

Case Notes

Adoption Report

BACKGROUND

The Adoption Legislation Review Committee was appointed by the previous Government in August 1978 to review the Adoption of Children Act 1964, and to report to the Minister for Community Welfare Services and the Attorney-General. This was to be the first comprehensive review of the Act since its commencement in 1966. The appointment of the Committee was the result of changes in community attitudes towards adoption and recommendations from interested bodies for changes to legislation based on developments in other States of Australia and in other countries.

The report of the Adoption Legislation Review Committee has opened up for discussion vital issues about "children's need for families". The Ministerial Statement on the Adoption Legislation Review Committee and the discussion papers prepared for consultation around the report are published here, as it is considered the issues involved should be discussed Australia-wide. As one discussion paper states, the issues involved are broader than "just adoption".

The discussion papers were prepared for meetings sponsored by Family Welfare/Adoption agencies, to give a greater opportunity for dissemination and discussion of the report.

The discussion papers were supplied by Ms. K. Lancaster, member of A.L.R.C. and Social Worker, Copelen Street Family Centre, Victoria.

REPORT OF THE STATUTE LAW REVISION COMMITTEE, OCTOBER 1978.

Shortly after the Committee's appointment, the Parliamentary Statute Law Revision Committee presented its report entitled 'Access to Information Concerning Adoptions'. The main recommendations of this report were incorporated into the Adoption of Children (Information) Act 1980. However, this Act remains substantially unproclaimed today because its provisions are not an adequate response to community needs for adoption information. Later on I will be referring to the recommendations of the Adoption Legislation Review Committee in regard to access to information.

MEMBERSHIP OF THE ADOPTION LEGISLATION REVIEW COMMITTEE

The Adoption Legislation Review Committee was chaired by Bill Davey, an officer of my Department, and included nominees of the Law Institute, the Law Department, the Family Welfare Advisory Council, the Victorian Conference of Adoption Agencies and of the Victorian Standing Committee on Adoption representing the views of the three parties to adoption – the adopted person, the natural parents and the adoptive parents.

The Committee therefore contained both legal and welfare expertise and represented the interests of all the parties involved in the adoption process. The Report notes that this diversity of membership has led to some modification of views within the Committee and resulted

in a greater consensus than previously existed.

The Committee met on 124 occasions in the preparation of this Report.

COMMUNITY CONSULTATION

The Committee advertised widely for submissions from the community and, following consideration of the resulting responses, issued a major working paper for public consideration. The Committee also held public meetings in metropolitan and country centres to discuss the interim recommendations in the working paper and to provide an opportunity for oral submissions. 158 written submissions were received and 500 individuals and organisations were on the mailing list for copies of the working papers of the Committee.

CURRENT SITUATION

Adoption is a major statutory welfare service which is shared between the Government and private agencies. At present there are ten adoption agencies, namely the Department of Community Welfare Services, Royal Women's Hospital Mercy Maternity Hospital, Queen Victoria Hospital, Catholic Family Welfare Bureau, Child Care Service – The Adoption Program of the Uniting Church, Mission of St. James and St. John (Anglican), L.D.S. Social Services Adoption Agency, Lutheran Adoption Agency, and the Australian-Jewish Welfare and Relief Society. The total number of non relative adoption orders granted in 1981/1982 was 287, of which 42% were placed by my Department.

CHANGES IN THE ADOPTION FIELD

Adoption practices and the Committee's report need to be seen in the context of enormous change in the adoption field since the current legislation was introduced nearly twenty years ago.

Since then, the number of children available for adoption has reduced dramatically. In the past ten years, the number of non relative adoption orders granted has fallen from 1488 to 287 per year. This has meant that adoption agencies have become more selective about who may adopt, and also that it is how much harder for interested people to become adoptive parents. The age of children adopted has also changed considerably, with many being pre-school and school age children. There are also more special needs children seeking adoption, and new practices have evolved to help them find adoptive parents.

In recent years there has been a sharp rise in interest in adopting children of other countries and races. The adoption of Aboriginal children by white parents has been strongly challenged during the last two decades.

Social attitudes towards illegitimacy have changed considerably in recent years. The stigma that people felt in former times is no longer common. As a result, relinquishing mothers are no longer as sensitive to disclosure, and adopted children are asserting their rights to information on their origins. There has been a great upsurge in applications for adoption information, and all adoption agencies have had to devote staff resources to handling these requests.

The greater incidence of divorce and remarriage in our society has led to an increase in adoptions by step-parents. These now constitute 57% of all adoptions.

We have also seen the development of self-help groups of people affected by adoption. I refer to Jigsaw, The Council for the Single Mother and Her Child, The Relinquishing Mothers' Association.

Finally, alternatives to adoption have developed considerably in the last decade. Whereas previously adoption seemed to be the only way of providing a family for many children, there are now many other options, such as foster care and family support services to the natural parents.

These and other changes have led to the need for a complete review of adoption legislation in this State.

Before describing the contents of this Report, I would like to quote from the introduction to the Report. It says: "This report is about adoption – not adoption as we have known it in the past, but the directions we feel adoption should take in the future. But more

than just adoption, the report is about children's need for families. Our overwhelming concern is that children should know the security and love of continuing family life." This statement of purpose is intended to guide the recommendations from the Committee.

SUMMARY OF RECOMMENDATIONS

The Report highlights the urgent need for new legislation which not only reflects current views but allows for future developments. To do full justice to the Report it needs to be read in detail the main recommendations from the various chapters of the Report cover the following matters:

With respect to the rights of the child in adoption, the Report recommends:

- * Increased emphasis on adoption as primarily a service for children.
- * Separate legal representation for children in certain circumstances to ensure that their interests and wishes are respected,
- * The right of adopted persons to factual information about their backgrounds together with their right to privacy,
- * Financial subsidies to enhance the adoption prospects of disabled children and children in older age groups.

With respect to new forms of adoption the Report recommends:

- * Adoption that does not involve the termination of all social and legal relationships with natural family members.
 - * Adoption orders that permit on-going access where this is stipulated in consents given by natural parents,
 - * Recognition of the importance of permanence and security by ensuring that adoptive parents have superior rights during the child's minority.
- With respect to adoption relatives and step-parents, the Report recommends:*
- * Guardianship and custody orders for step-parents and relatives instead of the appropriate use of adoption orders as at present,
 - * Adoption orders to be granted to step-parents and relatives only when the Court determines that there are special circumstances which justify such action.

With respect of adoption of Aboriginal Children, the Report recommends:

- * Special consideration to be given to the adoption of Aboriginal children, with a legal requirement that a nominated Aboriginal agency be involved in adoption arrangements,
- * Recognition of the importance of a knowledge of Aboriginal ancestry, heritage and family and kinship networks when an Aboriginal child is placed for adoption.

With respect to access to information, the Report recommends.

- * Access to original birth certificates for all adopted persons when they reach the age of majority, with appropriate counselling available but not compulsory.
 - * Establishment of an Adoption Information Service within the Department of Community Welfare Services to provide counselling and information to all parties to an adoption.
 - * Adopted children under 18 to have unrestricted access to non-identifying information about their natural parents and access to identifying information only if the natural and adoptive parents consent or if a judge waives this consent.
 - * Provision of on-going non-identifying information to natural parents regarding their children who have been adopted.
 - * Natural parents to have restricted access to identifying information concerning their children under the age of 18, dependent on the consent of the adoptive parents and the child or if a judge waives this consent.
 - * Provision for parties to an adoption to register their views about future contact and, if both parties desire it, assistance in making contact.
 - * Protection of adoption records and provision for records to be transferred to the Department of Community Welfare Services when adoption agencies cease operation.
- With respect to the role of adoption agencies, the Report recommends:*
- * Tighter controls to prevent illegal private adoption arrangements.
 - * Agency involvement to be required in any step-parent and relative adoptions.
- With respect to registration of agencies the Report recommends:*
- * An independent Adoption Agency Registration Board to be established to register and monitor all adoption services in Victoria.
 - * That Adoption Agency Registration Board be a sub-body of a wider Child and Family Welfare Services Registration Board which would register all welfare services.
- With respect to adoption consents, the Report recommends:*
- * Natural parents to be given more information and counselling to ensure that they understand the effect of consenting to adoption.
 - * Adoption consents to be taken by a court official and witnessed by the natural parents' counsellor.
 - * Expansion of the grounds under which the court may dispense with parental consent.
 - * Provision for the consent of a natural father to be required whenever paternity is established.

With respect to selection of adoptive

parents, the Report recommends:

- * The minimum age for applicants to be raised to 21 years and the minimum age difference between children and applicants to be 18 years.
 - * The broad factors to be taken into account when selecting adoptive parents are identified and extended to include couples who already have one or more children.
 - * Eligibility to adopt to be extended to couples in stable defacto relationships and tribal marriages.
 - * Educational programs to be provided for prospective adoptive parents and to be a prerequisite for making application to adopt a child.
- With respect to intercountry adoption, the Report recommends:*
- * Intercountry adoption to be with the agreement of the overseas country for children orphaned or abandoned and without extended family and for children whose parents/guardians have legally consented to adoption.
 - * Adoption arrangements to be made through approved adoption agencies in each country.
 - * Couples who bring children from overseas for adoption in Victoria, without seeking approval, to be given support and supervision for twelve months before being eligible to legally adopt in Victoria.

With respect to appeal mechanisms, the Report recommends:

- * An independent Adoption Appeals Committee to be established to hear appeals where an adoption application is refused, revoked or unreasonably deferred.
- * The Appeals Committee to have power to refer the case for reconsideration by the agency but not to have power to reverse the decision.

With respect to adoption jurisdiction, the Report recommends:

- * Adoption matters to be transferred from the present court to a family court vested with State and Federal Jurisdiction and capable of deciding all family matters relating to the child.
- * The family court to be able to minimise adversary procedures, to have multi-disciplinary expertise available and to be able to order separate legal representation for the child where appropriate.

Other recommendations in the Report cover four additional areas, namely agency authority to care for children before acceptance of guardianship, discharge of adoption orders, inheritance rights and offences under the Act.

PROCEDURE

The Report makes 247 recommendations. These cover amendments to the legislation, amendments to regulations, changes to administrative practices by Government bodies and by private



agencies, and continuation of existing arrangements. The Adoption of Children act, the Adoption of Children (Information) Act, the Administration and Probate Act, the Births, Deaths and Marriages Act, The Status of Children Act, the Crimes Act and the Legal Aid Act are all affected,

The Government has not yet reached a position on the recommendations in the Report. Instead, the Government is inviting comment from the community on this Report.

No action will be taken to implement the Report until it has been considered by all interested persons. Copies of the Report will be available for purchase from the Government Printer by the general public in the near future.

I welcome submissions on the Report from all individuals and groups who have an interest in this important subject. Submissions should be forwarded no later than 30 June, 1983. I realise that this does not allow a great deal of time for people to consider the Report, but it must be recognised that there has already been considerable consultation and discussion of the subject matter during the term of the Committee. Following consideration of submissions and incorporation of any resulting changes to the Recommendations of the Committee, a Bill will be prepared for presentation to Parliament as soon as possible.

THE REPORT

The report took 4 years to complete. The numbers of the committee presented the four groups involved in the adoption process, i.e. adopted persons, relinquishing parents, adoptive parents and agencies. Also there was a legal representative. "The balance of membership of the Committee was its greatest strength and ensured that the concerns of users and practitioners of the services were adequately represented and considered".

There are 247 recommendations so you will understand we cannot cover it completely. The report is available from the Victorian Government Printer at approximately \$10 per copy. The forward of the report states "This report is about adoption — not adoption as we have known it in the past, but the directions we feel adoption should take in the future." But more than just 'adoption' the report is about children's need for families.

Our overwhelming concern is that children should know the security and love of continuing family life.

This report worked from the following assumptions:—

1. A family environment usually best provides the intimate emotional attachments and behavioural instruction necessary for the healthy development of children.

2. Every child needs love, protection and the security which comes from permanent nurturing relationships which he/she would receive from within the family. Every child has the right to a family and family relationships.
3. Every child is entitled to be brought up by his/her own natural parents, with the support of services that complement, supplement and support the natural family.
4. Where their circumstances render natural parents unable, unfit or unwilling to fulfil the parenting role, the community has a responsibility to provide a spectrum of services of which adoption is one option. When placement in a family is indicated, then adoption is the plan most likely to provide children with optimum opportunities for developing strong, nurturing family ties.
5. The State, as *parens patriae* (literally "parent of the country") has the responsibility to protect vulnerable children and to ensure their maximum opportunity for development and self-realization within society. All adoption processes must therefore be regulated and monitored by means of appropriate legislation.
6. Adoption is principally a service to adoptees, and where the rights and needs of the adoptee, the natural parents and family, and the adoptive

parents and family are in conflict, and an equitable compromise cannot be reached, then the rights and needs of the adoptee must take precedence.

7. An adoptee has the need and right to grow up with the full knowledge of his/her status as an adopted person, and to current, ongoing information about his/her background and family medical details.
8. While adoption establishes a legal relationship between an adoptee and the adoptive parents and family, as exists between natural parents and their child, adoption does not require that all pre-existing relationships in a social sense should cease.
9. Adoption needs to be a dynamic ongoing service in order to meet the changing needs in the community and to develop understanding as to how these should be met. Legislation and practice must constantly be kept under review in order to keep pace with these changing needs and knowledge. Legislation should also anticipate the ongoing process of change and be flexible enough to accommodate this process without necessarily constantly changing the actual laws. In matters relating to adoption, the law should be an enabling, not a restrictive instrument.

The adoption act under which Victoria currently operates was passed in 1964. Recommendations to amend or revise the Act were made in 1973, 1974 and 1975. However, the Bill did not come before Parliament. In 1978 the Statute Law Revision Committee reported on the question of access to origins and the Adoption of Children (Information) Act 1980 was based on the recommendations of this Committee. Only Sections 1 & 9 of the Act have been proclaimed and it operates only in so far as an Adoption Information Register has been established at the Department of Community Welfare Services.

ELIGIBILITY AND SELECTION OF PROSPECTIVE ADOPTIVE PARENTS

Any discussion of the chapter entitled "Eligibility and Selection of Prospective Adoptive Parents" must be introduced by a statement from the Adoption Legislation Review Committee (A.L.R.C.) which states in part:— Para 11.0.6

During the last ten years the number of local children who were placed for adoption with non-relatives has fallen quite dramatically (paragraph 1.3.1) and there has been a continued high level of interest among persons wishing to adopt children (paragraph 1.3.4) This situation has had considerable impact on the practice and procedures of adoption agencies in relation to the selection of adoptive applicants and

the approval of their applications. Most agencies have had to evolve methods of restricting the number of people eligible to make adoption application.

Also, in current adoption practice, there are several stages to the adoption process. — Para 11.0

1. Acceptance on an agency's waiting list for application.
2. Application processes (group meetings, interviews, etc.)
3. Decision by agency in relation to application — acceptance or refusal.
4. Placement of child.
5. Supervision/settling-in period
6. Legal processes culminating in granting by the court of an adoption order.

Pre-requisites are usually applied for entry into Stage 1 above, namely acceptance onto an agency's list for applications. In the case of infant adoptions, these are employed often to limit the number of applications and may or may not be related to the welfare of the child. Agency and/or statutory criteria are applied to the following stages and generally the successful completion of each stage is a pre-requisite for entering the next stage.

The process may be halted at any stage if the applicants, the agency, or the court consider that factors are present that would militate against proceeding further.

The same basic stages apply to people wishing to adopt children with special needs but broader pre-requisites and criteria are employed. Agencies involved in making arrangements for the adoption of children with "special needs" do not generally specify restrictive requirements, e.g. age limits, marital status.

Research quote in the report states that:— Page 194, Para 11.1.4

The most certain thing that is known about the adoption process is that its 'success' depends more than anything else on the adopting couple, and on their having the right attitude to children — and of course this is not very easy to define in precise and measurable terms. Nevertheless one can say that the weight of evidence shows the positive association of successful and happy adoptions judged over short periods and long periods with such things as:

- A warm and accepting attitude on the part of the adopters to children
- A recognition and acceptance by the adopters of the adopting role

- A warm, stable adopting family
- A sensible and understanding attitude to infertility, illegitimacy, and the natural parents on the part of the adopting parents themselves and their relatives, particularly the grandparents. (Bradley 1967, Lawder 1969, McWhinnie 1967, Seglow et al, 1972).

- These all seem to be more important in the long run than such things as:
 - The age of the adopting parents.
 - Their education.
 - Their socio-economic status.
 - The kind of child they adopt.

The report therefore recommends three major headings under which the attributes of prospective adopters could be listed:—

(i) Age — The recommendation that the minimum age for the granting of an adoption order in favour of an applicant should be raised from 18 to 21 years. Also, the recommendation that an age difference — no greater than 40 years should apply unless circumstances exist which warrant this to be waived.

(ii) Health — The recommendation that the health of the prospective adoptive parents should be sufficient to enable them to provide a suitable parenting environment for the child until the child achieves social and emotional happiness.

(iii) Emotion & Physical Environment — The recommendation that a decision of approval should be based on a consideration of the following:—

Page 196 - 197

- Emotional warmth, maturity and stability of the applicants.
- Quality of relationship of the prospective adoptive parents.
- Ability to provide a healthy, stable, secure lifestyle for the child.
- Acceptance of infertility, if it exists
- Nature of childhood experiences of prospective adoptive parents.
- Capacity to deal with difficult and/or stressful situations.
- Potential parenting skills — ability to provide love, security, etc.
- Attitudes in relation to children — ideas relating to discipline etc.
- Motivation for having children by adoption.
- Attitude to the child's natural parents.
- Attitudes to the child's adopted status.
- Attitude of extended family to adoption.
- Ability to provide secure accommodation with adequate space and living conditions for the child.
- Ability to provide financially for the child until the child reaches emotional and social independence.

Para 11.1.6 —

The report considers that broad 'catchment' criteria should be specified at the beginning of the application process proceeding to more refined and detailed criteria at later stages of the assessment process. Criteria are to be conceived of as a continuum, moving from the general to the particular as the application process proceeds.

The report also states that the criteria to be applied by an agency at various stages of the application process and the rationale for them should be stated in writing at the beginning of the application process and given to the adoptive applicants.

Para 11.1.13 –

A particular mention needs to be made about the relationship between infertility and adoption,

“The majority of the committee considers that a child-centred adoption philosophy would be better realized by the removal of the present criterion which limits applications to adopt very young children to married couples who are childless or have only one child, in as much as this limitation is applicant-centred and deprives very young children of access to a group of parents, namely those with parental experience in relation to more than one child. However, we recognize that agencies may choose to retain this criterion in the light of organisational, social and political pressures provided that they consider there are sufficient applicants within this group who have high potential to be adoptive parents.”

APPEAL MECHANISMS

Para 13.0.1 –

At present in Victoria there is no formal independent appeal mechanism available for prospective adoptive parents whose application to adopt has not been approved or where approval of an application has been revoked.

The report recommends the following:–

Para 13.1.1 –

That an Adoption Appeals Committee should be established to consider the following matters:

1. Appeals by adoptive applicants against any decision by the Director-General of the D.C.W.S. or a Principal Officer of a private adoption agency refusing or revoking approval of an application.

2. Appeals by adoptive applicants whose applications have been commenced, against unreasonable deferment of their application by the Director-General or Principal Officer of a private adoption agency.

In relation to the second ground it is envisaged that the adjective “unreasonable” would be time oriented and/or refer to the agency’s grounds for deferment.

Para 13.1.2. –

The Adoption Appeals Committee should be, and be seen to be, independent from both D.C.W.S. and the private adoption agencies.

Para 13.1.5. –

That, within 3 months of the date on which applicants receive notice of:

- Refusal of approval of application.
- Revocation of approval of application, or
- Deferment of decision

the applicants should have the option of lodging an appeal to the agency which must decide whether to confirm or overturn its original decision and notify the applicants of this decision within 3 months of the lodging of the appeal.

Page 235 – Para 13.1.6. –

Where there has been no notification within 3 months of the last assessment contact with the agency, and where the agency rejects or does not reply to the adoptive applicants’ request for clarification of the standing of their application, the adoptive applicants should have the option of lodging an appeal with the agency. The agency should be required to decide whether



to refuse, approve or defer the application and notify the applicants of its decision within a 3 month period. The adoptive applicants may appeal against the decision of the agency to the Adoption Appeals Committee within 3 months of the date of receipt of notification by the agency of its decision.

Page 238 – Para 208. –

With regard to whether there should be a complete reconsideration of all matters, the report recommends that grounds for appeal should be limited to the following:

- The agency process has not been conducted in a manner fair to the applicants.
- Relevant factors have not been taken into account by the agency.
- The agency has not given proper weighing to the relevant factors.

Page 239 – Para 209. –

That a decision on appeal in favour of the adoptive applicants on one of the above grounds should result in a direction that:

- The case be returned to the agency for re-consideration, with a statement of factors which the agency did not take into account and with a clear indication of what factors the agency should take into account.
- And the agency should then notify the Adoption Appeals Committee and the applicants of the outcome of its re-consideration as soon as possible, but within a 3 month period.

ADDITIONAL CATEGORIES CHILD AND GUARDIANSHIP

This paper addresses four chapters of the report. Chapter 3 where additional categories of adoption are recommended: Chapter 4 which recommends the use of guardianship as an alternative to adoption particularly where step-parents and relatives are involved; Chapter 9 which makes detailed recommendations regarding establishing a child's eligibility for adoption and includes the procedures which are to apply to taking consents, and the grounds on which parent's consent to adoption may be dispensed by a Court: and finally Chapter 16 which is concerned with matters of inheritance. The paper addresses these areas in a different order from that of the report by starting from the matter of establishing eligibility of a child to be adopted, as without this no legal adoption can occur.

In the past, social attitudes and lack of financial and other support services were very real pressures on natural parents and affected the decisions they made. These pressures often lead to consents being signed with the parents not always knowing what other services were available, without their under-

standing the long term implications of their consent and without their (or others) realizing the effects relinquishment can have. Too often relinquishing parents feel they were misled, received little if any understanding and protection from inappropriate pressure. Present legislation which came into operation 16 years ago, helped overcome some of the serious lacks of the earlier, unregulated arrangements; and practice has continued to improve. Nonetheless, the procedures need to be explicitly stated in legislation. The recommendations of the report are designed to underline the serious nature of the step of signing consent and to ensure that this is done with awareness of the implications and of the other services available. The recommendations include:–

- A requirement of adequate counselling for natural parents.
- Written as well as verbal information available usually 7 days before a consent is signed but with provision for this to be reduced to 24 hours where there are special circumstances.
- Signing and witnessing a consent in the presence of a Court official and limiting the persons who can witness a consent to those authorized by the Director-General or by a Principal Adoption Officer.
- Requiring 10 (ten) full days after the birth of a child before consent can be taken instead of the present requirement of five days.
- Giving special care when parents are very young or are of a different ethnic background or for other reasons should be given special attention.

The report recognizes that children are able and should be given the opportunity to express their own views and wishes about being adopted. The present legislation only requires that a child of 12 years or over sign a consent to adoption. The report does not recommend a particular age or manner by which the child's views or wishes be obtained but charges that these be determined through discussion or other appropriate ways.

Fathers of ex-nuptial children are not recognised in present legislation although adoption practice has given increased recognition that they should be involved wherever possible. The recommendations seek to ensure that the consent of an ex-nuptial father be obtained wherever paternity has been established, or, where the father's identity is known, he must be informed of the adoption proposal and given limited time to take action to establish paternity.

The report recognizes there is a need to avoid unnecessary delay in the child's placement. Hence the limit of time in which to seek paternity. This is also the reason why, in increasing the length of time after birth before a consent may be

taken, a corresponding reduction of the time during which the consent may be revoked has been included, i.e. 30 to 25 days. These times are, of course, minimal. There is a recommendation which allows for the period of revocation to be extended by 14 days where the parent remains undecided about consenting.

Many natural parents have in the past, wondered for years whether the child whom they signed consent to adoption for, was ever adopted. To overcome this unnecessary uncertainty, it is proposed that routine notifications be sent:–

- when the revocation period has ended.
- when the child has been placed.
- when an Adoption Order has been granted.
- when a change of placement has become necessary.
- where the child dies prior to the granting of an Adoption Order.
- when the agency intends to reconsider its plan to place the child for adoption

The present legislation allows a parent to specify in their consent the religion in which the child is to be brought up. The report changes this from being included in the consent form but requires the agency to consider and carry out any expressed wishes of the parent particularly where these are concerned with religion, race and cultural background. Linked to the proposal to add to the categories of adoption is one that allows a parent to sign a consent conditional on the child being placed with adoptive parents who will allow continued access and/or continued recognition of the child's legal relationship to the natural family.

An alternative but less usual way of establishing a child's eligibility for adoption is through an application to Court for an Order dispensing with the parent's consent to adoption. At present there are five grounds on which such an order may be sought. Courts have interpreted these grounds very cautiously, particularly where the application is opposed. The importance of the blood tie, of the inherent rights of parents and the gravity of severing completely the legal relationship of parent and child has been stressed in decisions of Courts. However, there are times when this view has left children without a family as it has not been possible for them to return to their natural families and yet they are not given the opportunity of belonging to and receiving the care and love of a permanent alternative family. The report recommends that the present grounds for dispensing of consent be retained but with one ground altered to allow earlier applications where it is considered that a parent is, without reasonable cause failing to carry out the duties of a parent. The four new grounds include:–

- where a parent withholds consent



- unreasonably
- where a parent has severely ill-treated a child to the extent that it is unlikely that the child can be integrated into the family again.
- where the parent's capacity is so severely impaired as to make him or her unable to meet the physical, intellectual, social and emotional needs of the child
- where for any reason the integration or reintegration of the child into the family is unlikely.

Probably most people only think of babies in connection with adoption. Many are very young children but others are older, some physically or intellectually disabled, and others have experienced disruption to their lives, have been emotionally or physically ill-treated or have lost their natural parents through death, divorce or desertion. Parents of children also differ, some are young and single and not ready to be parents, others lack the capacity to be parents and have been overcome by their own life and family experiences.

The reasons for deciding to relinquish a child for adoption are many and complex.

The decision is never an easy one. Some parents recognize their own inability to give their child the love and care and stimulation they know the child needs, but also are unable to face complete severing of their knowledge, interest and relationship with the child.

About half the Adoption Orders granted in Victoria in recent years have been those where a natural parent and step-parent jointly adopt a child which may have been born to a single parent prior to marriage or be a child of a marriage which ended through death or divorce. A small proportion of Orders are granted to relatives.

The present legislation allows for only one category of adoption which in creating new legal relationships and making the child the child of adoptive parents as if born to them in marriage, severs the legal relationship with the original parents and consequently that of other relatives such as grandparents, aunts, uncles, brothers and sisters. No provision for continuing access exists. In practice access continues in some instances but only where adoptive parents voluntarily agree to this. The need for more flexible Orders of adoption which could better meet the particular circumstances of each situation is the basis of the recommendations of Chapters 3 and 4. The new categories of adoption include Orders:—

- which are similar to the present Order in that they sever the legal relationship between the parent and child without provision of access during the child's minority
- which sever the legal relationship

between child and natural parents but incorporate provisions for access for the natural parent and/or other natural relatives.

- which recognise the legal relationship between the child and natural parents and incorporate access provisions as appropriate.
- which continue the legal relationship of the child and the natural family without access provisions.

In all these Orders, the adoptive parents are granted full parental rights of guardianship and custody and their rights remain superior to those of the natural parents.

In addition, it is recommended that guardianship orders be available as an alternative to adoption where rights and obligations in respect of a child can be apportioned and varied depending on the interests of a child at a particular time. While this guardianship provision is recommended to be widely available, in the case of step-parents, a guardianship order is to be granted and only in special circumstances an Adoption Order is made

When an Adoption Order is considered appropriate, the natural parent would not be required to adopt, and this would avoid the present situation where a natural parent becomes an adoptive parent through having to adopt jointly with his or her spouse. Similarly with relatives, it is recommended that only in special circumstances should an Adoption Order be granted as in most instances a guardianship order allows the biological relationships to continue unaltered while giving security to the placement.

Among the reasons put forward for adoption by step-parents or relatives, are those of change of surname, inheritance rights and the incurring of death duties. The recommendations suggest there are more appropriate ways of dealing with these matters. However, parents and relatives of children who have been adopted out of the family, often seek to include these children in the disposal of their property. At present this is not possible and the recommendations address procedures which would allow an adopted person to be a beneficiary in the estate of the original family.

The recommendations of the report, particularly those concerned with additional categories, recognize that many families in our community are blended and that it is not necessarily harmful for previous relationships to continue. Adoption arrangements in other countries such as United Kingdom have introduced Adoption Orders with continuing access and we know from our own adoption experience that it is possible and appropriate in some cases.

THE CHILD IN ADOPTION

It was not until 36 years after legislation covering adoption was first enacted in Victoria that the principle of "the welfare and interests of the child concerned shall be regarded as the paramount consideration" was incorporated in the 1964 legislation.

The A.L.R.C. makes the following assessment of current attitudes to adoption.

Adoption agency practitioners appear to be unanimous in the belief that their primary client is the child.

Community attitudes continue to view the adoptive parent as the primary client. The number of non-relative adoptions in Victoria peaked in 1967-68 at 1,818 and dropped to 198 in 1981-82.

The normal healthy baby is no longer available for adoption in any number. During the 1970's adoption has been seen to meet the needs of a widening group of children. These children are older, emotionally disturbed, physically and/or intellectually disabled. Many of the children have been in children's homes and other residential care for years. Where adoption is perceived to be the appropriate choice for a particular child, parental consent has been sought, but if unavailable, the alternative of dispensation of that consent has been sought through the Court.

Planned long-term or permanent foster care or the use of guardianship or custody orders as an alternative to adoption are also being given increasing consideration as meeting the needs of children for permanency without cutting the legal ties with the natural family.

The assessment of the child is carried out by agency social workers in conjunction with others to establish the child's needs in planning for the child's future and considering the appropriateness of adoption over and against other placement options. Agencies involved in the placement of older children are consulting with such children about their desire or otherwise to be placed with an adoptive family.

Children are offered a service in their own right.

Law and practice should be consistent with furthering the interests of children. We therefore must ask, "does adoption help children?" Experience and research shows that one cannot give an unqualified "yes" to answer this question. There are inadequate and negative aspects to adoption as a means of meeting the needs of children and these need to be acknowledged. Adoption meets the needs of only some of the available children, not all. While adoption gives a child a family, it also deprives a child of a family. As the law stands at present a child adopted in the past or the future is still deprived of all identifying knowledge of his/her origins as a right.

Some of the recommendations of this report aim at seeking to rectify some of these negative aspects of adoption.

THE INTERESTS OF THE CHILD – PARAMOUNT

The rationale for giving special consideration to the interests of the child has been stated as follows:

“Children whose parents are either absent or unable to function as parents require protection. Because the child is unable to care for himself or look out for his own interests, society, through its organized agencies, must assume responsibility for the child’s care and protection. The precise meaning of the phrase “the best interests of the child” has been the subject of debate and differing legal interpretation.

Other persons have legal and moral interests in the child and the Act acknowledges their existence and relevance. While such interests cannot override in the end the interests of welfare of the child, their consideration may be of great significance in the determination of whether an order should be made.

The court and agency must have regard to all circumstances, first consideration being given to the need to safeguard the welfare of the child throughout his childhood. Goldstein, Freud and Solnit submit that it is impossible to determine the “best interests” of a child and that the only possible option is to determine “the least detrimental alternative”. The committee acknowledges the extreme difficulties to be encountered in resolving conflicting interests in adoption law, and establishing adequately the interests of the child.

“We are of the opinion that the legislation should reflect the concept that adoption is a service for adoptees (prior to and subsequent to the granting of an adoption order). The principle of “best interests” or “least detrimental alternative” should apply to the entire Act encompassing the whole process of adoption in every aspect.

ADVOCACY FOR CHILD

The present legislative provision that the best interests of the child be paramount does not find expression in provision for legal representation in court for a child where a conflict of interests is present, e.g. dispensation of consent application.

The committee supports the provision of separate legal representation for a child in any aspect of adoption proceedings where conflict exists.

BIRTH CERTIFICATE

A number of different views were presented to the committee.

Currently the birth certificate available to the adopted person is different

from the normal birth certificate in many aspects.

The committee has concluded that a birth certificate for an adoptee should not differ in format or content (apart from the schedule number) from the birth certificate for a natural born child. While the committee considers adoption should be an open matter, disclosure of the person’s status should be a matter for the choice of that person and/or his/her adoptive parents and not inevitable through the production of the birth certificate. The committee holds the view that the original birth certificate should be available to any adoptee on reaching the age of 18 years.

FINANCIAL SUBSIDY

Financial subsidies to help families adopting a child with special needs have been available in South Australia for many years. Implementation to have subsidies available are underway in New South Wales and Western Australia. This committee supports the introduction of these subsidies in Victoria as soon as practicable.

In short, the recommendations of this section are as follows:

1. That adoption legislation incorporate the concept that adoption is a service primarily for adoptees and that their rights and interests be given paramount consideration by agencies, courts and all others involved. This principle should apply to all stages of adoption. That as a guideline to the application of the principle that the adoptees’ interests are paramount the concept of making decisions that will be the least detrimental alternative for the child should be used. The concept of the interests of the child being paramount should apply to the whole act.
2. That legislation place an obligation on agencies to employ resources so as to give priority to the early adoptive placement of children available for adoption.
3. That separate legal representation for the child be available.
4. That where appropriate the views of the child in relation to decisions or processes concerned be ascertained and given consideration in making decisions and carrying out the processes concerned.
5. That wishes of the child be ascertained if appropriate in relation to any name change.
6. That a broad range of services be available when adoption is being considered as an option for a child.
7. That written information concerning a child’s family, social and medical history be kept by the agency and this be regarded as the child’s property and available to him/her.
8. That where appropriate the child be

interviewed separately.

9. That birth certificate of an adopted child be identical in format with, but under a different schedule, from that of a natural child.
10. That priority in Victorian adoption services be given to the identification and placement for adoption of children in children’s homes, foster care and other residential care situations who are without effective family and who could benefit from adoption; and children who are legally available for adoption but for whom, because of severe physical or intellectual disability, adoptive families are not readily available.
11. That the Victorian Government encourage the development of additional specialist agencies to find families for children with special needs and that funding provisions be made for such agencies. That a system of subsidised adoption be implemented.

SUMMARY OF CHAPTER 6 – ACCESS TO INFORMATION

It was when the current Adoption of Children Act 1964 was proclaimed in 1966 that Victoria began using a system of confidential adoption. This legislation was a reflection of what was seen to be community attitudes towards illegitimacy at that time. It was agreed that secrecy provisions would:

1. protect the anonymity of the natural parents whether or not they wanted their parentage of the adopted person to be disclosed
 2. would protect adopted persons from the stigma of illegitimacy – it was assumed that only ex-nuptial children would need to be adopted
 3. would protect the adoptive parents’ privacy from intrusion by the natural parents
 4. secrecy provisions were necessary before adoptive parents could build a good relationship with their child.
- At the same time adoption workers increasingly stressed the vital necessity for adoptive parents to be honest and open with their children about being adopted. Parents were often given little or no information with which to be open and honest.

The Adoption of Children (Information) Act 1980 was passed by State Parliament in December of that year. This Act sought to enable a person adopted after the proclamation of the Act to obtain a copy of his/her birth certificate on attaining the age of 18 years provided the natural parent gives his/her consent.

Only two sections of the Act have been proclaimed. The decision that the remainder of the act should not be proclaimed and take effect resulted from

overwhelming strong community criticism of both the policy and procedure established by the act.

BACKGROUND INFORMATION

Position in other countries –

Not all countries have used or currently use the confidential system of adoption. Scotland, England, Wales, Finland and Israel have a system of records and policies which make it possible for the adult adoptee to know his/her original name.

In Scotland information on biological parents is available to any person over the age of 17 without recourse to an agency. In Finland the principle of "adoptio incognito" is not recognised. The population registrar is asked to keep the name of adoptees confidential but if the birth mother insists she can get it. There is no age limit set by the agency and adoptees enquiring can get information at any age.

In Israel information is available through the agency.

In England and Wales legislation was enacted in 1976 which enables an adoptee at the age of 18 to be entitled to obtain a copy of the original birth certificate without restriction. However, no information from the birth record can be disclosed to persons adopted before the Act unless the person has attended an interview with a counsellor.

"The Committee unanimously agrees that adoption as a positive process designed to provide children with loving and stable homes does not inherently require secrecy". The attitudes in favour of secrecy have been undergoing change. There is much greater openness in public discussion of adoption matters. The need for adoptive parents to discuss status openly with their children from an early age is an essential part of adoptive parenthood. Today many children who are adopted are well past babyhood. They know their birth name and remember their natural parents.

Currently there is little social prejudice in relation to ex-nuptial conception and birth. Research has shown the failure of adoptive parents to openly discuss status can cause later distress and at times broken or unsatisfactory family relationships.

Access to information should be part of an ongoing process of understanding one's situation and establishing one's identity. This commences with status discussion with the very young child and must apply to all adopted children.

The work of groups such as the Council for the Single Mother and Her Child and Jigsaw has had a considerable influence not only on adoption agency philosophy and practice, but on the attitudes of the community in general, especially those with a special interest in adoption matters.

Each of the three Australia-wide adoption conferences in 1976, 78 and 82, highlighted the extent of changes already occurring in adoption practice and philosophy. At all of these conferences resolutions were passed supporting the right of adopted adults to retrospective access to a copy of their birth certificate.

In particular there is greater acceptance of the view that all adopted persons should have access to information about their origins as is the case with non-adopted persons.

The committee noted the perceptions of the way natural parents feel regarding the surrender of their children. Available research recognises the feelings of grief, mourning, loss and guilt. Although birth parents relinquish all their rights and responsibilities to the child and have no physical contact, their feelings of loss, pain and mourning do not disappear. One of the assertions most frequently heard when the access issue is raised is that relinquishing parents will not want the ghosts of the past raised because they have made new relationships and wish to forget the past. This seems at best to attribute feelings and capacities to relinquishing parents that are absent from other parents.

John Triseliotis in his 1973 study, *In Search of Origins*, was "impressed by the loyalty of adopted persons in search of origins to their adoptive parents." Most of the adoptees interviewed said very clearly and definitely that though they know they had a biological set of parents it was to their adoptive parents they responded as true parents for whom they had real feelings.

Dr. Triseliotis is concluded that the adoptees' quest for their origins was not a vindictive venture but an attempt to understand themselves and their situation better.

The available research findings indicate that the desire to obtain information about one's origins and background corresponds to a natural healthy need relating to the development of the psycho-historical dimension of a person's identity. The psychological development of an adopted person is handicapped by the absence of a sense of genealogical history resulting from the lack of known original family. All of us need to know our past – not only for a sense of lineage and heritage, but for a fundamental and crucial sense of our very selves. Our identity is incomplete and our sense of self retarded without a real personal historical connection. Research findings support that the right of access to information has proved to be of a positive, personal significance for adopted persons.

A summary of the research findings were:

1. Very small percentages of Scottish (around 1.5 per 1,000 eligible adopted persons), English and Welsh (between

1% and 2% eligible adopted persons) adoptees have sought to obtain their original birth certificates.

2. Of those adopted persons who obtained their birth certificates:
 - a minority intended to contact and meet the natural parent.
 - the vast majority were thought by the counsellors at the General Register Office to be very responsible.
 - only a small percentage were known to have contacted and met their parents.
 - the majority of adopted persons known to have contacted their natural parents have acted with sensitivity and tact (usually using a intermediary).
3. The motives of adopted persons who did seek their birth certificates were healthy and positive. A prime reason for making the application was a long felt need to establish a sense of true self-identity.
4. The obtaining of information about personal background and origins was helpful to adoptees.
5. For the vast majority of applicants, the acquisition of birth information did not appear likely to cause undue anxiety or distress either to adoptive parents or to the natural parent, where traceable.
6. The great majority of adopted persons applying for their birth certificates displayed an astonishing degree of loyalty to their adoptive parents and regarded their adoptive parents as their true parents.
7. Adopted persons' significant attachment to adoptive families are often positively affected by access to information.
8. Retrospective access to information has worked well in Scotland, England and Wales.

One factor which is often overlooked in this discussion is that every day adult adoptees are making contact with relinquishing parents, often with the active support of their adoptive parents. This is happening without any appreciable assistance or invasion of privacy and trauma.

The adopt of Children (Information) Act 1980 mentioned earlier – was not proclaimed in full because it was considered that granting a right to access to persons not yet adopted and at the same time denying that right to adopted persons, many of whom are adults, is anomalous and unjust in as much as it creates two classes of adopted persons – one with the right to access and one without. This could well occur in one family.

The 1980 Act did proclaim the parts which enabled the setting up an Adoption Contact Register.

The committee considers that:

1. Access to a birth certificate by an adopted person should be allowed as

a right along with other rights and responsibilities of an adult citizen.

2. That an adopted person 18 years or over should not require permission of another adult, either natural or adoptive parent, to acquire his/her birth certificate.
3. We support the view that a child under 18 years should not have access and that the privacy of adoptive and natural families should be respected.
4. We believe that such right of access to information would encourage greater openness about the adoption which could enable the child to achieve a proper sense of identity and could facilitate a closer relationship with his/her adoptive parents.
5. The committee recommends that the above proposals relating to the provision of identifying and non-identifying information to adoptees through the Adoption Information Service apply to natural parents.
6. We consider that the present practice of some agencies of supplying non-identifying information to the natural parents about the child and its family should be extended.
7. Where the natural parents or adopted person does not wish to have contact, the establishment of the Adoption Information Service will ensure that his/her wishes can be registered. The committee began this enquiry with considerable divergence of views on the question of the wisdom of any change in the law on access to information. After long and careful debate we have formed a firm and unanimous opinion that the first principle of adoption law must continue to be to serve the best interests of the child. We also support the view that "one can only effectively serve a CHILD as primary client in an adoption if one keeps clearly in mind that one must also serve the ADOPTED ADULT whom that child will become". We have come to realise how urgent is the need for more information amongst some adopted persons and some natural parents and how great is the need for a more open and understanding attitude towards those involved in the adoption process. We have moved to view the issue of access to information from the perspective of the needs and rights of both natural parents and adopted persons. We see amending legislation, which grants rights to both natural parents and adopted persons to obtain access to information, when the adopted person attains the age of 18 years, irrespective of whether the adoption takes place before or after the amending legislation is proclaimed, as being in the best interests of adopted persons, natural parents and adoptive parents.

THE ADOPTION INFORMATION SERVICE

There is support within the committee for the setting up of an Adoption Information Service. This would provide a counselling setting through which birth certificates and information could be obtained.

While original birth certificates contain information of importance and significance to adopted persons, there is also personal identifying information held by the agency who arranged the adoption

This service would be available to adopted persons, natural parents and adoptive parents. The Adoption Information Service would also carry out a community education role.

In this section Access to Information – there are thirty separate recommendations which flow from the discussion I have summarized. The main thrust is that of the right of adult adopted persons to information about their origins and the possibility of natural parents having a right to information about the adoptive family and the adopted adult.

RECOMMENDATIONS CHAPTER 6 – ACCESS TO ORIGINS

43. That an adult adopted person be entitled to a copy of his or her original birth certificate. Entitlement to the original birth certificate should be available without restriction, and should be given in a situation where appropriate counselling is available but not compulsory.
44. That any adopted persons have the right to identifying information when he or she is aged 18 years or more, irrespective of when the adoption order was granted. The natural or adoptive parents' permission should not be required for access to information by an adult adopted person.
45. That an Adoption Information Service be established within the D.C.W.S. The Adoption Information Service should liaise and consult with and make referrals to adoption agencies, publicise its functions, and provide an information service for persons and organizations involved in adoption as well as fulfil a community education function.
46. That the Adoption Information Service assist adult adopted persons to obtain a copy of their original birth certificate. It should supply further personal identifying information both orally and in writing from agency records to adult adopted persons.
47. That natural parents be able to register their wishes with respect to meeting the child when he or she is 18 years of age or more. This information with attendant explanation

should be given both orally and in writing to adult adopted persons seeking copies of their birth certificate or at any time they request the information.

48. That natural parents be given any identifying or non-identifying information both orally and in writing about their child which the adoptive parents are willing to supply at any stage.
49. That the Adoption Information Service provide an optional counselling service for adopted persons who seek copies of their original birth certificates and background information about their origins and, for natural parents who have relinquished children for adoption.
50. That an adopted child under the age of 18 have access to counselling and non-identifying information both orally and in writing from the Adoption Information Service whether or not the adoptive parents are involved, although every effort should be made to involve the adoptive parents.
51. That, where an adopted child under the age of 18 is seeking identifying information concerning his natural parents, and where the adoptive parents do not oppose this, the Adoption Information Service may approach the natural parents to seek their consent and co-operation in furnishing such information. Where this is forthcoming, the information be shared both orally and in writing with the child and his adoptive parents.
52. That identifying information not be available to the adopted child under 18 unless the natural and adoptive parents are in agreement to information being given. However the Adoption Information Service may taken an active counselling role with all parties with a view to the needs of the adopted child being met.
53. That, where access to identifying information is sought by an adopted child through the Adoption Information Service, but is opposed by the natural or adoptive parents, an application may be made to a judge in Chambers to determine whether special circumstances exist to warrant the granting of an order permitting the child to have access to his/her original birth certificate.
54. That natural parents have access to counselling from the Adoption Information Service and be given any non-identifying information both orally and in writing that may be made available.
55. That, where natural parents seek identifying information concerning their children who have been adopted, and who have not reached the age of

- 18, the Adoption Information Service may approach the adoptive parents to seek their consent and co-operation in furnishing such information.
56. That identifying information not be available to natural parents of adopted children who have not reached the age of 18, where the adoptive parents and/or the child object to this. However, the Adoption Information Service may take an active counselling role with all parties with a view to the needs of the natural parents being met.
 57. That, where access to identifying information is sought by a natural parent through the Adoption Information Service, in relation to an adopted child under the age of 18, but is not agreed to by the adoptive parents or the child concerned, an application may be made to a judge in Chambers to determine whether special circumstances exist to warrant the granting of an order permitting access to the adoption birth certificate
 58. That the matter of whether identifying information about an adopted person should be made available to his/her natural parents when the adoptee is adult be kept under review in Victoria with a view to formulating legislation, noting that this Committee generally supports that identifying information be available to natural parents, on application when the adoptee is aged 18 years or over.
 59. That natural parents, adoptive parents and adopted persons participate in both the practice and policy development of the Adoption Information Service and that such participation be encouraged in private agencies.
 60. That the Adoption Information Service provide when possible non-identifying information concerning the progress and welfare of the adopted child both orally and in writing to the natural parents.
 61. That the Adoption Information Service supply non-identifying information about the origins of the child both orally and in writing to the adoptive family.
 62. That, in special circumstances the Adoption Information Service supply identifying information to adopted minors or to the adoptive parents of minors subject to authorization by a court.
 63. That for persons seeking information, but whose case records are not available, the Adoption Information Service seek to establish links with other information sources.
 64. That the Adoption Information Service ensure that all information is released in a situation where applicants are aware that a specialised counselling service is available for those who wish to discuss the implications of this information.
 65. That non-identifying information generally be released to parents, siblings, grandparents, aunts and uncles both orally and in writing. Any other person should be required to establish a valid interest.
 66. That, when a birth certificate is issued to an adult adoptee the Adoption Information Service would have an obligation to inform that person of the wishes of the natural parent regarding contact, if such information is recorded. Contact should not be actively promoted where a natural parent or adult adoptee has indicated that they do not want contact.
 67. That the Adoption Information Service record the wishes of natural parents about contact by adult adopted persons. If contact is desired by both parties the Service should assist if requested to do so. The Adoption Information Service should not interfere with the right of natural parents and adopted adults to proceed, or not to proceed, with contact, as they choose.
 68. That the Adoption Information Service be required to consult with agencies to establish and review policy concerning the responsibility for following up an adoption where information about the progress of the child is sought by natural parents and relatives.
 69. That, when an adoption agency closes down, its records be transferred to the Adoption Information Service.
 70. That the Adoption Information Service have the right to obtain original birth certificates and adoption birth certificates from the Government Statist in relation to all persons on the Adoption Information Register.
 71. That the Adoption Information Service publicise guidelines on what type of information is available to those involved in adoption.
 72. That the Adoption Information Service provide a public information service to interested persons about the procedures involved in relinquishing a child for adoption or adopting a child. It should provide information about adoption legislation and regulations, agencies, waiting lists, and about the specialised services of inter-country and special needs adoption.
 73. That the Adoption Information Service seek to develop greater community sensitivity to adoption through the use of discussion groups, films, seminars, distribution of pamphlets, media advertising and visits to community groups.

