



DECD Families Adoption Review

Review of the South Australian Adoption Act 1988

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To: Associate Professor Lorna Hallahan
Chair, Review Committee
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1. Introduction

- 1.1. The Child and Family Welfare Association of South Australia [CAFWA-SA] is the South Australian peak body representing the not-for-profit non-government organisations [NGOs] providing child protection services for children, young people and families, especially in relation to various forms of Out of Home Care [including Foster Care and Residential Care], Family Support, Placement Prevention, Early Intervention and Family Reunification Services.
- 1.2. CAFWA-SA and its members have for many years been engaged as service providers and partners in the child protection sector, and we are acutely aware of sector complexities and challenges. Apart from being a difficult area of public policy, the impact of child protection incidents is challenging each one of us individually when we strive for what is best for children and young people.
- 1.3. This brief submission is based on our experience as a peak body to advocate for children and families, our members' experience in providing Out of Home Care Services, and communications with other experts in the provision of care and services.
- 1.4. CAFWA-SA welcomes the opportunity to comment, however this response is limited to the third term of reference for the review, that is, *the interface between adoption and children in the child protection system requiring permanent care*.
- 1.5. We are building on the expertise reflected in the submission made recently to the DECD Families Adoptions Review - the response from the Office of the Guardian for Children and Young People [GCYP] and we will make reference to this submission.

2. General

- 2.1. Children need to be and feel connected with meaningful others and the significance of belonging and feeling connected to family,

however defined, cannot be overstated. The birth family (or family of origin) experience however is not always positive or protective towards children, leading in some cases to Government intervention on behalf of the community in order to protect the child from his or her birth family.

- 2.2. The care provided when the birth parent[s] is temporarily or permanently incapable, is usually given by other adults who may or may not be relatives of the birth parents. In South Australia the adults providing 'alternative' care are often foster carers and they help to create the necessary sense of belonging for the child, usually without cutting links to the child's birth family.
- 2.3. The GCYP in her submission highlights that in most cases, and supported by our experiences, the child or young person will want to identify with both birth and alternative care families, although in very different ways.
- 2.4. The matching of children to the most appropriate carers is always significant, yet even more so for Aboriginal children whose belonging to family [in the broader sense] is not only important to the child but also in the interest of the child's community. Aboriginal people continuously remind child welfare workers that it is critical to the child's present and future wellbeing to have a strong connection with the child's own specific community and culture – see also the attached reports by SNAICC 'Family Matters – kids in culture not in care'
- 2.5. This principle is supported in s 11 of the Adoption Act 1988 [the Act], however CAFWA-SA supports the proposal from the GCYP that an explicit requirement should be considered in the review of the legislation for an independent view by an Aboriginal representative on an application for an order.
- 2.6. CAFWA-SA also strongly supports the view that not only should

decisions about children be obviously determined in the best interest of the child and take the child's views or perspective into account, but also that all decisions must be individualised, timely and culturally appropriate. The rights as set out in the 'Charter of Rights for Children and Young People in Care' [www.gcyp.sa.gov.au/charter-of-rights-2/] should equally apply to children who have been in care and are subsequently adopted.

- 2.7. CAFWA-SA supports the notion that adoption of children in care should be one of the options to consider in order to create permanency and stability for a child on a guardianship order. With stable, long term foster care being a positive experience for most children, adoption is but one of the required options.
- 2.8. What needs to be considered carefully is, how to create the greatest stability for a particular child. Research shows that a child in long-term foster care often faces multiple placements. The instability and lack of security this causes is exacerbated in South Australia by the lack of power for foster carers to make the daily parenting decisions. It is Families SA on behalf of the Minister who exercises the guardianship responsibilities.
- 2.9. Much greater stability and security may follow for a child under a Guardianship of the Minister, who is adopted after being fostered for a minimum period before adoption orders can be sought or granted. This will ensure that the child and family are familiar with each other and have established relationships that can be assessed as part of the application process.
- 2.10. Amongst a plethora of critical requirements, one key issue for successful outcomes of adoption for the child is how the relationship with the birth family is continued. Longitudinal research published by the Centre for Research on Children and Families [University of East Anglia, UK © Elsbeth Neil, Mary Beek, Emma Ward 2013] may provide valuable insights to the Review Committee and the paper

will be added as an amendment to this submission.

3. Voice of the child

3.1. Presently the Court need only take the child's wishes into account if the child is over 12 years of age and the child must consent to any changes, including the retention of his or her birth name, unless intellectually incapable of consenting. We support the GCYP position that decisions should always be individualised and that even very young children are capable of giving their views. As is routinely done in the care and protection Court decisions, skilled independent advocates can ensure that the child understands the implications.

4. Same sex couples

4.1 Whether or not a child is adopted should not be determined by the marital status or sexuality of the prospective adopting parent/s and the legislation should be changed to allow same sex couples to adopt. There are presently children and young people living in long-standing same-sex couple 'carer' arrangements, who benefit greatly from stability, identity and a strong sense of belonging.

5. Single persons and adoption

5.1 As above, there are presently children and young people [in care], who are provided with stability, identity and a strong sense of belonging by sole carers. The legislation should be changed to remove the requirement for 'special circumstances' to justify adoption of a child by a single person.

6. Other issues

6.1 The ongoing involvement of the birth family when a child under a guardianship order is considered for adoption, see section 2.9, can be enhanced by continuous support for the birth family. A separate worker or agency needs to be involved not only during the period leading up to the adoption but to be available to the birth family for support and counseling for the length of the adoption order. See the

longitudinal study by the Centre for Research on Children and Families [University of East Anglia, UK] as referred to in section 2.10.

- 6.2 As stated the views and best interests of the child should be the paramount principle in deciding on adoption orders. The Act says that as a general principle, ‘the welfare of the child to whom the proceedings relate must be regarded as the paramount consideration.’ CAFWA-SA supports the GCYP submission that this should be strengthened to require explicit consideration of views and best interests of the child. It is recommended that those views or representation of best interests should be presented to the Court by an independent advocate (guardian ad litem) in the circumstances where a child is incapable or unwilling to do so themselves. Section 8A requires the Court to interview children aged five years or older but not in the presence of any other party to the adoption. There is an opportunity in this review to recommend that this be strengthened so that views and best interests of the child are required in the decision about the order and all subsequent Court decisions related to the order.
- 6.3 In our experience, the motivation for adults in fostering a child is of a different nature to those who want to adopt a child, and this can lead to problems with shared decision-making and meeting agreements for contact with birth parents and siblings. However, this should not preclude foster parents from considering adoption or being considered as prospective adopting parents. It is rather an issue for recruitment, assessment and training of foster carers.
- 6.4 At present, if another person accepts the legal guardianship of a child under the provisions of the *Children’s Protection Act 1993* (s.38 (1) (c) and (d), DECD continues to provide agreed payments and services for the wellbeing of the child. If a child is adopted from the guardianship of the Minister, would any services or payments continue or be provided in the future? Would the child have a say in

whether the department remained involved? Similar to adoption programs in some other countries, the provision of services, payments and continued support for birth families [see 6.1] needs to be negotiated and agreed as part of the adoption order.

- 6.5 While there is provision in adoption orders for birth family contact (s.26A) the views of the child are only sought when the [adult] parties to the adoption seek the order or variation to the order. There is no provision for a minor who is adopted, to change the formal arrangement. There is also no specific mention of contact with siblings, which in children's views, can be more significant than ongoing contact with their birth parents. The child is not a legal party to the arrangements associated with the adoption.

Please contact Albert Barelds, Executive Director of CAFWA-SA, if we can be of further assistance in either clarifying or expanding on the comments made in this submission.

References [attachments were too big to email]

- **Contact after adoption: A follow up in late adolescence**
Published by the Centre for Research on Children and Families, University of East Anglia. © Elsbeth Neil, Mary Beek, Emma Ward 2013
<https://www.uea.ac.uk/documents/3437903/0/Contact+report+NEIL+dec+20+v2+2013.pdf/f2d766c7-39eb-49a3-93b7-1f1368a071a1>
- **Family Matters - kids safe in culture, not in care**
An invitation to change, SNAICC 2014
<http://healingfoundation.org.au/wordpress/wp-content/uploads/2013/11/Family-Matters-Booklet-2014.pdf>
- **Family Matters - kids safe in culture, not in care**
Issues Paper South Australia, SNAICC 2014
http://www.snaicc.org.au/_uploads/rsfil/002777_afcd.pdf