

19 September 2016

The Hon. Phillip Cummins AM  
Chair, Victorian Law Reform Commission  
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Via email: [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

Dear Justice Cummins,

**RE: Review of the Adoption Act 1984, Consultation Paper (August 2016)**

The Australian Psychological Society (APS) welcomes the opportunity to make a brief submission to the Victorian Law Reform Commission's review of Victoria's adoption laws, outlined in the *Review of the Adoption Act 1984 Consultation Paper (August 2016)*.

The APS is the largest professional organisation for psychology in Australia representing over 22,000 members of whom a significant portion practice as mental health clinicians delivering evidence-based psychological services to consumers with mental health disorders. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing.

The APS recognises the important relationship between human rights and mental health and wellbeing. In addition, research and practice in the area of child development is a major focus of Psychology, with a great many psychologists working to enhance the mental health and wellbeing of children, adolescents and families. The APS has a long history of working with government and various Inquiries and Royal Commissions to provide expert psychological advice and support in meeting the needs of vulnerable populations, such as children subject to adoption.

Engagement of all stakeholders, including children, young people, parents, families and communities will be critical to the effectiveness of the reform in this area, and the APS encourages continued mechanisms for this involvement as a matter of priority, including during any implementation phase of proposed reforms.

Whilst the APS is only addressing certain matters in this submission, it does not in any manner indicate that the others issues raised in the Consultation Paper are any less significant or important. This includes consideration of the assessment process for adoption, contact and communication with the family of origin after the adoption, changing a child's name and birth certificates of adopted people. The APS will confine this submission to a discussion of children's best interests and rights and post-adoption support.

The APS agrees with the terms of reference for the inquiry of the *Adoption Act 1984 (Vic)*<sup>1</sup> (the Act) and in particular the following considerations:

- The best interests of the child are paramount in any decision made under the Act

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<sup>1</sup> *Adoption Act 1984 (Vic)*.

- That adoption laws reflect consistently with contemporary law in relation to family and community
- That laws in relation to adoption laws operates harmoniously with other relevant areas of law that have developed since the introduction of the Act
- That reform of the Victorian adoption laws uphold principles set out in the Victorian Charter of Human Rights and Responsibilities and the United Nations Convention on the Rights of the Child.

### **Best interests principles**

Overall, the APS supports the inclusion of best interest principles that would guide decision-making and actions in organisations and adoption law processes. We have a number of suggestions regarding the articulation and implementation of those principles:

- 1) The best interest principles for children in adoption processes should be included in the Act and should state that the best interests of the child must always be paramount and that they should apply equally and in a consistent manner to all decision makers in the adoption process, including: the Victorian Department of Health and Human Services (the Secretary and principal officers), approved adoption agencies, adoption teams and the courts.

Including the best interest principles in legislation for the adoption of children is imperative for a strong, consistent and effective adoption process and is the approach taken by the legislature to laws regarding the safety, welfare and placement of children generally. As indicated in the Consultation paper, the *Family Law Act 1975*<sup>2</sup> and various Australian state and territory pieces of legislation (regarding the safety and wellbeing of children) articulate that the best interests of children are considered paramount in actions and decision-making concerning children. Further, this approach would also follow Article 3<sup>3</sup> of the United Nations Convention on the Rights of the Child which provides that:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

That is, adoption legislation should state that the best interests of the child must always be paramount, rather than merely an emphasis on the fact that decisions should be made based on best interests. The latter approach may indicate that a child's interest is to be considered, but that the interests of any agency, institution or organisation, or other person may be paramount. Hence, the Act would be improved by the inclusion of a definition of what are the best interests for children and a statement that those interests are paramount in decision making for adoption of children.

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<sup>2</sup> *Family Law Act 1975 (Commonwealth)*.

<sup>3</sup> *Convention on the Rights of the Child*, Article 3. United Nations (1990).

2) The best interests principles could have two tiers of consideration, primary and additional consideration. As indicated in the Consultation Paper, the approach in the the Victorian *Children, Youth and Families Act 2005*<sup>4</sup> (CYF Act), provides that in deciding whether something is in the best interests of a child, a decision made under the CYF Act must consider (primary considerations) the need to:

- *Protect the child from harm*
- *To promote the child's rights; and*
- *To promote the child's development, taking into account age, stage and development*<sup>5</sup>.

In addition, the CYF Act then articulates a number of relevant matters for consideration regarding what is in a child's best interests in section 10 (3). The APS is of the view that a similar approach could be utilised in the adoption legislation and relevant principles drawing from this and other legislation (including consideration of principles from relevant adoption legislation in other Australian states and territories) as outlined in the Consultation Paper<sup>6</sup> could be included in the adoption legislation.

3) The Victorian adoption legislation could also articulate decision-making principles<sup>7</sup> to guide decision-makers and actions in the adoption processes. Such principles could include specific or additional decision making principles for Aboriginal and Torres Strait Islander children, particularly in relation to placement of children<sup>8</sup>.

For example, the CYF Act also has decision-making principles that outline what types of matters need to be taken into account in decision-making for children. Some of the provisions in the CYF Act could be relevant and applicable (although may not be directly translatable) to the adoption legislation and processes are as follows:

- *the child's parent should be assisted in reaching decisions and taking actions to promote the child's safety and wellbeing*
- *where a child is placed in out of home care, the child's carer should be consulted as part of the decision-making process and given an opportunity to contribute to the process*
- *the decision-making process should be fair and transparent*
- *the views of all person who are directly involved in the decision should be taken into account*
- *decisions are to be reached by collaboration and consensus, wherever practicable*

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<sup>4</sup> *Children, Youth and Families Act 2005 (Vic)*.

<sup>5</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic)*, Section 10 (2).

<sup>6</sup> *Review of the Adoption Act 1984 Consultation Paper* (August 2016). Victorian Law Reform Commission, pages 52-53.

<sup>7</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic)*, Section 11.

<sup>8</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic)*, Sections 11-14.

- *the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision-making process*
- *the decision-making process should be conducted in such a way that the persons involved are able to participate in and understand the process, including any meetings that are held and decisions that are made*
- *persons involved in the decision-making process should be-*
  - *provided with sufficient information, in a language and by a method that they can understand and through an interpreter if necessary, to allow them to participate fully in the process; and*
  - *given a copy of any proposed case plan and sufficient notice of any meeting to be held; and*
  - *provided with the opportunity to involve other persons to assist them to participate fully in the process*
- *if the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision-making process<sup>9</sup>.*

In recognition of the principle of Aboriginal and Torres Strait Islander self-management and self-determination in making a decision or taking an action in relation to an Aboriginal or Torres Strait Islander child, the legislation could also outline that decisions in relation to adoption, must also give consideration to specific principles. The CYF Act outlines specific principles and where relevant, some of these principles could be included. This includes, *when making a decision or taking an action in relation to an Aboriginal<sup>10</sup> child, an opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views<sup>11</sup>.*

- 4) A focus on systems and processes for implementing the best interests' and decision- making principles.

Psychologists have a sound understanding of child, adolescent and adult behaviour. They are well placed to advise government and adoption agencies on the implementation of the best interests and decision-making principles, child centered practices and about how to listen to and assist children to have a voice in adoption processes.

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<sup>9</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic), Section 11 9 (a)-(i).*

<sup>10</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic), s.3 definition of "Aboriginal person" includes a person who is descended from an Aborigine or Torres Strait Islander; and identifies as an Aborigine or Torres Strait Islander; and is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community.*

<sup>11</sup> *Children, Youth and Families Act 2005 Act No. 96/2005 (Vic), s12 (a).*

## **Post-adoption support**

The Commission should give consideration to the recommendation of appropriate post-adoption support for children and families involved in the adoption. Any such support should be tailored to individual needs and be flexible to cater for differing needs at different times. This will be particularly critical where an adopted child has ongoing special needs or a disability, and may require specific assistance to the child and the adopted family members.

In relation to forced adoption, the Department of Social Services (DSS) is funding the delivery of forced adoption support services to people affected by past forced adoption policies and practices across Australia. These services are designed to facilitate access to peer support and advocacy groups, post-adoption support services (including counselling or other mental health services), search and contact services and adoption information services<sup>12</sup>.

Although in relation to forced adoption, comments in an article by Dr Daryl Higgins of the Australian Institute of Family Studies are highly relevant to the support needs of post-adoption families in general:

*"There is a range of functions that can be provided by counselling and mental health care services for those affected by forced adoptions. At a minimum, practitioners should ensure that the services they provide are trauma-informed, aware of grief and loss, and are attuned to attachment disruption issues. Concrete steps to reduce the risk of retraumatising clients can include:*

- *Reading about the history of adoption and its impacts to provide contextual background*
- *Undertaking thorough assessment and screening processes to establish an appropriate treatment plan, tailored to meet individual needs and circumstances*
- *Referring clients for trauma-specific services (for example, trauma-focused psychotherapy interventions) where trauma is not the practitioner's own area of expertise*
- *Engaging with clients in a manner that is understanding and non-judgemental of the needs and necessary coping behaviours that were required of the trauma survivor to function in everyday life.*

*The diverse needs of people affected by forced adoptions frequently require expertise from other services/professionals and practitioners should facilitate access to such services where necessary. Services need to be attuned to the complex symptoms, needs and responses of all those directly affected, and to provide flexible and individually focused care (including intensive and ongoing psychological and psychiatric counselling) across a*

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<sup>12</sup> Australian Psychological Society. <http://www.psychology.org.au/forced-adoption/support-services/>

*range of health domains (including mental and physical health, and relationship, social and economic wellbeing)<sup>13</sup>."*

### **Training for health professionals to assist families in the adoption processes**

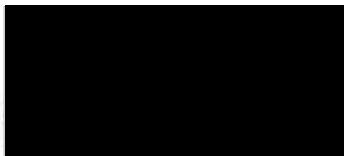
The APS has recently produced guidance and training on Forced Adoptions for Health Professionals. In January 2015, the APS was contracted by the Australian Government Department of Health to develop a suite of professional resources and tools including national online training, a practice Guidance document, web-based resources and webinars, to better support health professionals delivering services to people affected by forced adoption. The project forms part of the government's response to the Senate Inquiry's key recommendations. The national online training program entitled "*Understanding and supporting people affected by forced adoption: Training for health professionals*"<sup>14</sup> has been developed to meet the needs of a range of allied health professionals who are working to support people affected by past forced adoption practices and policies. The training is suitable for all health and community professionals including general practitioners, psychiatrists, psychologists, social workers, occupational therapists, mental health nurses and Aboriginal and Torres Strait Islander health workers.

The APS would be happy to have further discussions with the Commission:

- Regarding what might be needed for families in terms of post adoption support services
- To explore the idea of relevant training for health professionals who may come into contact either directly or indirectly with children and families who are part of the adoption process
- In relation to any matters raised in this submission.

For further information please contact me on 03 8662 3314.

Kind regards



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<sup>13</sup> Higgins, D. (2014). Past adoption practices: Implications for current interventions. *InPsych*, 36(6). Available at <http://www.psychology.org.au/inpsych/2014/august/higgins/>

<sup>14</sup> Australian Psychological Society. *Forced adoption training*. See <http://www.psychology.org.au/forced-adoption/>