



## **Submission in response to Review of Operation of *Adoption Act 1984 (Vic)* and the *Adoption Regulations 2008 (Vic)***

### **1. Introduction**

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Women's Forum Australia (Women's Forum) welcomes the move by the Victorian Government to explore the issue of whether the *Adoption Act 1984* and the regulations made under it require change. In our view, access to adoption facilitated in an open, respectful and regulated way has had, and continues to have, tremendous potential to benefit women, children and families in need.

#### **Who we are**

This submission is made on behalf of Women's Forum Australia. Women's Forum Australia was established in 2005 as an independent women's think tank. We conduct evidence-based research, develop and deliver high quality education programs to women and men, mentor women to be agents of positive social change and influence in the home, the community and the paid workforce, and inform government legislation and policies on issues of relevance to women's health, well-being and safety.

In 2014, Women's Forum commissioned Dr Greg Pike from the Adelaide Centre for Bioethics and Culture to perform an independent review of evidence-based research to understand better the impact of the complex social institution of adoption on the health and well-being of women, taking the child's best interests as the paramount consideration. This review resulted in our report entitled "*Adoption Rethink*". A copy of this report is enclosed with this submission.

#### ***Adoption Rethink* in brief**

There has been a 97% decline in the number of adoptions in Australia over the last 40 years. *Adoption Rethink* explores the reasons for this decline, examines current and past attitudes to both open and closed adoption practices and examines the relevance and viability of the practice of adoption generally. In doing so, the report examines the evidence in relation to how adoption affects each member of the "adoption triad" – children, relinquishing parents and adoptive parents.

It is clear from the evidence that despite the mistakes of the past, adoption remains a viable alternative for women, children and families in need. An open adoption process, appropriately and sensitively managed, can provide positive long-term outcomes for birth parents, adoptees and adoptive parents. A new legislative approach from State and Federal Governments, the involvement of non-government organisations in providing adoption services and a change to the hostile attitudes towards adoption that have developed within the various bureaucracies in recent years is necessary. This must be underpinned by a comprehensive evidence-based education campaign to inform the community about the benefits of adoption for women, children and families, particularly in comparison to other arrangements.

Since the release of *Adoption Rethink*, Women's Forum has been actively advocating for a change in culture, policy and legislation to promote adoption as a response to a need first and foremost – being the needs of vulnerable women facing a crisis pregnancy and vulnerable children in need of a stable, loving and permanent family. Given the high level of impact adoption can have on people's lives, we also advocate for more research to be done to inform how adoption works best – to ensure that adoption practices in Australia are based on, and can be refined by, real evidence.

## **2. Guiding Principles**

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When considering adoption practices in Australia we consider it is important to observe certain guiding principles:

1. Every effort should be made to enable birth parents to raise their own children in a safe, loving and stable environment. Adoption should only apply in situations where birth parents are unwilling or unable to parent their own child appropriately.
2. Adoption as an institution is first and foremost a response to a need (being the needs of vulnerable women facing a crisis pregnancy and vulnerable children in need of a stable, loving and permanent family), and only a means of family formation for adoptive parents in the second place.
3. As the most vulnerable member of the 'adoption triad' the needs of children warrant particular care and attention and must receive first priority in any discussion and in all processes relating to the establishment and maintenance of any permanent or temporary care arrangements. Where this priority has been lost sight of or superseded in practice, all relevant processes must be reoriented towards this priority.
4. Permanency and stability are critical to the long-term welfare of children. Timeliness is also critical. Every effort must be made to resolve the situation of children in need as quickly as possible, ideally within six months.
5. An open adoption process, where birth parents feel they have the opportunity to identify the attributes or characteristics of the adoptive parents, and are given the opportunity for ongoing contact where appropriate, provides for the most favourable long-term outcomes.

6. Children have a right to know about their origins. Appropriate records should be maintained of a child's biological parents and be made available to the child. Adopted children should be made aware at an age appropriate time of their adopted status, regardless of the level of contact they may have had or may subsequently have with their birth parents.

### **3. The Assessment Process**

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#### **A. Consent in the context of adoptions at birth**

Across Australia, adoption orders may only be commenced following the birth of a child, and the process then involves lengthy waiting periods mandated by legislation. This is the case in Victoria.

In practice, this process can take up to 12 months if birth parents give consent. Until the adoption is finalised, the child remains in pre-adoptive foster care forming critical primary attachments to temporary foster carers, contrary to evidence supporting the importance of timely permanent attachment relationships.

The gap is inconsistent with other legislation. Surrogacy laws, for example, cover arrangements prior to conception, with all other existing parenting orders applying to children after birth.

We believe that vulnerable women facing crisis pregnancies could be assisted with the assurance of certainty for the future of their child if they are able to progress along the path to adoption while they are still pregnant.

We also believe that the evidence shows that children require stability as soon as possible to achieve the best developmental outcomes.

**Recommendation 1:** Enable adoption orders to be commenced (and if reasonable in the given case, finalised) while the baby is still *in utero*, provided that the birth parent has the ability to withdraw consent for a reasonable period (say, 30 days) after the birth. During the waiting period *postpartum*, every effort should be made to place the child with one carer only.

#### **B. Consent in the context of children at risk of harm**

Parental consent to adoption in cases where it has been substantiated that children are at risk of harm can significantly delay the adoption process, often for years, to the detriment of the children involved.

The need for concurrent permanency planning has been repeatedly highlighted over the past decade to ensure that alternative plans are in place in the event that family reunification is not possible.

For example, a 2004 inquiry conducted by the then Queensland Crime and Misconduct Commission emphasised the importance of concurrent permanency planning to allow for an alternative plan to be in place if reunification with a birth family could not be achieved in a timely manner. The reason concurrent permanency planning is so important is that it can reduce further harm, give children in out-of-home care a chance at a stable permanent "family" arrangement and decrease "drift" in care.

**Recommendation 2:** If it is established that a child cannot be safely returned to his or her birth family within a reasonable and child-centred time frame (say, six months), the alternative plan should be initiated with courts dispensing with parental consent as provided in legislation.

Develop, implement and monitor uniform national legislation, policy and practice that enshrines the principles of placement stability and concurrent permanency planning for all children on statutory child protection orders living in out of home care.

## **4. Current Eligibility Criteria**

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### ***A. Maintain and strengthen existing eligibility criteria***

The United Nations Declaration on the Rights of the Child and Victoria's Adoption Act, all state that the welfare and best interests of the child are the paramount consideration. It has also been well-established that permanency and stability are also critical to the harmonious development of children, particularly young children. These considerations must be taken into account when determining the eligibility criteria for adoptive parents.

The optimal outcome for children is to be raised in a safe loving and stable environment by their biological parents. Where this is not possible, every effort should be made to provide an arrangement that replicates this environment as closely as possible.

While we accept that single-parent families have become more common today than 30 years ago we do not accept that this is the best environment for children to be raised, particularly those vulnerable children who are being considered for adoption. We also note that, while the South Australian review considered the "best available" evidence on the impact on children being brought up in same-sex couple and single-person households concluded that there is no difference in outcome than for those brought up in different-sex couples, this evidence is not conclusive.

A review of a number of studies supporting the no-difference consensus of same-sex parenting undertaken by Dr Andy Mullins, adjunct Professor at the University of Notre Dame Australia, found the studies to be methodologically flawed, based on subjective perceptions and inconclusive. In 2015, one of the largest studies of same-sex parenting, undertaken by Paul Scullins and published in the British Journal of Education, Society and Behavioural Science, found a significant increase in serious emotional problems in children of same-sex couples. The American College of Paediatricians stated the alleged scientific consensus that having two parents of the same sex is innocuous for child well-being is almost wholly without basis. They are all of the view that the natural family is the single greatest pro-child institution in the history of mankind.

In view of the importance of permanency and stability to a child's well-being, Women's Forum believes children should only be placed within families that are most likely to provide permanency and stability. We consider the current provisions of the Adoption Act that require adoptive parents to be married, in a traditional Aboriginal marriage or in a registered relationship for at least two years should be maintained and strengthened. They should not be further eroded by allowing single people, one person in a couple or a person who is unable to demonstrate s/he is living in a stable

domestic relationship to adopt. To do so would be a decision to preference the desires of adoptive parents over the needs of vulnerable children.

**Recommendation 3:** Maintain and strengthen the existing eligibility criteria for identifying suitable prospective adoptive parents so that only married couples, Aboriginal married couples and those in a registered relationship for at least two years are eligible to adopt.

***B. Protect the rights of birth parents to express a preference for the characteristics of prospective adoptive parents***

In Victoria, the right of birth parents to express preferences for characteristics of adoptive parents such as religious, ethnic and cultural backgrounds is protected.

Our *Adoption Rethink* research demonstrated that an open adoption situation, where the birth parents feel they have some control over the decisions and process to place a child for adoption, results in the most favourable long-term outcomes for all involved. Key to the open adoption process is the involvement of the birth parents in the selection of adoptive parents. This is particularly critical where birth parents want or are expected to have ongoing contact with their children.

We believe that it is imperative that this occurs in practice in all Australian jurisdictions and we encourage Victoria to continue to protect the right of birth parents to do so. Attempts to exclude the wishes and desires of birth parents in the adoption process is reminiscent of the forced and closed adoption processes of the past that caused so much damage to previous generations. A repeat of these circumstances must be avoided at all costs.

***C. Provide for the rights of birth parents to express a preference for marital status and gender***

We note the recent attempt in Victoria to remove its protections for the birth parents' rights to express preference in enacting its same sex adoption legislation on the basis that this would "open up an avenue for same-sex couples to be discriminated against". This is despite the fact that the existing Victorian Adoption Act provided for birth parents to express a preference in relation to the religion, race and ethnic characteristics of the adoptive parents. We consider that for many parents, the marital status of the prospective parents will be of equal, if not more, importance than these other characteristics and the right to specify marital status must be protected.

We reiterate our position that adoption is a process that should be driven by the needs of vulnerable women and children. It should not primarily be used as a means of family formation for those who are otherwise unable to have children. While we welcome the loving contribution made by adoptive parents in providing a home for children in need, the concerns of adoptive parents about issues such as discrimination must take second place to the needs of birth parents and vulnerable children. Birth parents must be allowed to have some control over the adoption process where possible in order to achieve the most favourable long-term outcomes. This includes having the right to specify the gender and marital status of the adoptive parents.

**Recommendation 4:** Ensure that, in practice, birth parents are given the ability to specify characteristics of adoptive parents including ethnic, cultural and religious characteristics as well as gender and domestic situation.

## **5. National uniform laws on adoption – The Need for a National Framework**

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Australian state and territory adoption legislation and policy differ widely. While all jurisdictions place the “child’s best interests” as paramount, this principle is not necessarily reflected in practice and the approach to adoption is inconsistent across jurisdictions.

For example, NSW and Victoria have different models of how adoptions are carried out – with NSW and Victoria having a more outsourced model (relying on agencies as well as the department), and other states like Queensland solely operating out of their relevant government department. This means adoption may not be as accessible an option for children depending on the state or territory in which they live.

Another example is the different timeframe requirements in each state for decisions made relating to placing children who are the subject of child protection orders. We believe there should be standardised timeframes across Australia for making placement decisions about children so that children’s best interests are protected irrespective of the jurisdiction in which they live.

**Recommendation 5:** Develop a national best-practice approach to adoption and ensure that it is implemented in legislation and policy in each jurisdiction across Australia. This is imperative to ensure that every child in Australia has the same access to a stable, permanent home regardless of the state in which they live.

## **6. Examples from other jurisdictions**

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Women’s Forum believes that there are several examples in other jurisdictions from which Victoria could learn in order to improve its adoption practices.

### ***A. Innovative approaches to matching children to families***

We consider that Victoria (in conjunction with other Australian states and territories) could look to other jurisdictions, like the UK, for innovative ways to improve the matching process between children in need of a family and adoptive parents.

For example the UK has established a nation-wide Adoption Register through which 282 children were placed for adoption in 2014-15.

Women’s Forum is of the view that more could be done to link children across all states, including pregnant mothers carrying unborn children, to potential adoptive parents to facilitate a faster adoptive process.

By consolidating all the information in one national register and making this available to all registered adoption agencies, the likelihood of finding a suitable match for children with prospective adoptive parents is increased.

**Recommendation 6:** Victoria could initiate the process for Australian states and territories to develop a National Adoption Register, which, in addition to matching children already born with prospective adoptive parents, could also facilitate the matching of the unborn children with adoptive parents in situations where the birth parents are unable or unwilling to parent their own child.

## **7. The importance of high quality, evidence-based information**

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### **A. *Ensure we continue to evaluate programs for children in out of home care based on data***

International literature emphasises epidemiological surveillance data as the foundation for identification and service delivery<sup>1</sup>. Yet in 2015, there is still no high quality data of this kind. There is similarly no auditing of outcomes, no national definitions and no consistent reporting data. This means that there is no clear accountability or research to evaluate the effectiveness of support services.

The lack of available data makes it impossible to know whether early intervention and prevention efforts are actually effective. We submit that without this data, we are simply operating on the assumption that more of the same will one day have a different result.

Good public policy and planning must be grounded in high quality information and data, especially in complex service delivery environments. Accordingly, we consider that data must be more consistent, open, accountable and accessible. This is critical in ensuring that vulnerable children in out of home care are receiving the best possible assistance and that service delivery is evidence-based and best practice.

**Recommendation 8:** Make available more consistent, open and accountable data such as expanded information on notification, re-notification, substantiation and re-substantiation statistics, national definitions of reporting data, auditing of outcomes for children, objective outcome measures for family support services and unlimited access to statutory child protection records. There is a need for high quality and reliable surveillance epidemiological data to determine the true magnitude of child abuse and neglect, the risk and protective factors and the effectiveness of existing policy and practices, so as to develop evidence based best practice.

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<sup>1</sup> Broadley, Goddard & Tucci, 2014; Sammut J, 2009.

## ***B. Promote cultural change through better education practices based on evidence***

### Better education for social workers

Generally speaking, there is an ideologically driven, anti-adoption culture in the social work area. This may in part be due to the tone and content of training currently provided to social workers.

Social work courses appear to be predominated with theories of society rather than an effective understanding of child development and the cognitive damage that accrues through neglect and appropriate thresholds for taking children into care.

Basing university education, as well as ongoing professional development and training, on evidence based best practice, informing those involved in child protection of the cumulative harm and permanent developmental impacts of abuse and neglect could help to shift the pervasive family preservation and anti-adoption culture among social workers. This has been effective in the UK, so we would suggest following their lead.

**Recommendation 9:** Introduce more comprehensive professional development, education and training of social workers throughout Australia, including at an undergraduate degree level. Study should be based on best practice informed by evidence.

### A more informed concept of the “child’s best interests” in practice

The *Adoption Act 1984* makes it clear that the “child’s best interests” are of paramount concern. Despite this, it is clear that there is an ideological bias in the bureaucracy towards family preservation and parental rehabilitation at all costs, and an overemphasis on the use of the out of home care system to resolve situations as demonstrated by the fact that there were over 8,500 children living in out-of-home care in Victoria in 2015.<sup>2</sup> This ideological bias generates a hostility towards adoption as an option for children in need despite comprehensive research showing the advantages of adoption particularly in comparison to the out of home care system.

It is important that a clear and evidence-based concept of the “child’s best interests” informs all decision-makers in the adoption system.

We believe that this concept should centre around evidence with respect to child development, attachment theory, the longer term impact of neglect and maltreatment of children, and the primacy of the child; successful family support and parenting capacity and how to collate and critically analyse information to arrive at the right assessment decision (particularly vital when defending decisions at court).

**Recommendation 10:** There needs to be a fully informed evidence-based concept of the “child’s best interests” that places the child’s wellbeing and rights above those of other parties, which should guide the implementation of legislation at the policy and operational levels.

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<sup>2</sup>AIHW 2016. Child Protection Australia 2014-15. Child welfare series no. 63. Cat. No. CWS 57. Canberra: AIHW.

### For legal practitioners

Legal practitioners and members of the judiciary making legal decisions with respect to children being adopted from out of home care are not provided with appropriate professional training or education to set the context for their decision-making.

Given the long-term and critical impact of these decisions on the adoption triad, especially children, it is vital that lawyers and judges are continually aware of the context within which they are operating.

**Recommendation 11:** Introduce better education programs for judicial staff throughout Australia similar to those proposed by the Victorian Cummins Review including: 1) understanding of abuse, neglect and trauma, 2) understanding of physiological issues and long term (permanent) damage due to harm and 3) cumulative harm risks arising from chronic neglect.

### ***C. Consider ways to promote and generate more evidence based research***

On 31 January 2015, the NSW Government announced that it would establish an Institute of Open Adoption Studies. The University of Sydney and Barnardos Australia were selected to form the institute as a joint venture. The NSW Government has committed \$2.85m so far to the Institute, which is tasked with generating ongoing high quality and independent research into open adoption focusing on children who have been permanently removed from the care of parents by the courts of NSW. This is important to inform adoption practices and policy in NSW, as well as professional development for those who work in the area of adoption.

The NSW Government acknowledged that there are significant knowledge gaps in the area and that there is a lack of research in the Australian context.<sup>3</sup> The then Family and Community Services Minister, the Hon Gabrielle Upton MP stated that the Institute would “build community awareness of contemporary adoption practice, and support our efforts to improve pathways to adoption”.

Women’s Forum Australia supports this initiative of the NSW Government and its recognition that more needs to be done to build the evidence base in relation to adoption, which should inform adoption practices. Women’s Forum considers that Victoria should similarly consider establishing a means to promote and support much-needed growth in this area of research.

**Recommendation 12:** Victoria should consider ways in which it can promote and generate more independent, evidence based research on adoption to inform policy and adoption practices. Establishing an Institute of Open Adoption Studies, similar to the NSW Government’s initiative, would be one way of ensuring more high quality and independent research is carried out.

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<sup>3</sup> <http://nsw.liberal.org.au/adoption-priority-nsw-government-establish-institute-open-adoption/>