to be profile tested to determine whether they have the inherent qualities to be able to support a traumatised child, and give of themselves indefinitely.

In addition to other screening or information sessions, all potential adoptive parents need to spend at least one open session listening to, and being able to ask questions, of adopted people, from various age groups and experiences, to obtain clear insights about the realities, good and bad, of living with adoption as seen from the adoptees perspective.

In addition, adopted people should be encouraged to act as mentors in post adoption support both for younger adoptees or for parents who are considering adoption.

Pathways to adoption are often driven by loss. It is uncanny how often a woman who has lost a child or where a partner is declared infertile within a relationship, their doctor or lawyer advises them to adopt a child to compensate for their loss. Doctors and lawyers should be counselled to stop giving such advice as substituting an adopted child for either a lost child or infertility never replaces that which is lost or out of reach.

Traditionally with adoption once the adoption order was finalised, responsibility for the child fell to the adoptive parent, and they were left to their own devices, with no welfare checks on the children thereafter. There are many known cases of adopted children in the past being hurt or harmed at the hands of their adoptive parents, or by the partners of an adoptive parents. Post adoption check points, for example every five years until age 18, do need to be built into the adoption process to ensure this doesn't happen as the ongoing welfare of the child is of the utmost importance.

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