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Re: Review of the Adoption Act 1984

My name is Karleen Gribble. I am an Adjunct Associate Professor in the School of Nursing and Midwifery at Western Sydney University. My research interests include the practical aspects of day-to-day care of traumatised children and how to support parents and caregivers in facilitating the healing and healthy development of these children. I have numerous publications on these subjects in in peer-reviewed professional psychological, medical and social work journals. Materials I developed have been used in adoption applicant parent training in several Australian jurisdictions as well as internationally. From 2009 to 2013 I was an advisor to the Federal Attorney General on adoption via the National Intercountry Adoption Advisory Group. I am also an adoptive parent.

I would like to suggest changes that could reduce the losses associated with adoption and so be of benefit to adopted children.

Modern adoption legislation was developed in a context where illegitimacy, infertility and adoption were all shameful. Adoption needed to be hidden. Adoption required a complete severance of the relationship between a child and his/her family of origin, they were never to meet again. Adoption required the old identify to be erased and a new identity to be created, complete with a new birth certificate.

Adoption is viewed differently now. It is recognised that openness is important in adoption. Adoption is no longer considered as shameful. Legislation has been amended to provide for more openness in adoption as appropriate. However, adoption still permanently legally removes a child from their family of origin and erases a child's pre-adoptive identity. These losses are not necessary.

<u>Current situation</u>

- There are large numbers of children in out of home care in Australia, more than 45 000. Most of these children (38 000) are on finalised orders meaning that a decision has been made that they cannot be returned to the care of their parents[1].

- Very few children are adopted from out of home care. Only 94 children were adopted from out of home care in 2014-15 [2].

Why are so few children adopted from out of home care?

- Adoption has a dark history in Australia. For decades women were lied to, drugged, coerced and shamed into consenting to their children being adopted [3]. Adoptees were lied to and had their name, identity, and family history hidden from them [3]. They were unnecessarily separated from their family of origin [3].

- Present legislation ensures ethical adoptions and children maintain knowledge of, and often contact with, their family of origin, but losses still remain[2]. Current adoption legislation requires the permanent severance of any legal recognition of the child's belonging in their family of origin [2]. This loss is maintained to subsequent generations. Legally removing a child permanently from their family and so removing a part of their identity is something that many practitioners and policy makers wish to avoid [4]. It is because of this issue that adoption is not possible for Aboriginal children.

How adoption benefits children

- Adoption provides stability- Children in out of home care are frequently moved from placement to placement, family to family and a substantial proportion may have more than half a dozen placements over only a five year period [5]. Multiple placements are associated with poor outcomes for children and young people that extend into adulthood [5]. In contrast, adoption provides a permanent family and stability for children. Despite the often difficult behaviours that children adopted from out of home care may have, adoption disruptions are a rare event [6].

- Adoption provides belonging- Children in out of home care do not fully belong in the family caring for them. They do not share a name with their family, their foster carers often do not have the ability to make important decisions for them, the relationship may be severed at any time, any recognition of the relationship ceases when they reach majority and does not endure to further generations. The absence of legal belonging into adulthood has real implications for individuals in relation to next of kin for medical treatment, inheritance and immigration. Adoption provides children with belonging in their family that is life-long and gives them equal status with any children born into the family.

- In some jurisdictions, such as Victoria, permanent care or guardianship orders are presented as an acceptable alternative to adoption. Research from the UK, has identified that such legal arrangements provide less stability than adoption [6]. In addition, legal recognition of children's relationship within their family does not persist past the age of majority so individuals no longer legally belong to their family once they turn 18 years. Permanent care orders do not provide the same lifelong and intergenerational belonging that adoption provides. The absence of a legal relationship past majority has real ramifications as previously described in relation to next of kin, inheritance and immigration.

<u>The ramifications of legally removing a child out of their family of origin upon adoption</u>

- Children are no longer legally recognised as being part of their family of origin in any way. Regardless of the age of the child, a new birth certificate is created and their previous identity erased. They are in no man's land in terms of their relationship with immediate and extended family; they may have contact with them but they are not legally related. There are also lifelong implications for inheritance, immigration and recognition of next of kin regardless of the closeness of their relationship with birth relatives.

- Many children in out of home care are older and have established and positive relationships with their birth family, including siblings and extended family. While they may wish fully belonging in the family caring for them they also want to remain a member of their family of origin. They want to remain the child of their birth parents, the sibling of their birth siblings, the grandchild of their birth grand parents. Foster parents are also often reluctant to pursue adoption because they do not want children to lose legal membership of their family of origin.

- Birth parents are unwilling to consent to the adoption of their children even when they recognise that they cannot care for them because agreeing to their child being adopted requires them to expel their child from their family. This means that legal processes for adoption often require dispensation of consent.

- Courts processing adoptions without the consent of parents is viewed as being akin to "forced adoptions" of past practice. Social workers and administrators are reluctant to force adoptions.

- Processing of adoptions without the consent of parents is more difficult than when consent is obtained which dissuades child protection workers from pursuing adoption.

- While open adoption allows for continued contact and maintenance of relationships between adopted children and their family of origin they have no impact on the legal removal of children or erasure of identity.

- Adoption is not possible for Aboriginal children.

Severing the relationship between a child and their family of origin is not necessary

- Adoption, illegitimacy and infertility are no longer considered shameful. It is recognised that children have a right to know about their history and origins. It is understood that most children benefit from contact with members of their family of origin. There is no reason why children need to be legally removed from their birth family in order to be adopted.

Legislative change could allow children to legally belong in two families

- There is more than one form of adoption around the world. Adoptions that legally remove children from their family of origin are called "plenary adoptions." Adoptions that allow children to remain legally a part of their family of origin when they are adopted are called "simple adoptions."

- Countries as diverse as Mexico, France, Thailand, Ethiopia and Belgium have adoption legislation providing for simple adoptions.

- Simple adoptions allow for creation of a new legal relationship between the adopted child and their adoptive parents while retaining legal recognition that the child is still a member of the family they were born into.

- While the idea of a child being a member of two families may be new in Australia we already have a legal framework for creation of a new legal relationship while retaining the old in marriage. Marriage does not require individuals to repudiate their parents or siblings or other family members in order that they make a new family with their marriage partner.

The benefits of simple adoption

- Simple adoption allows adoptive parents to have full parental responsibility and to be recognised as legal parents to their adopted child.

- Simple adoption allows the child to legally fully belong in both their adoptive and birth family.

- Simple adoption means that children lose nothing when they are adopted, they only gain.

- Where the court has already decided that they cannot ever parent their child again simple adoption does not remove anything from birth parents.

- Simple adoption would likely increase the likelihood of birth parents consenting to adoption.

- Simple adoption would facilitate the adoption of many children from out of home care and support the short and long term wellbeing of adopted children.

- Simple adoption does not erase the child's identity but allows children to add an identity. In simple adoption, an amended birth certificate could be replaced by an adoption certificate allowing children's identities to be accurately reflected in documentation.

- Simple adoption may make adoption of Aboriginal children possible.

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Adoption legislation in Victoria requires modernisation. There is no longer any reason for a child to be legally removed from their family of origin when they are adopted or for the erasure of their identity to occur with the creation of an amended birth certificate.

Recommendation

I suggest that the Law Reform Commission investigate the possibility and ramifications of legislative reform to institute simple adoption in Victoria.

Yours Sincerely,

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