

23 September 2016

Helen Rechter
Victorian Law Reform Commission
GPO Box 4637
Melbourne Victoria 3001
[REDACTED]

Dear Helen,

Re: Review of the 1984 Adoption Act

Berry Street appreciated the opportunity to participate in the roundtable on September 8th and provide input into the review of the 1984 Adoption Act. We are providing this brief submission to summarise and highlight a number of key issues.

We have provided some general comments below and responded to a number of issues canvassed in the Commission's consultation paper. Our particular interest is in relation to adoption and children and young people who have had contact with the child protection system and are the subject of child protection orders, including those in permanent care.

Berry Street was an adoption agency until 1975 and retains an interest in adoption law and practice. Reflecting on our long history managing an adoption program for most of the 20th century gives us reason to be cautious about the practice of adoption in the child welfare field. In 2013 Berry Street was moved by the experiences of women who had lost the care and custody of their children through what have come to be described as forced adoption practices to apologise for our part in those practices. We know that such practices have caused lifelong harm and hardship to many families.

We are also ever mindful of the impact of past child welfare policies and practices that authorised the forced removal of Aboriginal and Torres Strait Islander children from their families. Many of these children were permanently separated from their families and culture, their source of identity and wellbeing, placed in foster care and then placed for adoption. The intergenerational trauma caused by these policies and practices has been well documented.

In Victoria permanent care has been developed as an effective means of providing children who cannot ever be safely reunified with their family and parents with a family based care arrangement for the duration of their childhood. Permanent care also provides carers with the required level of legal certainty to exercise the parental responsibilities expected of them.

Berry Street has raised concerns through various forums regarding the 2014 permanent care amendments to the 2005 Children, Youth and Families Act including the amendment to list adoption as a preferable permanency outcome to permanent care. We don't intend to expand upon our concerns regarding the 2014 permanency amendments here noting that the Commission for Children and Young People are to conduct an independent review of the amended legislation and Berry Street will provide input into that review.

In relation to adoption and permanent care Berry Street supports permanent carers having the option of being able to apply to adopt the children in their care. This should be conditional on the child, if they are 12 years old or older, not withholding their consent, parental consent being obtained or the County Court making a formal decision to dispense with parental consent. Such an approach would give children who have been the subject of child protection interventions rights that are equal to other children in Victoria and equal treatment within the adoption process.

There are a number of other matters Berry Street wishes to comment on as follows:

Best Interests Principles: Berry Street supports the inclusion in the Adoption Act of best interests principles to affirm that adoption should only be considered and approved by the Court where it is in the best interests of children.

We support a consistent expression of best interests between the 2005 Children, Youth and Families Act and the Adoption Act. Further we support a specific reference to the overarching paramount principle that the interests of children are to be considered above all others. Berry Street also recommends that the Adoption Act make a specific reference to relevant United Nations human rights instruments to which Australia is a signatory, in particular to the UN Convention on the Rights of the Child. We note that while the 2005 Children, Youth and Families Act requires decision makers (section 10) to take into account the rights of children it provides no reference or details on what constitutes a child's rights. A specific reference to the UN Convention on the Rights of the Child in the Adoption would provide clarity regarding the rights of children to be considered by decision makers.

Dispensing with parental consent: Berry Street considers that the list of circumstances in which the County Court can dispense with parental consent are currently framed too broadly.

We note for instance that the Court can dispense with parental consent if parents have '*ill-treated a child*' or '*a person has such a physical or mental disability, or is otherwise so impaired that the person would be unable to meet the needs of the child*'.

These circumstances are framed too broadly. We would contend that the use of terms like 'impaired' could be interpreted to include any form of impairment such as financial impairment, long-term unemployment, being a victim of family violence or a lack of access to housing. There are over 8,000 children and young people in Victoria's child protection system ostensibly because the Children's Court has determined that parents are unable to meet their needs. As currently

framed the Adoption Act could be reasonably interpreted as providing a legal basis to dispense with parental consent to adoption in all of these cases.

Prior to the Court dispensing with consent Berry Street would add an additional requirement that the views of all siblings of a child be considered by the County Court.

Wishes of the child and legal representation. As noted earlier Berry Street supports the inclusion in the Adoption Act of a requirement that children from age 12 cannot be adopted where the child *withholds their consent* to the adoption.

We are cognisant that to *require the consent* of the child in order for an adoption to proceed creates a scenario where the child is forced to express a view either in favour of or against the adoption and that this can place undue pressure on children. A provision that the adoption cannot proceed *where the child withholds consent*, ie declines to express any view, would lessen the pressure on children while preserving their rights within the decision making process.

In relation to legal representation Berry Street believes that in all child protection and adoption legal proceedings all children should have legal representation. Specifically children under 10 should have representation on a best interests basis and children aged 10 and above on a direct instructions basis.

Birth certificates of adopted people. Berry Street's in-principle position is that a child's birth certificate is their identity document and that a child's birth certificate should not be altered.

We are cognisant of and support the need to provide adoptive parents with legal documentation that makes clear that they have full parental responsibility for a child. Integrated birth certificates, (which include details of the family of origin and adoptive parents), are not the only solution to ensuring adoptive parents have documentation that makes clear their parental responsibility. Permanent carers are provided with specific documentation to fulfil this need without the amendment of the birth certificate of the child or children in their care. Berry Street suggests that adoptive parents be provided with a similar form of documentation.

We have reservations about creating a different form of birth certificate for adopted persons, birth certificates being altered or a new birth certificate being created by replacing the details of the child's family of origin with the details of the adoptive parents. That said we are aware that some adoptees may prefer to have an integrated birth certificate and one option would be to allow for integrated birth certificates, where this is sought by the adoptee and they are 12 years old or older.

Legal Jurisdiction. In relation to the option of the Children's Court of Victoria performing the role currently performed by the County Court and being responsible for the adoption legal process this would seem an appropriate reform. However, Berry Street has some reservations about supporting such a reform

while the 2005 Children, Youth and Families Act retains the provision that adoption is considered a higher and preferable permanency objective than permanent care.

Aboriginal and Torres Strait Islander Child Placement Principle (the principle). Berry Street supports the inclusion and application of the principle in the 1984 Adoption Act; and that the wording of the principle in the 1984 Adoption Act should be the same as the version currently included in the 2005 Children, Youth and Families Act.


The principle should be applied in all cases, those with parental consent and those where the Court is dispensing with parental consent; and it should apply where a consenting parent expresses a wish against a child being placed for adoption in accordance with the principle. This is consistent with the paramount principle that children's best interests are always paramount regardless of the wishes of other stakeholders.

It would also be consistent with the Aboriginal and Torres Strait Islander Child Placement Principle for Aboriginal and Torres Strait Islander parents to continue to have the right to place conditions on their consent relating to the cultural connections and identity of their children.

Berry Street also considers that there should be a positive duty on the Secretary of DHHS to make extensive inquiries as to whether or not a child being placed for adoption is Aboriginal or Torres Strait Islander. This could include documented evidence of consultation with a range of Aboriginal agencies and with Victoria's Aboriginal Commissioner for Children and Young People.

Berry Street appreciates the opportunity to contribute to the VLRC review of the 1984 Adoption Act. We are happy for this submission to be published and be made publicly available and we look forward to further involvement in these important considerations.

Yours sincerely,



Sandie de Wolf AM
Chief Executive Officer