



VCOSS response to the *Adoption Act 1984* review

September 2016

Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide feedback on the review of the *Adoption Act 1984*.

VCOSS is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

The review considers possible adoption law amendments for children born or living in Victoria, to better meet children's and families' needs. VCOSS' response focuses primarily on adoption of children in the child protection system. Adoption is one permanent care option for children and young people. Preventing children from entering out-of-home care must be the child and family services system's primary goal. If this is not possible, every effort must be made to secure better futures for these children and young people. All children should have the opportunity to live in a stable, loving family.

Promote the best interests of children

Children and young people in out-of-home care are among the community's most vulnerable people. Any change to adoption law must protect and promote their rights, safety and wellbeing. VCOSS supports amending the *Adoption Act 1984* to require the 'best interests of the child shall be the paramount consideration' in all decisions about children and young people, aligning with Article 3 of the *United Nations Convention on the Rights of the Child* (CROC) and the *Children, Youth and Families Act 2005*.

Support child and young people to have their voices heard

The adoption process must empower children and young people to meaningfully participate and express their wishes. A child's right to adequate representation and to be heard in all decisions about their lives is enshrined in Article 12 of the CROC.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

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2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹

Children of any age require appropriate information and counselling to develop and express their views. VCOSS recommends independent advocates, with early childhood expertise, are available to work with children to represent them. Children and young people should also be consulted on any changes.

VCOSS endorses the Committee on the Rights of the Child's recommendations for Victoria, and all other States and Territories, to comply with their obligations under the CROC. This includes requiring consent of the adopted child (as of 12 years of age) prior to adoption and providing legal representation in adoption proceedings.²

Keep children with their brothers and sisters

Children in care benefit from living with their brothers and sisters.³ Sibling relationships can help reduce adverse effects of trauma, anxiety, grief and loss experienced by children entering care, and provide support into adulthood.⁴ VCOSS supports a legislative principle to consider placing children together. This can be supported by policy guidance about how to facilitate greater contact between siblings when placement together is not possible, and guidance about when it is not desirable for siblings to be adopted together.

Protect Aboriginal children's best interests and their cultural connections

VCOSS believes specific provisions should apply in adopting Aboriginal and Torres Strait Islander⁵ children. An Aboriginal child's community, culture and identity must be central in determining their best interests. Connection to community, family and culture is fundamental to their wellbeing. All reasonable steps must be taken to identify a child's Aboriginality.

VCOSS supports including the Aboriginal Child Placement Principle in adoption law, replicating section 13 of the *Children Youth and Families Act 2005*. This principle provides for self-determination, and requires involving Aboriginal agencies in all decision-making affecting Aboriginal children, a placement hierarchy, and maintaining a child's culture and identity. VCOSS recommends Aboriginal community controlled organisations be consulted directly on promoting Aboriginal children's best interests.

Provide more support for families to care for their children

Recent amendments to the *Children, Youth and Families Act 2005* introduced 'permanency objectives' to case planning. They ranked adoption as the third preference, after family preservation and family reunification, but before permanent care and long-term out-of-home care. VCOSS members believe this may increase adoption of children in the child protection

¹ United Nations, Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² United Nations Committee on the Rights of the Child, [Convention on the Rights of the Child, Sixtieth session, CRC/C/AUS/CO/4](#), August 2012.

³ J. J McDowall, *Sibling placement and contact in out-of-home care*, CREATE Foundation, Sydney, 2015.

⁴ Ibid.

⁵ The term 'Aboriginal' is used in the remainder of this document to refer to Aboriginal and Torres Strait Islander peoples.

system. In particular, this may adversely and disproportionately affect Aboriginal families, who are over-represented in the system.⁶

Children with disability⁷ and children of parents with intellectual disability are also overrepresented in child protection.⁸ VCOSS members report their high representation is influenced by the lack of appropriate support, prejudice, and lack of understanding from practitioners.⁹ Families cannot access enough timely support to care for their children with disability, often meaning they feel without any choice other than relinquishing their care.¹⁰

While outside the scope of this inquiry, VCOSS advocates for investing in culturally safe and inclusive prevention and intensive intervention services. These strengthen families' capacity to provide a safe and nurturing environment for their children. In turn, this helps prevent children entering the child protection system or being relinquished by their families, and helps families safely resume their children's care.

In combination with this investment, all families in contact with child protection or involved in adoption must be aware of their rights, and supported to understand the process and any decisions made, and have access to appropriate legal representatives or advocates.

⁶ Australian Institute of Health and Welfare, Child Protection Australia 2014–15, Child Welfare Series Number 63, AIHW, 2016, p.44.

⁷ Victorian Equal Opportunity and Human Rights Commission, Desperate measures: The relinquishment of children with disability into state care in Victoria, Carlton, VEOHRC, May 2012.

⁸ A Lamont and L Bromfield, *Parental intellectual disability and child protection: Key issues*, AIFS, 2009.

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¹⁰ Victorian Equal Opportunity and Human Rights Commission, Desperate measures: The relinquishment of children with disability into state care in Victoria, Carlton, VEOHRC, May 2012.