



Youth Affairs  
Council Victoria

## **Submission to review of the Adoption Act 1984 (VIC)**

**September 2016**

**To:**

Victorian Law Reform Commission  
Level 3  
333 Queen Street  
Melbourne Victoria 3000  
Via email to: [lawreform@lawreformvic.gov.au](mailto:lawreform@lawreformvic.gov.au)

**Contact:**

Dr George Taleporos  
Manager  
Youth Disability Advocacy Service  
Youth Affairs Council of Victoria  
180 Flinders Street  
Melbourne Vic 3000



## **About Youth Disability Advocacy Service (YDAS)**

YDAS is a Victorian advocacy service that works alongside young people with disability between the ages of 12 and 25 to raise awareness of their rights, and to support them to achieve their goals.

We provide one-on-one support to young people with disability through our individual advocacy service, and work on systemic issues affecting the full and equal participation of people with disability through our policy work. Our work is informed and guided by the YDAS Steering Committee, which is made up of young Victorians with a range experiences of disability.

YDAS is a core agency of Youth Affairs Council Victoria (YACVic) and is funded by the Victorian Government Office for Disability.

Web: [www.ydas.org.au](http://www.ydas.org.au)

Facebook: [www.facebook.com/ydas.vic](https://www.facebook.com/ydas.vic)

YouTube: [www.youtube.com/ydasvic](https://www.youtube.com/ydasvic)

## **About Youth Affairs Council Victoria (YACVic)**

YACVic is the peak body and leading policy advocate on young people's issues in Victoria. Our vision is that Young Victorians have their rights upheld and are valued as active participants in their communities.

[www.yacvic.org.au](http://www.yacvic.org.au)

## **Introductory comments**

It is crucial that the needs and interests of young people with disability are given careful attention in the review of the *Adoption Act 1984* to ensure their rights are adequately upheld. As the *Act* currently impacts on children and young parents with disability in a number of ways, we appreciate the opportunity to provide feedback to help inform the review of this important piece of legislation.

Please note that we have only chosen to comment on those aspects of the *Act* that we deem to be of particular relevance to our work.

## **The principle of 'best interests of the child'**

The consultation paper asked whether or not the *Adoption Act* should offer more specific guidance on what constitutes a decision that is in the best interests of the child. YDAS believes it would be beneficial to have a set of guiding principles enshrined in the *Act* to help quantify this term. These principles should be informed

by, and directly reflect those set out in the United Nations *Convention on the Rights of the Child*.

In the case of children with disability, the notion of 'best interests' may be interpreted differently depending on who happens to be involved. What may be in the best interests of a child with disability cannot always be determined based on a generic assessment of a prospective parent's ability to care for and love the child. For this reason, the revised Act should give additional guidance that is to be followed when considering placement options for children with disability. This guidance should aim to put a range of pre- and post-placement supports in place to ensure the child's rights are adequately upheld and that they are able to flourish in their new home environment to the fullest extent possible. Such supports might include:

- Guidance for prospective parents on factors such as the social model of disability and principles of person-centered approaches e.g. dignity of risk versus duty of care.
- The provision of information about avenues for accessing disability support, such as the National Disability Insurance Scheme and Local Area Coordination.
- Linking the adoptive parents up with peer support groups for parents of children with disability, and ensuring the child also has appropriate peer support options in place.

It is recommended that such guidance be developed in close consultation with people with disability and disability advocates.

### **Consent of the child**

In cases where a child is over 10 years of age, the Law Reform Commission questioned whether or not there should be provisions in the Act to require the consent of the child in order for the adoption to go ahead. YDAS asserts that the opinions and views of the child should always be carefully considered in the adoption process in line with international human rights standards. In the case of children with disability, it is essential that professionals who are engaged in the process of determining the opinions and views of the child also have specific expertise in matters relating to disability.

### **Consent of the birth parent**

YDAS is particularly concerned about the complex and legalistic nature of the consent process. Without this process being made more accessible, there is a very real risk that it will place young parents with cognitive impairment, as well as young parents with disability from non-English speaking backgrounds at severe disadvantage. To rectify this problem, YDAS recommends that information about the consent process is required to be explained verbally in plain language and provided in Easy English. Information should also be made available in alternate formats such as large print, braille and audio upon request.

Although birth parents always have access to an options counsellor throughout the adoption process, there is no guarantee that these counsellors will have any expertise in disability. This is particularly concerning in light of the fact that the Act currently includes provisions for dispensation of consent, including in circumstances where:

- the person's mental or physical condition makes them incapable of properly considering the consent, and
- the person has a mental or physical disability preventing the needs of the child from being met.

The Act does not currently provide any guidance on how the above factors are determined, and it may be possible for an individual with a limited understanding of disability to incorrectly assess a person with disability as being incapable of adequately meeting a child's needs, leading to unwilling or coerced adoption. YDAS asserts that dispensation of consent should never be granted on the basis of a person's disability, but a holistic assessment of the individual's ability to care for their child - as would be the case for any parent without disability. The revised Act should also include provisions to ensure that parents are always informed about their right to an independent advocate throughout the adoption process, with this information being provided in Easy English, and in alternate formats such as large print, Braille and audio upon request.

### **Withdrawal of consent**

After consent has been signed, parents currently have a period of 28 days in which to withdraw their consent and may extend this period for a further 14 days. In the case of young parents with disability, YDAS asserts that it would be useful for there to be greater flexibility around these time frames in order to safeguard against unwilling or coerced adoption. Where there may have been an onset of post-natal depression soon after the birth, the current timeframe for withdrawal of consent may also be inadequate in allowing the mother to come to terms with the events that have taken place and enabling them to make a well-informed and reasoned decision.

### **Ability of people with disability to adopt**

The Department of Health and Human Services currently requires all individuals wishing to adopt a child to undergo a full medical check. These checks are intended to ensure the prospective parent has the ability to care for a child. As is the case for dispensation of consent, an assessment of someone's ability to care for a child should never be made on the basis of disability alone. In the case of a person with disability, options should be provided for a medical check to be undertaken by a medical professional of their choosing with whom they have built up a relationship over time, and who has an understanding of the individual's disability and its real, rather than assumed impact.

## Concluding comments

We thank you for providing YDAS with an opportunity to comment on issues raised in the review of the *Adoption Act* that have the potential to impact upon young people with disability. In summary, we recommend:

- The Act include a set of guiding principles to help quantify the concept of ‘best interest of the child’ that are informed by, and strongly reflect the United Nations Convention on the Rights of the Child.
- The Act provides specific guidance on pre- and post-placement measures that must be followed in the placement of a child with disability. This guidance should be developed in close consultation with people with disability and disability advocates.
- The Act ensures the opinions and views of children are always taken into account when determining whether adoption should go ahead. In the case of children with disability, it is essential that professionals who are engaged in the process of determining the views and interests of the child have specific expertise in matters relating to disability.
- Information about the consent process and the right of the birth parent to access an independent advocate should be explained verbally in plain language, and provided in Easy English and alternate formats such as large print, audio and Braille upon request.
- The Act allow for a more generous timeframe for the parent to withdraw consent to safeguard against unwilling or coerced adoption and to allow the mother to make a well-informed and reasoned decision.
- An assessment of a prospective adoptive parent’s ability to care for a child should not made on the basis of disability alone. People with a disability should be provided with an option for a medical check to be undertaken by a medical professional of their choosing with whom they have built up a relationship over time, and who has an understanding of the individual’s disability and its real, rather than assumed impact.

Please do not hesitate to contact us should you require any further information.