



## Submission to Legal Affairs and Community Safety Committee Re: Child Protection and Other Legislation Amendment Bill 2020

### 1. About VANISH

VANISH Inc. (Victorian Adoption Network for Information and Self Help) is a secular community-based not-for-profit organisation funded since 1990 by the Victorian Government to provide family search and support services to people separated from natural or biological relatives through adoption, state ward-ship and, most recently, donor conception. VANISH service users include people residing in Victoria whose adoption or separation from a child through adoption occurred in other states, including Queensland, and also service users whose adoption or separation from a child through adoption occurred in Victoria but who now reside in other states, again including Queensland.

VANISH was established in 1989 by people affected by adoption in response to the long waiting list of adopted adults seeking access to their adoption records (including original birth certificates and identifying information about their natural parents) consequent to retrospective provisions of the Victorian *Adoption Act 1984*. The introduction of that Act followed a comprehensive four-and-a-half-year review of adoption legislation in Victoria, which recommended more open and consensual adoption practices (ALRC 1983).

VANISH has been approached for search assistance and support by a steady stream of people affected by pre-1984 'closed' adoptions and post-1984 'open' adoptions for several years now, which reflects that even in the context of open information and contact arrangements, there is a tendency for contact between children and their natural parents and extended family members to be curtailed after an adoption order is granted. This is consistent with current research into open adoption over time with respect to children adopted locally in Victoria (Castle 2014) and in overseas research with children adopted from out-of-home care (Neil, Beek et al. 2013).

VANISH draws its policy positions from our direct contact with the many thousands of clients to whom we provide, and have provided, services; and from our growing membership of over 900 people.

### 2. VANISH's position on adoption

VANISH's position on adoption is embedded in our position on permanency for vulnerable children. We view adoption to be at the extreme end of the range of permanent care options potentially available to children deemed unable to be raised safely by their parents. There are, we believe, less

drastic permanent placement options that better support the child's identity and connections with their family of origin.

Adoption legally removes one set of parents and replaces them with another set of parents, and the child is recognised in law 'as if born to' the new parents. This compounds the child's loss of family by violating their rights to preservation of name, heritage, identity, and often also family relationships, across the life cycle. These losses are inappropriate and unnecessary, and the severance of family relationships can and does occur even in 'open' adoptions. Research findings and personal testimonies over several decades demonstrate that these factors negatively impact the adopted person's identity development and well-being throughout their entire life, not just during childhood, and inter-generationally (Kenny, Higgins et al. 2012; Conrick 2012; Green 2013).

VANISH is strongly committed to upholding the *rights*, as well as the *best interests*, of children, and we view these as integral to any consideration of permanency planning for vulnerable children. VANISH recognises and supports other more suitable permanent placement options for vulnerable children such as permanent care and guardianship.

VANISH believes that consideration should only be given to permanently removing children whose parents are unable to care, or resume caring, for them in an adequately safe, nurturing and secure manner after appropriate support services have been provided for a reasonable period. Sustained change requires consistent, trauma-informed service provision. We consider it inappropriate to impose an arbitrary time limit on reunification efforts, rather this should be assessed on a case-by-case basis, as appropriate to the individual circumstances and best interests of the child.

VANISH holds that appropriate housing, income support and family support/preservation services, including those related to substance abuse, mental health and domestic violence, should be made readily available to vulnerable families from the earliest point that parenting of their children comes to the attention of child protection authorities. These services must be child-centred, affordable and accessible for such families (e.g. including the provision of transport and childcare).

Where it has been assessed by child protection authorities and decided a child is unable to be raised safely by their parents, VANISH holds that:

- the child's best interests must be ensured by timely provision of a suitably safe, nurturing and secure alternative placement, looking first to the child's kinship network; and
- it is imperative to commence as soon as practicable a permanency case planning process to consider the most suitable alternative permanent placement option available for the child (kinship care or 'stranger' care), and to minimise the number of placement changes the child may experience.

VANISH holds that implementation of permanent care orders or other third-party parenting responsibility or guardianship-type orders, would be significantly enhanced by a child-focussed, rather than service-focussed, approach. This involves:

- an integrated case management model which seamlessly connects planning for vulnerable children from the time they are identified by the child protection system through to permanency planning and placement, as required; and
- a structural realignment of the out-of-home care system from a silo approach – which differentiates between prospective foster carers (respite, short-term and long-term), permanent carers and adopters – to a robust ‘one-door’ model of recruitment, training, screening, assessment and matching of carers to the vulnerable children entering out-of-home care.

VANISH acknowledges that more alternative family carers are required, as are improved carer retention rates, in Australia’s out-of-home care systems. We recommend strengthening the out-of-home care system via the following reforms:

- providing sufficient funding to the whole out-of-home care system;
- embracing a ‘one-door’ approach and actively marketing it to prospective carers;
- focussing on meeting the child’s needs, including minimising placement changes and maximising stability, maintaining relationships, and promoting the concept of belonging to families rather than being ‘owned’ by only one family;
- standardising training and assessment processes to achieve best practice standards across the out-of-home care system;
- providing adequate financial support to all carers;
- providing adequate ongoing support and training to all carers and adequate ongoing support to the children and their families of origin – with a view to ensuring the maintenance of quality contact between child and family of origin throughout the duration of the child’s placement and beyond;
- conducting appropriate research regarding permanency outcomes; and
- addressing any security, travel and inheritance issues in relation to third-party parenting responsibility or guardianship-type orders, particularly from the perspective of the child.

VANISH holds that, until such time as it is no longer available as an option, adoption should only be considered when all other placement options have been fully explored.

In the rare event that adoption is the selected placement option, then it should be undertaken in accordance with best practice principles, including:

- *Honesty, accuracy and transparency* – the child must be provided with full and accurate information regarding the circumstances of their birth, adoption and family history. This

necessarily includes that it is not appropriate to change the adopted child's registered birth details or names; and

- *Openness* – parents should generally be encouraged to be involved in selection of the adoptive parents. Further, every effort must be made to ensure maintenance of ongoing, safe and, where necessary, supported contact and connection between the child and their parents, extended family and culture following adoption proceedings, which should be set out in the adoption order.

### 3. Non-consensual adoption

In the United Kingdom (UK), in contrast to the use of adoption in Australia, non-consensual closed adoption has come to be considered the 'gold standard' approach to permanency planning for children in out-of-home care. This approach has been strongly promoted by governments across the UK, especially in England (Hall 2008; McSherry, Fargas et al. 2016), and Australian adoption proponents often quote UK literature in support of this approach (e.g. Pike 2014). However, the approach has also been widely criticised, recently prompting the British Association of Social Workers (BASW) to undertake an inquiry into the ethics and human rights involved in non-consensual adoptions from out-of-home care.

The final report from the BASW inquiry (Featherstone, Gupta et al. 2018) noted that adoption is one of the most controversial areas of social policy:

Recent policy and the use particularly of non-consensual adoption across the UK has sparked disagreements between judiciary and government, criticism from many birth parents whose children have been adopted against their wishes, and questions within the social work profession itself about the ethics of this increasingly politicised area of practice. (p. 3)

The report also outlined the reason for the need to scrutinise, from an ethical perspective, the practice of social workers in undertaking non-consensual adoptions:

Social workers' decision making is at the heart of adoption and needs to be subject to ethical scrutiny form within the profession and without. The higher rate of care proceedings and adoption involving children from families that are particularly disadvantaged – by poverty, social trauma, mental health difficulties or learning disability, for instance – is an ethical and practice concern for social workers, not least because it raises questions about the adequacy of support and protection of human rights of parents. (p. 3)

There were five recommendations from the BASW inquiry, two of which are highly relevant to the Australian context, as follows:

- The use of adoption needs to be located and discussed in the context of wider social policies relating to poverty and inequality; and
- There needs to be further debate about the status of adoption and its relationship to other permanence options.

VANISH is concerned that routinely dispensing with parental consent for adoption in the Australian child protection context would compound the multiple disadvantages often experienced by parents whose children are placed in out-of-home care against their wishes in the first place.

#### 4. Adoption mistakenly assumed to be budget-saving

It is often mistakenly assumed that adoption is a budget-saving measure, compared with maintaining children in long-term foster care arrangements. This reflects a widespread lack of recognition of the significant hidden costs associated with adoption throughout the lifetime. The complexity of children's needs does not disappear on the granting of an adoption order – legal permanency does not automatically resolve the child's needs for relational and physical continuity, stability and security. There are ongoing needs for specialist support services to address the needs of children who have suffered trauma, and to facilitate the maintenance of contact between the child and their parents and extended family of origin members (e.g. Walsh 2015).

Research into 'open adoption' has established that there is an ongoing need for specialist post-adoption support services throughout the adoptee's lifetime. For example, Neil, Beek and Ward (2013) have undertaken longitudinal research on open adoption in the UK with the same sample of children adopted from care over a 16-year period. In Phase Three of their research with 87 children adopted from care, they found that over half of these young people were now adults and, for many, their psychological work in relation to making sense of their adoption was very much still in progress, and the support of adoptive parents, birth relatives and, in most cases, also professionals was still needed. However, the availability of post-adoption support services for this group was lacking.

Thus, just as was the case for adopted people subject to past forced adoption policies and practices, love is not enough to overcome the challenges faced by children who are permanently removed from their parents' care.

In the context of a policy promoting adoptions from out-of-home care, there is also pressure for prospective adoptive parents to transition (i.e. 'convert') from foster (including kinship) care arrangements to adoption. However, on the granting of an adoption order, the adoptive parents will lose access to support services and the relevant foster care allowance, which is usually significantly more than any allowance they may be eligible to receive as adoptive parents (or permanent carers).

As previously mentioned, granting an adoption order under 'open' arrangements, does not guarantee that contact between a child and their family of origin will be maintained. This is particularly the case in the absence of dedicated specialist services to support and manage the inevitably changing needs of the adopted child and their family of origin and adoptive family members as the child matures (Neil, Beek et al. 2013). Similarly, for those who experience the breakdown of contact during the adoptee's childhood, there will be a continuing need for services, such as those provided by VANISH, to facilitate family member searches and reconnection for those who desire it.

So, while adoption from out-of-home-care may appear to be budget-saving in the short-term in that the cost to the government is transferred, along with guardianship responsibility for the child, to the adoptive parent(s), in reality, the ongoing and potentially lifelong support needs of the parties involved will continue to be the responsibility of government and will need to be borne by government in one way or another.

## 5. Adoption and the rights of the child

Cancelling the child's original birth certificate and issuing a new one, falsified and condoned by the state, violates the adopted child's rights to preservation of their identity and relationships with family of origin, as enshrined in Articles 7 and 8 of the United Nations Convention on the Rights of the Child, or UNCROC (UNICEF 1989). Non-consensual adoption thus violates children's rights and parents' rights, as well. Therefore, there are strong arguments that, in the context of child protection, an adoption order is punitive for the parents and child, and a violation of UNCROC, to which Australia is signatory.

After all, an adoption order:

- severs the legal ties between a child and all of their biological/genetic family members – not only their parents, but their siblings, grandparents, etc., too;
- results in cancellation of the child's original birth certificate and issuance of a new birth certificate, and thus also a new identity, as if the child was naturally born to the substitute parents – this practice supports and promotes a manifestly false and discriminatory practice for the adopted person; and
- negatively impacts the likelihood of social relationships between the child and their family of origin members being preserved – even where a contact plan is in place at the time the adoption is finalised.

It is because adoption breaches UNCROC's own provisions that UNCROC does not promote the use of adoption and, in fact, incorporates safeguards to be implemented in countries that use adoption as an alternative means of care for children (see Article 21).

On the basis of the drastic legal nature of adoption, which breaches various children's and parents' rights, VANISH argues that adoption from out-of-home care should be considered as the permanency placement option of absolute last resort, if it is considered at all.

## 6. Forced Adoption Apologies.

A common theme in the series of state/territory and national Apologies from 2008 through 2013 for people impacted by past family separation and adoption practices is the commitment by Australian governments including Queensland, to learn from past mistakes in child and family welfare policy and practice, and to never repeat them. State and federal governments will need to continue dealing with the current and inter-generational legacies of poor past adoption practices for several decades to come, given that the peak of adoption numbers occurred in 1971-72.

There is a need to move away from a paternalist-protectionist model, which infantilises adoptees and stigmatises parents, to a rights and strengths-based model, which acknowledges the trauma of adoption and better respects and addresses the lifelong needs of all parties involved.

VANISH does not want another generation of people impacted by forced adoptions to be created as a result of the promotion of adoption from out-of-home care – people who, like those in previous

generations, had no say in adoption being chosen ahead of other options that would have preserved their identities and connections with their families of origin.

In summary, VANISH's position on adoption is consistent with the views of thousands of people with lived experience of adoption; the weight of more than three decades of domestic child welfare legislation and practice in regard to permanency planning; relevant research evidence; moral and ethical considerations; and universal child rights, as enshrined in UNCROC. It is for these reasons that VANISH strongly opposes the prioritisation of adoption ahead of other forms of permanency. VANISH holds that adoption is not necessary to ensure the care of vulnerable children residing in out-of-home care and unable to be returned to their parents' care as other options have less detrimental impacts on the rights of the child.

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