



## GPV/KCV congratulates the law reform Commission on its report on adoption July 2017

In October 2016, GPV/KCV participated in the Victorian Law Reform Commission review into Victoria's adoption laws, with both an in-person consultation and a written submission.

GPV/KCV believes that adoption should only be maintained as the last resort option for the care of children, particularly those in out of home care. There is a range of parenting orders available in Victoria that can deliver security and stability of care for children and keep them within their biological family.

GPV/KCV also believes that once it has been established that adoption is the final option available for a child then it must be proven that it is applied in a way that protects the best interests of the child and enhances observations of the rights of the child.

GPV/KCV believes that:

- adoption should only be applied once parents have been supported to keep the child and after their rights and options have been explained to them by a specially trained person who is independent of the DHHS
- adoption should never be applied as a means of addressing the needs of couples or individuals who cannot conceive their own child or as a means of reducing the statistics related to children in out-of-home care or the obligation of society to support children in need
- adoption should never be applied if the extended family is willing and able to raise the child and in all cases extended family of the child should have the right to prove their capacity and willingness to raise the child.
- The application of extended family to raise the child must be given priority consideration, even if the parent initially approves the adoption. In the cases where members of the biological family other than the parents want to raise the child, adoption should not proceed because parenting

orders are sufficient to provide permanency and stability to the child's life.

The final report of the review by the Law Reform Commission was tabled in parliament on 7 June 2017, and is currently being considered with a view to updating adoption policy and practice. No timeline has yet been announced for the introduction of the reformed Adoption Act.

GPV/KCV notes that many of the recommendations that appeared in the GPV/KCV submission have been addressed in the report, as outlined below.



grandparents  
VICTORIA



14 Youlden Street,  
Kensington, Vic. 3031  
(03) 9372 2422

E/mail: [director@grandparnets.com.au](mailto:director@grandparnets.com.au)

GPV/KCV said ...	The law reform commission said .....
<p>The Adoption Act must articulate the best interests and rights of the child</p>	<p>The Commission recommends that the best interests of the child concerned, both in childhood and in later life, must be the foremost consideration.</p> <p>The Commission recommends principles to guide decisions and actions in adoption to ensure that they are in the best interests of the child.</p> <p>Best interest guidance should apply to all decision makers under the Adoption Act, including the Court, the Secretary, the principal officers of approved agencies and any other people and bodies involved in the administration of the Act.</p>
<p>Siblings have the right to be placed together</p>	<p>The Commission makes recommendations aimed at preserving sibling relationships after an adoption.</p> <p>This includes requirements that all reasonable steps be taken to place siblings together and that if siblings are separated through adoption, arrangements for contact be made.</p>
<p>The adoption act must provide for contact between the adopted child and the extended biological family to be maintained</p>	<p>The Commission makes recommendations to help children continue existing relationships with people of significance to them after adoption. These recommendations aim to reduce trauma associated with adoption and assist with the development of the child's identity.</p> <p>An adoption plan should be negotiated before a child is placed for an adoption. It may provide for contact with a broad range of people. In addition to contact with natural parents it should always include detail about contact with siblings and grandparents.</p>
<p>Fathers should be able to consent to adoption of their children (except in cases where this would create a risk to the child's safety, or where the child has been conceived as the result of sexual assault.)</p>	<p>Consent to a child's adoption is required from the child's mother and father. The Commission proposes the introduction of a duty on the secretary of DHHS to take reasonable steps to identify the father and recommends that steps be taken to lengthen the timeframe for a parent to revoke consent to a child's adoption.</p> <p>The Adoption Act should provide that the court should have the power to dispense with the consent of a person to adoption if satisfied:</p> <ul style="list-style-type: none"> <li>• The person cannot, after reasonable inquiry, be found</li> <li>• The person committed an offence which resulted in the child's conception</li> <li>• There would be an unacceptable risk of harm to the child or mother if the person were made aware of the child's birth or proposed adoption</li> </ul>

<p>People other than the child's mother and father should participate in decisions about adoption.</p>	<p>Currently, the court has a broad discretion to permit anyone it thinks fit to be a party to an adoption hearing. The Commission recommends that the Adoption Act define the parties to adoption hearings at each stage of the process.</p> <p>In all adoption hearings, parties should include the child and the child's natural parents. This grants them the right to be heard by the court in decisions that affect them. However, they should not be obliged to participate.</p> <p>The Secretary or principal officer should notify the parents and siblings of the natural parent or, if they cannot reasonably be located, an aunt or uncle of the natural parent who is 18 years and over, that the necessary consents have been given to place a child for adoption and give them the opportunity to be a party to the adoption plan when:</p> <ul style="list-style-type: none"> <li>• The natural parent is unable or does not wish to be involved in adoption planning and does not object to the relative being involved</li> <li>• The natural parent's consent to the adoption is not required because they are deceased</li> <li>• The natural parent died after consenting to the adoption</li> <li>• The requirement for the natural parent's consent to the adoption has been dispensed with because they cannot be found or contacted.</li> </ul>
<p>The court must put conditions on an adoption, including conditions placed by biological parents.</p>	<p>The Commission considers parents should be able to participate in decision-making about who adopts their children, because it increases the possibility that they will have ongoing contact with their child and the adoptive family.</p> <p>The Commission recommends that the Adoption Act permit parents to express wishes about the full range of suitability criteria set out in the Adoption Regulations, replacing the factors currently specified in section 15(1)(b) of the Adoption Act. This would ensure parents' wishes focus on factors already established as relevant to applicants' ability to care and provide for a child and increase the chances of a successful open adoption.</p> <p>However, parents' wishes should not decide the outcome. A wish that is contrary to a child's best interest should not be followed.</p>
<p>The balance between privacy protection and access to information are out of alignment.</p>	<p>The Commission recommends that part VI of the Adoption Act be replaced with a new access to information scheme, designed by DHHS in consultation with the Privacy Data Protection Commissioner, the Health Services Commissioner and the Ombudsman. The new scheme should incorporate contemporary standards of transparency, accountability and fairness in the management of personal information by Victorian government agencies.</p>
<p>Children must be empowered and enabled to consent to their own adoption</p>	<p>The Commission makes recommendations that aim to increase children's participation in decision making about their adoptions, including about placement, contact with their family of origin, and whether an adoption order should be made.</p>

<p>Children should have separate legal representation and the adoption act should provide guidance about the duties and role of a legal representative.</p>	<p>The Commission considers that an independent children's lawyer should be appointed for all children in the adoption process. This should occur as early as possible, including during the development of an adoption plan, at a preliminary hearing, at a final hearing and at any subsequent hearings such as a variation or revocation of the terms of an adoption plan.</p> <p>There are cost implications of appointing independent children's lawyers in adoption proceedings. However, the decisions under consideration by the court have great and lasting significance for the child. In view of the small number of adoptions in Victoria the Commission considers that the cost is justified.</p>
<p>The adoption act should require provision of non-legal support for a child as an adjunct to legal representation.</p>	<p>The Adoption Act should also provide for the court to direct the Secretary or principal officer to appoint a person, such as a social worker or other person of expertise to support a child in proceedings, as well as a lawyer. This person should not be an employee of the Department or of an approved adoption agency.</p>
<p>The current limitations to rights to adoption information are designed to protect the best interests of the child.</p>	<p>Before 1984, adoption information was kept confidential. The current Adoption Act made some of this information available. Part VI of the Adoption Act regulates access to information held in records about adoptions that were negotiated or arranged by the Secretary, an approved agency, or a private adoption agency under the <i>Adoption of Children Act 1964 (Vic)</i>.</p>
<p>A range of people other than heterosexual couples should be allowed to adopt children.</p>	<p>The Commission makes recommendations which widen the eligibility criteria in the Adoption Act. While every eligible person should be entitled to apply to the secretary or principle officer to adopt, an application should not create an entitlement to be assessed. The Commission recommends that the Adoption Act require the secretary to manage applications for approval to adopt, anticipating the number of children able to be adopted and their needs</p> <p>To be eligible to adopt through the local adoption program, couples must have been married, in a registered domestic relationship or in a domestic relationship for no less than two years. Since September 2016 this includes same sex couples.</p> <p>The Commission considers differentiating between couples and single people on the basis of marital status is inconsistent with the Charter and the right to recognition and equality before the law. Marital status is not relevant to the safety, wellbeing and interests of a child to be adopted.</p> <p>The Commission recommends that the adoption act apply the same eligibility criteria to single applicants as couples.</p>

<p>Parenting orders are a more appropriate option than adoption in many cases.</p>	<p>Parenting orders under the <i>Family Law Act 1975</i> are preferred to adoption orders as they do not sever the legal relationship between the child and their parents, and expire when the child turns 18. There is also concern that when a relative adopts a child, it can distort family relationships. The Commission supports the preference for Family Law Act orders over adoption orders in relation to adoption by step-parents and relatives.</p> <p>The Commission recommends that the grounds for dispensing with consent be narrowed to exclude its use for child protection matters. The consent of a child's natural parents should remain the fundamental requirement. 'Child protection' grounds for dispensing with consent should not be available granting an order for adoption from permanent care.</p> <p>The Commission recommends the creation of a pathway to adoption from permanent care in strictly limited circumstances.</p> <p>Eligibility should be limited to the people applying to adopt a child who has been placed with the applicant under a permanent care order for at least two years. The two-year requirement ensures that children will not be quickly moved from permanent care to adoption.</p>
<p>A range of factors must be considered when releasing identifying information about a person</p>	<p>The new access to information scheme should describe clearly the circumstances in which information may be released under the Adoption Act.</p> <p>The Commission recommends that the new scheme extend some rights to apply for adoption information, for example the rights of adopted children under 18 and natural relatives. It also recommends that eligible people be enabled to authorise another person to apply on their behalf in defined circumstances.</p> <p>The Commission recommends that the Secretary develop clear, publicly accessible guidelines to promote consistent decision making about access to information.</p> <p>The definition of the information to which access may be granted under the new access to information scheme should provide a simple yet comprehensive description that does not pre-empt decisions about how to respond to a request for access to it.</p>
<p>All provisions of the adoption act should be conveyed in a pamphlet written in plain language that can be understood by people from all walks of life and ethnic backgrounds.</p>	<p>Anyone involved in the adoption process should be given the information that they reasonably need to participate effectively, in a manner and form that enables them to understand the relevant process.</p> <p>Clearly written information about assessment requirements and procedures should be published on the Department of Health and Human Services website and otherwise be readily available to applicants and any person who expresses interest in adopting a child. This should include information about eligibility for assessment, the suitability test and criteria and the assessment process.</p>
<p>Children should never be advertised as being available for adoption</p>	<p>This issue, which was raised by GPV/KCV after noting the practice of advertising children for adoption in NSW was not addressed in the VLRC recommendations.</p>

<p>The adopted child's biological identity should be reflected on their birth certificate</p>	<p>The commission has recommended that, subject to security and cost implications, optional integrated birth certificates be introduced in Victoria, with equal legal status to regular birth certificates.</p> <p>These should be available for future adoptions and all previous adoptions.</p>
<p>A child's given name as it is registered on the birth certificate must be maintained</p>	<p>The commission makes recommendations aimed at preserving a child's identity by limiting the situations in which a child's name may be changed.</p> <p>The Adoption Act should specify that on the making of an adoption order a child's given name should not be changed unless there are 'exceptional circumstances'. It should be possible to add given names.</p> <p>The Adoption Act should provide for the court to decide on a child's surname on the making of an adoption order, which should be one of the following: the adoptive parents' surname, where they both have the same surname; the surname of the adoptive father; the maiden name or other surname of the adoptive mother; the surname of former surname of any previous parent of the adopted child; a surname formed by combining the adoptive parents' surnames or any previous parents' surnames.</p>
<p>The adoption act must require and set standards for post adoption support and evaluation</p>	<p>The Commission recommends the Secretary establish and maintain adoption and post-adoption services. The Commission considers that as the state is responsible for arranging adoptions it should also be responsible for post-adoption support. These services should include support provided by approved adoption agencies and other organisations, and specialised adoption support services, including specialist counselling, psychological and psychiatric services.</p> <p>The people eligible for adoption support, including grants of financial assistance, should include adopted people, natural parents, adoptive parents, parties to an adoption plan, natural relatives, and the natural children of adopted people. This recognises the far-reaching effects of adoption and is consistent with access to adoption information rights under the Adoption Act.</p>