

Victorian Law Reform Commission
GPO Box 4637
Melbourne Victoria 3001 Australia,
Melbourne

22 September 2016

Dear Commissioner,

Re: Response to the Review of the Adoption Act 1984 consultation paper

CREATE Foundation (CREATE) is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 43,399 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care. To do this we:

- **Connect** children and young people to each other, CREATE and their community to
- **Empower** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **Change** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people in care and developing policy and research to advocate for a better care system.

Thank you for providing the opportunity for CREATE to comment on the *Review of the Adoption Act 1984* (the Act) in Victoria. CREATE appreciates the need for stability in children and young people's lives and adoption is one of many ways providing stability to children and young people in out-of-home care. When we asked children and young people with a care experience their views on adoption, their views were mixed with some supportive and others opposed, and a key factor in this was their concern about maintaining connection to their siblings. In response to this CREATE has developed a position paper on Adoption which states:

“CREATE advocates for measures facilitating stability of placements in out-of-home care and permanence in the relationships experienced by children and young people who are not able to live with their birth parents. Permanence can be achieved by reunification with family, legal guardianship, and adoption (Akin, 2011). If adoption is chosen as the most appropriate course of action in an individual case, CREATE supports the view that the decision must be based on what would be in the best interests of the child or young person (Cuthbert & Quartly, 2010).”


(CREATE Foundation, 2014)

victoria office

CREATE Foundation Limited ABN 69 088 075 058

A 325-327 Queensberry Street, North Melbourne VIC 3051 | T 03 9918 0002

☎ 1800 655 105 🌐 www.create.org.au 📘 facebook.com/CREATEfnd 🐦 @CREATEfnd



In reading the Act consultation paper (the paper), CREATE wishes to raise a number of points for consideration.

The best interests of the child

Defining best interests

The best interests of the child should be paramount in any considerations about the care of children and young people. Adoption represents permanent changes to the legal status of a child or young person's family relationships and thus clear definitions and guidelines for determining what the best interests of a child or young person are, are of particular importance.

CREATE believes that the Act must provide guidance about the determination of what is in the child's best interests. CREATE notes that these principles are already enshrined in the *Children, Youth and Families Act, 2005* section 10, articles 1, 2, 3.

The inclusion of these principles within the Act would better reflect the contemporary child rights language in terms of wellbeing, rights and participation of children and young people in decisions which impact upon their lives (where age appropriate). In addition, Part 1.2, Division 3, *Decision-making principles*, also reflects the inclusion of children and young people's participation, which is paramount in any decision which impacts on the child or young person's life.

Supported decision making and young people with an out-of-home care experience

Specialised support for young people in OOHC

Many young people who have been in out-of-home (OOHC) care have experienced trauma including abuse and neglect which can impact their willingness to trust adults and professionals.

CREATE's Young Consultants regularly comment that, *'it takes time and genuine interest and care from someone to be able to trust them enough to express their true thoughts and feelings'*. Children and young people who have a lived experience of being in care, say that they feel most comfortable with people they know and with people that they feel genuinely care about them. Given this, in order to properly assess a child or young person's views, wishes and consent to adoption, consistent support would be required, either from the time of entering OOHC or the time the adoption process begins.

Decisions about children and young people's futures should be made *with* children and young people and this requires their active engagement in the process. CREATE often hears of experiences of children and young people feeling excluded from major decisions about their lives. For example, only 63% of the 1069 respondents to CREATE's 2013 Report Card, felt that they were consulted on issues that concerned them only 'reasonably often'. (McDowall, 2013) Therefore, decisions about adoption should be made with careful regard to the informed consent processes with children and young people.



Informed consent

Current arrangements for counselling regarding consent to adoption as described in the paper, appear to be insufficient to support young people with a care experience to be able to make significant life decisions as to whether to be adopted, or potentially, to give up their child for adoption.

For example, section 5.82 of the consultation paper appears to describe the provision of various kinds of information including:

“the effect of an adoption order, the alternatives to adoption, and the names and addresses of organisations that provide family support services. This information should be provided no less than seven days before consent is given.”

There seems to be an assumption here that a person or couple considering adoption can easily contact and access such services within a short time-frame which may be unlikely for many not for profit services. There is no mention of how many sessions of counselling are to be provided and considered adequate to support informed decision making about adoption and/or alternatives to adoption. Children and young people in OOHC require specialised support in order to make important decisions such as consenting to their own adoption or to the adoption of their child and/or children.

Consent to adopting out a child

Where young people who have been in OOHC consider adoption of their own child, matters of consent are complex and require specialised support. Trauma-informed practice is necessary to enable *informed* consent. Young people with a care experience have often experienced severely disrupted attachments and educational attainment, this alone can lead to low level literacy and numeracy issues, making it difficult for them to understand complex forms and consent processes.

For these reasons, it is important that professionals charged with supporting such momentous decisions, have the time to form relationships with young people which facilitate good communication and allow various parties to clarify with the young person that they understand the information presented to them and the implications of the information, for themselves and others, both in the short, medium and long-term.

Post-adoption support

CREATE believes that the Act should include the availability of post-adoption support services. CREATE agrees with the statement in section 9.49 of the consultation paper, ‘that the adopted person should be supported and safeguarded throughout their life’. CREATE consistently hears from young people with a care experience that they are transferred between multiple services, programs and agencies and that this can be very distressing and destabilising, often leaving them with negative life outcomes.

CREATE believes that young people exiting OOHC require greater access to on-going support services, to identify needs and provide personal support and advice once the statutory care system has withdrawn (McDowall, 2016). In the case of adoption, CREATE believes it is in the child or young person’s best interests that an adopted child or young person should be able to access support agencies which have access to their history and circumstances and can offer ongoing support and information should they experience difficulties post adoption.



Contact arrangements

Children and young people who have lived in OOHC often have important relationships with other children and young people, as well as significant adults such as teachers, previous and current carers, workers, family friends, neighbours and other community members. The Act does not appear to consider such relationships in its discussion of consent and does not appear to have provision within the Act to make conditions on adoption orders for contact to be maintained where desired by the child or young person.

Part of the process in considering adoption as an option for children and young people in OOHC is about determining the people the child or young person nominates as being important to them and how in the planning process of the adoption, these relationships can be preserved and supported.

Siblings

Maintaining contact with siblings

In recent work undertaken by CREATE, young people highlighted the need for siblings to be connected and to have the opportunities to remain connected whilst in OOHC. CREATE would like to see some form of obligations placed upon adoptive parents to take this into account throughout the infant/child and young people's life. It is of some concern that 'parties in an adoption', defined in section 5.38 "refers only to the adopted child, the birth parents and the adoptive parents". Though section 5.37 notes this does not mean that other parties do not have rights or interests in consideration of decisions about adoption,

CREATE has found that young people with a lived experience of care often regard sibling relationships as some of their *most* important relationships. CREATE's 2015 research report *Sibling Placement and Contact in out-of-home care* (McDowall 2015) found that children and young people in care contact their siblings more often than other people in their families and also desired more frequent contact with their siblings than others.

CREATE is aware that children and young people placed in OOHC may have siblings in a range of families and family contexts. Siblings may be biologically related but many young people may also regard step siblings and foster siblings as their immediate family. In Kinship care settings children and young people may regard cousins as their siblings. Question 4 in the consultation paper considers the issue of including a principle in the Act to require consideration of placing siblings for adoption in the same family. CREATE support this consideration and acknowledges that siblings can enter the care system and/or potentially the adoptive process at different times, months and years apart. Some siblings may remain in the home whilst other siblings are removed and therefore may not be able to be considered for placement in the same adoptive family at one time.

In this context it is of concern that the legal process of adoption is to make a child part of a new family (Department of Health and Human Services, 2016). CREATE is unsure as to whether an adoption order legally severs the relationships between siblings or not. We believe that this should not be the case. In addition, CREATE is unsure of how well the adoption process will maintain a child or young person's relationships with their siblings, including foster siblings and cousins who they may have lived with. CREATE believes these principles should be included in the Act in order to preserve existing kin and sibling relations.



Aboriginal and Torres Strait Islander children and the best interest's principle

CREATE agrees with Section 6.48 and 6.49 of the paper, which recommends that there should be greater application of the Aboriginal and Torres Strait Islander Child Placement Principle and that it should be applied to any adoption of an Aboriginal or Torres Strait Islander child.

Access to counselling services

CREATE believes that the provision of this counselling services is of the upmost importance and that any Aboriginal or Torres Strait Islander persons considering placing a child up for adoption should be carefully counselled on the effects of adoption, especially in the context of "...the past laws, practices and policies which have resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence...". (Bringing Them Home Report 1997)

An Aboriginal or Torres Strait Islander parent considering adoption must have access to counselling from an Aboriginal and/or Torres Strait Islander specific agency to ensure any decisions to consent to adoption are well informed. This should not only be the case when a parent requests their child be adopted within an Aboriginal or Torres Strait Islander community as section 6.45 advises. Policy and practice must ensure that Aboriginal and Torres Strait Islander persons have access to counselling from an Aboriginal and/or Torres Strait Islander agency.


CREATE notes, that in order to support access to counselling, such agencies must be equipped with the resources necessary to carry out their duties. Funding resource and allocation must be made available where appropriate.

In addition, CREATE notes that in Section 6.46 it states that 'the Commission understands there is currently no organisation declared under the Act as an Aboriginal agency'. Therefore, no agency is currently permitted to perform the function of providing counselling as an Aboriginal agency for the purposes of the Act.

Safeguards are also required if parents considering adoption clearly express a wish to not receive counselling from an Aboriginal agency. The safeguards must ensure that such a decision is investigated to see what other services could be offered or what alternatives are available. This is to ensure that a refusal is not connected to a parent feeling uncomfortable with a particular agency or service for any reasons. As Section 6.46 demonstrates, it is possible for loop holes to appear in legislation and safeguards are required to ensure that these issues or concerns are addressed.

Aboriginal and Torres Strait Islanders, as well as many other cultures have concepts of family and community that are not restricted to immediate and biologically related persons.

CREATE believes that adoption legislation should ensure that Aboriginal and Torres Strait Islander children and young people are able to maintain contact with their kin, families and communities. The Act currently only considers birth parents, adoptive parents and adoptive children as 'parties in an adoption' (section 5.38). This may inhibit the "maintenance of the child's culture and identity through contact with the child's community" as outlined currently in the Victorian, *Children, Youth and Families Act (2005)*.



CREATE's previous research indicates that maintaining existing and previous positive connections to children and young people's families, social and community networks and supports is seen as very important to young people in out of home care (McDowall, 2013). The restriction and availability of information about an adoption to those immediately and biologically related to the child and/or young person and their adoptive parents, outlined in section 8.18, appears to work against the maintenance of extended family, social and community networks.

CREATE has appreciated the opportunity to comment on the consultation paper and has included for your information a copy of our position paper on Adoption.

If you require further information or clarification on CREATE's position please do not hesitate to contact myself or on 03 9918 0002 or via email at cathy.carnovale@create.org.au Alternatively you may wish to contact Ms Noelle Hudson, National Policy and Advocacy Manager, on (07) 3062 4860 or via email at noelle.hudson@create.org.au

Yours Sincerely

Ms Cathy Carnovale
Victorian State Co-ordinator

References

Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families

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CREATE Position Paper

Issue: Adoption

CREATE’s Position

CREATE advocates for measures facilitating stability of placements in out-of-home care and permanence in the relationships experienced by children and young people who are not able to live with their birth parents. Permanence can be achieved by reunification with family, legal guardianship, and adoption (Akin, 2011) If adoption is chosen as the most appropriate course of action in an individual case, CREATE supports the view that the decision must be based on what would be in the best interests of the child or young person (Cuthbert & Quartly, 2010).

National Standards (FaHCSIA, 2011) that relate to stability and permanence of relationships, and thereby may impact on adoption, include:

National Standards	Measures
<p>1. Children and young people will be provided with stability and security during their time in care.</p>	<p>Children and young people are to be matched with the most suitable carers and the care environment according to their assessed needs.</p> <p>1.3 The proportion of children and young people in out-of-home care who report feeling safe and secure in their current placement.</p>
<p>9. Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.</p>	<p>9.3 The proportion of children (as age-appropriate) and young people who report having contact with family members, by the reported frequency of contact, by their reported satisfaction with contact arrangements.</p>
<p>11. Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.</p>	<p>11.1 The proportion of children and young people who are able to nominate at least one significant adult who cares about them and who they believe they will be able to depend upon throughout their childhood or young adulthood.</p>

Evidence

- In 2011-12, 62% of all adoptions (n = 210) were Australian children. Of these, approximately 40% of the adoptive parents were carers or relatives other than step-parents (Australian Institute of Health and Welfare, 2013).
- Decision-making should be individualised, timely and culturally appropriate. Children themselves, their parents and carers all need to be involved in planning (Tilbury & Osmond, 2006).
- Factors likely to lead to positive adoption outcomes include recruiting/approving additional adopters, reducing breakdowns, and reducing delays in placing children for adoption. Bonin, Lushey, Blackmore, & Holmes (2013), in the UK, estimated that following these recommendations may reduce the cost of supporting a child with a plan for adoption by as much as £200,000.
- The experience of stress whether pre-adoption, or during the adoption transition, can impact on the developing neuroendocrine system and can contribute to problems with physical growth, brain development, and sleep, activating consequential effects on social, emotional, and cognitive development (Grotevant & McDermott, 2014).

- Legislation can be introduced, as recently in NSW, to (a) establish a new preferred hierarchy of permanent placement types (with adoption placed above long-term foster care); (b) introduce specific timeframes for making decisions about restoration of the child to their family; (c) create a new long-term guardianship order that would support long-term relative and kinship placements; and (d) make the adoption process more efficient (PeakCare [Qld], 2013; Roth, 2013).

Actions

Adoption may not be the chosen way to achieve permanence for all children and young people in care. However, if it is to be achieved successfully, as Neil (2014) indicated, CREATE urges governments to ensure their adoption policies meet these four challenges:

1. The first relates to achieving adoption within a timescale that meets children's developmental needs (whilst giving birth families fair opportunities to look after the child themselves).
2. The second challenge is how to support birth families through and after the almost inevitable adversarial nature of proceedings.
3. The third challenge is to manage the child's connection to their birth family over time through openness practices, including post-adoption contact.
4. The fourth challenge is to support adopted children and adoptive parents after adoption.

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