

# Regulatory Impact Statement

Proposed Adoption Regulations 2019

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Where the term 'Aboriginal' is used it refers to both Aboriginal and Torres Strait Islander people. Indigenous is retained when it is part of the title of a report, program or quotation.

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# Regulatory Impact Statement

## Proposed Adoption Regulations 2019

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994*. Its purpose is to inform interested parties regarding a proposal to make new regulations.

Public comments and submissions are invited on the proposed regulations and in response to information provided in the RIS. Written comments and submissions should be forwarded by no later than 5.00 pm, 16 November 2018 to:

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# Executive summary

The proposed Adoption Regulations 2019 (the proposed regulations) are made under the authority of the *Adoption Act 1984* (the Act). The Act is jointly and severally administered between the Minister for Families and Children and the Attorney-General. The proposed regulations are intended to replace, with limited amendments, the Adoption Regulations 2008 (the current regulations), which will sunset on 25 February 2019. To a large extent, the regulations contain procedural details and forms. Details of key amendments made to the regulation are contained in **Chapter 5**.

The proposed regulations will constitute the principal regulations made under the authority of the Act. The primary objective of the proposed regulations is to ensure the care and protection of children whose parents have consented to their adoption within Victoria or who are available for adoption in overseas countries and will be adopted by Victorian couples. In pursuit of this objective, the proposed regulations primarily make provisions in relation to:

- parents considering natural their children for adoption
- agencies seeking approval as adoption agencies; and
- intending adoptive parents.

The major provisions of the current and proposed regulations regulate the following:

**Parents** considering adoption are provided with counselling. Parents are provided with written and verbal information to understand the supports available to them should they wish to maintain care of their child. Arrangements for alternative care of their child will also be explored, and should they still wish to pursue adoption of their child, counsellors explain the implications of natural a child for adoption, including the possible psychological impact for the parents and the child.

**Approved Counsellors** explain to parents why it is important for the child to be given as much information as possible about their origin, including information about the father if not identified. Where a father is not identified, the approved counsellor will encourage a mother to disclose as much information about the father as possible and a record of these conversations will take place. Counsellors also explain to parents what rights they retain in respect to their child post-adoption so that they may be equipped to exercise them.

**Adoption agencies** are required to provide information about the governing of the organisation, its rules or articles of association, its proposed financing, its reason for wishing to become involved in adoption, or renew its involvement in adoption, and its links with other child/family welfare agencies. The current and proposed regulations cover approval requirements for both local Victorian agencies and overseas agencies which Victoria works with in making arrangements for local and intercountry adoptions. The current and proposed regulations proscribe the approval process of these agencies to allow for an effective and transparent assessment to be made of their capacity to provide a high level of service. For further information on service delivery arrangement see **Chapter 1.6** 'Adoption Service Delivery'. The current and proposed regulations also establish qualification requirements for the principal officer of approved adoption agencies.

**Adoptive parents** are required to meet a range of criteria established in the current and proposed regulations in order to establish their fitness to become adoptive parents and demonstrate their capacity to provide a secure and beneficial emotional and physical environment for the child's upbringing until the child reaches social and emotional independence.

**Adoption information** is regulated. The current and proposed regulations include requirements in relation to keeping an adoptions register and providing birth certificates. The current and proposed regulations also prescribe the time to comply with a request for information.

## Adoption data

Evidence-based adoption data in Victoria is limited. Comprehensive statewide data on the operation and delivery of adoption services at all stages of the adoption process, such as assessment, support and counselling services, is not reported to the Department of Health and Human Services (DHHS) on an annual basis. It is therefore difficult to determine how the Act and current regulations enable effective provision of adoption services. For the purpose of preparing this regulatory impact statement Victoria's adoption teams were asked to provide a number of estimates for time spent completing adoption related activities (see [Appendix 2](#)).

The limited amount of service delivery related data available does not mean that adoption data is not collected, rather the type of data collected and reported focuses on the characteristics of local and intercountry adoptions and is used for statistical reporting to the Australian Institute of Health and Welfare.<sup>1</sup> This data includes information about the parents (age, gender, marital status), category of adoption (local/intercountry, unknown/known), the characteristics of adoptive families (age/gender), the duration of making arrangements for intercountry adoption (time to finalise placement), and the characteristics of children placed for adoption (country of birth, age, gender).

The tables of statistical data in [Appendix 2](#) provide estimates only of adoption service delivery in Victoria. In making arrangements for an adoption, effort is required from a number of parties, including parents, applicants, adoption and permanent care teams, solicitors and court services. These figures are calculated from information provided by the Victorian Adoption Program, which includes the nine local adoption and permanent care teams, the DHHS Adoption Information Service and Intercountry Adoption Victoria. The data in the tables have a number of limitations, in particular they are average estimates of time spent performing certain activities that form part of an adoption. The activities that are considered are not an exhaustive representation of what takes place during each adoption and are subjective in nature, and therefore open to interpretation. The level of effort in time spent and the type of activities undertaken will also change between each adoption. This may be impacted by a number of factors, for example, the complexity in making arrangements for the adoption placement or geographical locations of parties to an adoption.

## Cost analysis

An assessment of the expected benefits and costs of the current regulations has been undertaken. A preliminary analysis suggests that the costs of providing adoption services is greater than \$2 million per year, or \$20 million in present value terms of the expected ten year life of the current regulations. This cost is borne entirely by the Victorian Government. The provision of local adoption services is organised on a regional basis. Currently, there are nine approved adoption and permanent care teams. Four DHHS adoption teams cover the Hume, Eastern Metropolitan, Barwon South West and the Northern part of North and West region. Five non-government approved adoption agencies provide services in the remaining regions:

- Anglicare provides services in Gippsland and North and West
- Child and Family Welfare Services Ballarat provide services in Grampians
- St Lukes Anglicare provide services in Loddon Mallee
- Uniting Victoria and Tasmania (formerly Connections UnitingCare) provide services in Southern Metropolitan; and
- CatholicCare provides a statewide service.

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<sup>1</sup> The series of reports, Adoptions Australia, are available online at the Australian Governments Australian Institute of Health and Welfare website: <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content>

The funding provided to the non-government approved adoption agencies is intended to fully cover the costs they incur in providing adoption services.

The provision of the Victorian intercountry adoption service is provided only by DHHS. Adoption policy direction is set by DHHS.

Only a minor portion of the total cost of providing adoption services can be regarded as directly attributable to the current regulations as the larger portion would be attributable to the Act. A significant proportion of this cost would be borne in any case, regardless of whether the provision of these services were regulated.

The second major cost identified is the cost of the time taken by prospective adoptive parents to comply with the requirements of the current regulations. This involves the provision of information, conduct of certain practical exercises, attendance at interviews and training for the making of an application to be assessed as a 'fit and proper person'. As [Table 3](#) in [Appendix 2](#) shows for 2016-17, step-parents that progress to approval spent approximately 30 hours completing paperwork and undertaking the assessment and approval process, whereas prospective adoptive parents with no prior connection to a child that proceeded to approval generally spend on average 150 hours completing paperwork and undertaking the assessment and approval process. These figures mean that the estimated cost of a prospective adoptive parent's time, based on 2017 Victorian median hourly rate of \$36.00 per hour is estimated to be around \$5,400.00, whereas the estimated cost of an adoptive step-parent's time, based on 2017 Victorian median hourly rate of \$36.00 per hour, is \$1,080.00.

The significant difference between time spent between step-parents and other prospective adoptive parents is due to the pre-existing relationship between the child and the step-parent, and that both child's parent(s) will be consenting (unless otherwise dispensed with) to the adoption of the child to the specific person. It should be noted that it is the court that decides whether consent may be dispensed with. Examples of when dispensation of consent may occur in practice is usually only where a father is not known or a parent cannot be located and may never have had a relationship with the child.

It is likely that the step-parent has a significant pre-existing relationship with the child and as the child remains with a biological parent, the step-parent is not required to go through the same level of information and training sessions as adoptive parents seeking to adopt a child unknown to them. This is because unknown adoptions require adoptive parents to demonstrate competencies in raising a child who may grow up without knowing their birth parent(s).

Among other things, adoptive parents for unknown adoption engage in training to ensure they understand the issues an adopted child may face and are educated on how to manage the trauma and loss a child may experience as they enter adulthood. Before making an application for determination of suitability as a 'fit and proper person', prospective adoptive parents must attend a two-hour group information session and a subsequent two-day group education program. The assessment process then involves the submission of the application for assessment, which involves a large amount of paperwork and medical and criminal history checks. An assessor from the adoption team then conducts a number of interviews which may take place at the approved adoption agency, in the home of the prospective parent(s) and on the telephone. On consideration of the interviews and application, the assessor writes a report, which makes a recommendation about the prospective parent(s) suitability. The report is provided to an 'applicant assessment committee' and the committee considers the report and any other relevant information. The committee decides whether to give approval, decline approval or defer the decision.

In both scenarios of known or unknown adoption, the Supreme Court (Adoption) Rules 2015 (Vic) require the Secretary or principal officer arranging the adoption to give the court a report which addresses whether the applicant satisfies the suitability criteria.<sup>2</sup> Where a step-parent meets the prescribed requirements of the current regulations, the second key question to be answered is whether the court

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<sup>2</sup> Adoption Act 1984 (Vic) s 15; Supreme Court (Adoption) Rules 2015 (Vic) r 23.

considers the adoption is appropriate in the circumstances. This is because it may be more appropriate to consider orders under the *Family Law Act 1975* (Cth): see **Chapter 1.4** 'Nature and extent of adoption in Victoria' for a more detailed explanation.

A third major cost identified is the cost of the time taken by parents when considering consenting to adoption, which again differs significantly depending on whether the parent is consenting to the adoption of their child generally or to the adoption by a specific person. As [Table 4](#) in [Appendix 2](#) shows for 2016-17, the time input by adoption and permanent care teams per parent consenting to the adoption of their child by their spouse/step-parent was approximately 11 hours, whereas the time per parent consenting to the adoption of their child generally was approximately 62 hours. This time spent includes counselling and document preparation. It is estimated that the cost of a parent consenting to the adoption of their child generally, based on the 2017 Victorian median hourly rate of \$36.00 per hour, is \$2,232.00, whereas the estimated cost for a parent to consent to adoption by a spouse/step-parent, based on 2017 Victorian median hourly rate of \$36.00 per hour, is \$396.00.

The costs involved in making arrangements for an adoption to parents and prospective adoptive parents are considered to be minor in relation to the size of the benefits that arise as a result of having a well-regulated adoption service delivery.

The Regulatory Impact Statement (RIS) for the Adoption Regulations 2008 reported that the major indicator of good adoption practice is the rate of breakdowns of adoption placements.<sup>3</sup> The rate of 'breakdowns'<sup>4</sup> is no longer considered the most useful indicator of a successful placement because neither the DHHS nor adoption agencies have long-term oversight of adoption placements once the adoption placement is finalised. As a measure, it is limited in the sense that DHHS relies on adoptive parents self-reporting adoption placement breakdowns to the relevant adoption agency, in order to measure the success of adoption services.

Regardless of this limitation, the adoption and permanent care teams report that Victoria continues to have a very low rate of breakdown of adoption placements. During consultation, the Victorian adoption and permanent care teams reported that no breakdowns of local infant adoption placements have been reported during the life of the current regulations, while the breakdown rate in relation to intercountry adoptions over the same period has been below one per cent.

Given this performance, it is considered that the benefits of the proposed regulations will substantially exceed the costs that they impose. For example, having the prescribed forms in the proposed regulations provides an administrative benefit to the Court by promoting consistency in the forms that are used by parties in adoption proceedings. The forms also assist to achieve consistency in practice across adoption services as they are delivered by both government and community service organisations that are approved adoption agencies under the Act. The forms assist by providing direction to what matters need to be considered to ensure the adoption has been arranged in accordance with the Act.

Consideration of the range of regulatory and non-regulatory policy tools has been undertaken as part of the RIS process. It has been concluded that there are no feasible alternatives to the making of the proposed regulations. The basis for this conclusion is discussed in [Chapter 4](#) 'Options'. However, given this conclusion, and the general purposes of the RIS process, input and contributions from relevant stakeholders regarding ways in which the regulatory and administrative burden of the proposed regulations could be reduced are welcomed.

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3 Regulatory proposal: Adoption regulations 2008, Final version: 17 December 2007, p3. Available online at the Commissioner for Better Regulation's website: <http://www.betterregulation.vic.gov.au/Searchable-RIS-Archive/Search-for-a-RIS/2007-08>

4 Breakdowns may also be referred to as 'disruption'. A breakdown/disruption of a placement is where the child is no longer able to remain with the adoptive parents. The breakdown/disruption may result from the adoptive parents' request for the child to be placed elsewhere, or a decision may be made by the adoption service that it is not in the child's best interests to remain in the placement.



# 1. Background

The proposed regulations are intended to replace, with limited amendments, the existing Adoption Regulations 2008, which will sunset on 25 February 2019, as a result of the operation of the *Subordinate Legislation Act 1994*.

The Act makes provision for a wide range of matters connected with adoption, including establishing requirements for the approval of adoption agencies and of adoptive parents. The Act regulates both the adoption of children in Victoria (local adoption) and children in other countries who are available for adoption by Victorian parents (intercountry adoption).

Children requiring adoption placement can be broadly divided into four categories:

1. Infant adoption: children aged 0 - 1 year, born in Victoria.
2. Additional (special) needs adoption: babies and older children with emotional, physical or intellectual disabilities.
3. Known adoption where a step-parent/spouse wishes to adopt the child of a previous relationship of the other spouse. Relative adoptions are uncommon in Victoria as parenting orders made under the *Family Law Act 1975* (Cth) are considered a more appropriate form of order to transfer parental responsibility.
4. Intercountry adoption: infants and children born outside Australia who have entered Victoria for the purposes of adoption. Intercountry adoptions can also include known adoptions (Intercountry known adoptions) by relatives other than a step parent and that most (all) intercountry adoptions meet the criteria of additional special needs.

The Act's provisions in relation to intercountry adoption are required to be consistent with the terms of *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*<sup>5</sup> (the Hague Convention), to which Australia is a signatory.

The proposed regulations set out information provision requirements in relation to both adoption agencies and adoptive parents, in order to allow the assessments required under the Act to be completed effectively. They also set out procedures for obtaining consent to adoption from biological parents. The proposed regulations do not establish the fees payable in relation to intercountry adoptions as these are established via the Adoption (Intercountry Fees) Regulations 2002.

A number of important decisions are made under the Act. These include, but are not exhaustive to:

- decisions by the Secretary of DHHS to approve an agency to arrange adoptions<sup>6</sup>
- decisions by the Secretary and principal officers to approve people wanting to adopt as 'fit and proper persons' to adopt a child<sup>7</sup>
- decisions by the Victorian Civil and Administrative Tribunal (VCAT) when reviewing decisions of the Secretary or approved agency<sup>8</sup>
- decisions by the County Court to make an adoption order<sup>9</sup>
- decisions by the County Court to discharge an adoption order.<sup>10</sup>

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5 The full text of the [Hague Convention on Intercountry Adoption](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=69) <[http://www.hcch.net/index\\_en.php?act=conventions.pdf&cid=69](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=69)>

6 Adoption Act 1984 (Vic) s 22.

7 Adoption Act 1984 s 13(3).

8 Adoption Act 1984 s 129A.

9 Adoption Act 1984 s 15.

10 Adoption Act 1984 s 19.

The proposed regulations assist and guide the making of adoption arrangements in a number of ways, such as by:

- prescribing the requirements for approval and renewal of adoption agencies
- prescribing the required qualifications for the principal officer of an adoption agency
- prescribing the permitted arrangements for overseas and Hague Convention adoptions
- prescribing provisions around counselling and procedures for consenting to adoption
- prescribing additional provisions applying to adoption of Aboriginal and Torres Strait Islander children
- prescribing the eligibility requirements for approval of applicants to adoption of a child
- prescribing the application form for approval as a fit and proper person.

## Victorian permanent care options

Adoption is one of the permanent care options available in Victoria. Permanent care is defined as an arrangement whereby a child or young person is cared for on a permanent basis by someone other than their biological parents. The local adoption program is delivered alongside the permanent care program by a combination of government and community sector agencies.

Permanent care arrangements are made when biological parents are either unwilling or unable to care for their own children. Permanent care arrangements are normally established by some form of court order which transfers parental rights and responsibilities to the permanent caregiver. Three types of permanent care arrangements can be distinguished:

- **Adoption:** Adoption orders are made pursuant to the Act. Adoption in Victoria is the legal process through which a child becomes a member of a new family, involving the permanent transfer of all legal rights and responsibilities from a child's parent(s) to the adoptive parent(s). Adoption arrangements may include arrangements under which contact with or information about the adopted child may be provided to the parent as part of the conditions on the order for adoption. Arrangements can also be made for ongoing contact to be maintained with relatives.
- **Permanent care:** Permanent care orders are made pursuant to the *Children, Youth and Families Act 2005*. A permanent care order may be granted to a person or persons if the Court is satisfied that the person or persons is/are suitable to have parental responsibility for the child. Permanent care orders confer exclusive parental responsibility for a child on a carer named in the order, and last until the child reaches the age of 18. This usually occurs after the child has been subject to protective intervention by DHHS and follows a determination being made that the child's parent is not expected to be able to care adequately for the child in the foreseeable future.
- **Orders under the *Family Law Act 1975 (Cth)*:** Various orders may be made under this Act, relating to issues including with whom a child lives or has contact with, and specific issues such as who is responsible for decisions regarding the child's day to day and long term care. For example under the *Family Law Act 1975*, a parenting order confers parental responsibility for a child on a person, but only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.

In each case, the making of a court order formally recognises permanent carers' responsibilities and rights with respect to the children that are the subject of the order.

## Adoption

Adopting a child is a significant and lifelong decision.

An adoption order ends the legal relationship between a child and the child's parents.<sup>11</sup> The law no longer recognises the birth parents as being the parents of the child. The adoptive parents assume all

the parental rights and responsibilities that belonged to the child's birth parents before the adoption order was made. The law views the child as the adoptive parents' child, as if the child had been born to them.<sup>12</sup>

Adoption is a contentious subject in Victoria, Australia and internationally. Some individuals strongly oppose adoption, particularly those affected by past practices of forced adoptions, and others promote it as a desirable solution for a child in need of stability and permanency. Both sides argue their position is in the best interests of the child.

## 1.1 Terminology

DHHS has attempted to balance the language used in this RIS and the proposed regulations, acknowledging that there may be some people who will remain dissatisfied with the language used. There are particular sensitivities for parents and, for example, to achieve clarity in the proposed regulations the term 'natural mother' has been used to refer to the person to whom the child was born. The Adoption Act uses the terms 'natural parents', 'natural relative' and 'natural child'.<sup>13</sup> As reported by the Victorian Law Reform Commission in its *Review of the Adoption Act 1984*, DHHS also acknowledges the following linguistic sensitivities:

- Mothers who have given up their children, whether voluntarily or forcibly, may disagree with terms such as 'birth mother', 'natural mother', 'biological mother' and 'relinquishing mother'. Often, the simple term 'mother' is preferred.<sup>14</sup> For clarity this RIS uses the phrase 'natural mother'.
- Adoptive mothers who have raised these children may object to the use of the term 'mother' in this context. Indeed, the terms 'adoptive mother' and 'adopter' have been rejected by some in favour of the term 'mother'.<sup>15</sup> For clarity, this RIS uses the phrase 'adoptive mother'.  
Adopted persons and children may also disagree with the terms 'adopted person', 'adopted child' or 'adoptee', particularly if they were adopted during the period of forced or closed adoption.<sup>16</sup>
- The term 'Aborigine' is used in the Adoption Act, defined as 'a person who is descended from an Aborigine or Torres Strait Islander, identifies as an Aborigine or Torres Strait Islander, and is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Islander community'<sup>17</sup>. DHHS acknowledges that the term 'Aborigine' may be considered inappropriate and offensive, as well as the term 'Aboriginal person' or 'Aborigine' does not include Torres Strait Islander people, although it has been defined to do so in the Act.<sup>18</sup> Amendment to the Act is required to amend this terminology.

## 1.2 Acknowledging the past

The *Adoption Act 1984* introduced open adoption<sup>19</sup> and made Victoria the first Australian jurisdiction to end closed adoption<sup>20</sup> practices.

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13 The information provisions give rights of access to information on the basis of specified terms. These include 'natural parent', 'natural relative' and 'natural child'.

14 Victorian Law Reform Commission, *Review of the Adoption Act 1984: Consultation Paper*, August 2016, p 3 <[http://www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Adoption\\_Act\\_Consultation\\_Paper-Web\\_final.pdf](http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Adoption_Act_Consultation_Paper-Web_final.pdf)>.

15 *ibid*, p.3.

16 *ibid*, p.3.

17 *Adoption Act 1984 (Vic)* s 4(1).

18 *Adoption Act 1984 (Vic)* s 4(1).

19 Open adoption is a form of adoption that facilitates or allows information sharing or contact between the adoptive and birth parents and may involve contact between the child and birth parents.

20 Closed adoption is a form of adoption in which no information is shared between adoptive and birth families. Closed adoption is no longer practised in Victoria.

The Act gave adopted people aged 18 years and older the right to access their original birth certificates, and introduced greater access to adoption information for natural parents and relatives of adopted people.

It is widely acknowledged in Australia that closed adoption practices caused grief to those affected. Many people have experienced adoption or been exposed to issues relating to adoption. The number affected (including natural parents, adoptive parents and the adopted person) has been estimated to be one in 15.<sup>21</sup>

Many Australians were affected by past (forced) adoption practices, particularly during the late 1960s and early 1970s, which resulted in significant trauma. These practices have been the subject of inquiries, which led to apologies by the Commonwealth Parliament and state and territory parliaments.<sup>22</sup> The Senate Community Affairs References Committee in its report into the Commonwealth contribution to former forced adoption policies and practices urges all those involved in current adoption practices to take the findings of this report into account to ensure that the mistakes of the past are never repeated.<sup>23</sup>

### 1.3 Review of the *Adoption Act 1984*

In 2015 the Victorian Law Reform Commission (the Commission) was asked to provide advice to the Victorian Government on the modernisation of the *Adoption Act 1984*. The Commission was not asked to examine adoption laws and practices that existed before the *Adoption Act 1984*; nor to review the law regarding intercountry adoption programs, nor to consider adoptions by same-sex couples or contact statements<sup>24</sup>. The review considered how best to ensure adoption laws:

- promote the best interests of children, their rights and their ongoing needs
- align with other key pieces of Victorian legislation
- better reflect a contemporary understanding of family and community.

The Commission's report, *Review of the Adoption Act 1984* (the report)<sup>25</sup>, was tabled in the Victorian Parliament on 7 June 2017. The Victorian Government acknowledged the work of the Commission in providing a comprehensive report for reform, as well as the important contributions from the community to the review.

With the primary recommendation for a new Act, the Commission's report contained 88 recommendations in response to a number of issues, including:

- promoting the best interests of the child, their rights and ongoing needs
- increasing openness in the adoption process
- setting out special requirements and considerations for the adoption of Aboriginal and Torres Strait Islander children

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21 Daryl Higgins, *Impact of Past Adoption Practices: Summary of Key Issues from Australian Research*, Final Report (Australian Institute of Family Studies, 2010) p.7, citing Winkler and van Keppel (1984), *Relinquishing Mothers in Adoption: Their Long-Term Adjustment*, p.3. <<https://www.dss.gov.au/sites/default/files/documents/pastadoptionreport.pdf>>

22 Australian Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), which describes the forced adoption of Aboriginal children; Senate Community Affairs References Committee, Parliament of Australia, *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (2012), which found that because of the Commonwealth's involvement in forced adoptions, it should help the states and territories address the consequences of past forced adoption practices. <<https://www.humanrights.gov.au/publications/bringing-them-home-report-1997>>

23 Senate Community Affairs References Committee, Parliament of Australia, *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (2012) [13.23]. <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2010-13/co](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/co)>

24 Contact statements' restrict parents from contacting their adult adopted children if the adult adoptee lodged a statement specifying 'no contact'. If breached, they attract penalty fines of up to \$9100.

25 Victorian Law Reform Commission, *Review of the Adoption Act 1984*, 7 June 2017, available online at <<http://www.lawreform.vic.gov.au/projects/adoption-act/review-adoption-act-1984-report>>.

- protecting against the possibility of future ‘forced’ adoptions.

In response to the report, the Victorian Government announced on 7 June 2017 it will carefully consider the report and its recommendations, and start implementing changes to policies and service delivery to address some of the immediate issues raised.

DHHS has commenced implementing changes to policies and service delivery to address some of the immediate issues raised and is updating its adoption policies within the scope of the existing Act. A new adoption manual will include modern language, update program materials to increase clarity around processes, and bring practice up to date to serve the best interests of the child.

New health assessment guidelines will be developed to ensure an applicant’s age, body mass index and other empirical indicators are not used to determine capacity and capability to parent. The new guidelines, which will form part of the new manual, will be more holistic, asking more questions about health status and the impact on an applicant’s ability to parent.

As noted above, the primary recommendation made by the Commission is to repeal and replace the Act. Consequently, the report’s recommendations that concern changes to the current regulations are made on the presumption of implementing a new Act. In the absence of new legislation at this time, the proposed regulations must be drafted in accordance with the existing Act

Proposed changes to the regulations have been incorporated where possible and compatible with the Act to address some recommendations made by the Commission, and following consultation with the adoption and permanent care teams.

Changes to regulations are proposed where consistent with problems identified by DHHS and where it is expected that the proposed changes will address identified problems. These problems are discussed further in **Chapter 2**.

## 1.4 Approaches in other jurisdictions

### Local Adoptions

#### Legislation and responsibilities

Each Australian state and territory has its own legislation governing local adoption practices. To see an outline of the legislation for each jurisdiction, a useful summary has been compiled by the Australian Institute of Health and Welfare (AIHW).<sup>26</sup>

The individual state or territory authority for adoption works to ensure that local adoption practices follow the legislation and regulations set out by its jurisdiction. The AIHW reports that in most cases, the responsible state or territory department will be the guardian of a child for whom general consents for adoption have been signed; and that for some approved non-government adoption agencies, the agency’s principal officer will be the guardian. The guardianship of a child remains in force until the adoption order is made, or consents for adoption are revoked, or until some other specified event occurs (such as when a suitable and willing relative is able to care for the child).

The AIHW summarises the similar approaches across all Australian jurisdictions in the following way:

A child can legally be adopted if all the necessary consents to the child’s adoption have been obtained or dispensed with (dispensation refers to the legal process in which a court declares that the consent of a parent is not required for an adoption order to be granted). People wishing to adopt a child must satisfy the government department or agency concerned that they will be suitable parents. Factors that may be considered in assessing the suitability of potential parents include their

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<sup>26</sup> See [Australian Institute of Health and Welfare, Adoptions Australia 2016-17, Appendixes A and B](https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/appendixes/a-and-b)  
<<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content>>.

parenting capacity, age, health, reasons for wanting to adopt, marital status and the stability of their relationship. Eligibility requirements to adopt a child vary between jurisdictions (see Appendix A:A1), as do eligibility requirements set by countries of origin for intercountry adoptions (IAA 2017b).<sup>27</sup>

According to the AIHW, Australian jurisdictions also differ in the extent to which they use adoption as a measure to improve permanency and stability for children in out of home care. Some states and territories have introduced legislative changes over the past 25 years which support a greater use of alternative legal orders. This in turn has contributed to the decline in adoptions generally, and an increase in 'known' adoptions<sup>28</sup> specifically. The AIHW has published detailed data on adoptions of Australian children and children from overseas, and highlights important trends in the number of adoptions back to 1992–93.<sup>29</sup>

Whilst some other jurisdictions (such as New South Wales) use adoption as a measure to improve permanency and stability for children in out of home care, Victoria's position is that permanent care orders are a more appropriate and balanced option than adoption to provide permanency for children unable to return to parental care following statutory intervention because permanent care orders:

- maintain the legal parental relationship and child's relationship with their birth family when in the child's best interests
- provides the recognised benefits of permanency without the need to legally sever the child's relationship with their birth family and noting that adoption is premised on consent of the birth parent
- preserves the child's right to have their identity, name and family relations preserved, as well as their right to maintain relationships with their parents as articulated in the United Nations Convention on the Rights of the Child
- enables the Children's Court to issue the order with contact and information exchange conditions in the same way as adoption in addition to enabling the order to be revoked or varied
- requires that applications concerning an Aboriginal child must be supported by an Aboriginal agency and be accompanied by a cultural support plan.

### **Intercountry adoptions**

Historically, there has been a high degree of similarity in the approaches taken to the regulation of intercountry adoption across all Australian states and territories. To a significant extent, this similarity reflects the fact that in the past, intercountry adoptions accounted for the majority of adoption placements, and that the requirements of the Hague Convention apply either directly or indirectly in all Australian states and territories because Australia was (and in fact, remains) bound by its international obligations in this area as a signatory to the Hague Convention.

Approaches in other jurisdictions were not considered in Victoria because they are out of scope of the Victorian Act; and the administrative cost of switching to another system would be high, for little or no expected benefit, as outcomes are similar across jurisdictions.

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27 Australian Institute of Health and Welfare, Adoptions Australia 2016–17, Child Welfare Series Number 67 (2017) p. 4.

28 Known adoptions are adoptions by people who have a pre-existing relationship with the child, such as step-parents or relatives of the child.

29 See [Australian Institute of Health and Welfare, Adoptions Australia 2016–17](https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17)

<<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/contents/table-of-content>>

## 1.5 Nature and extent of adoption in Victoria

### The Victorian adoption and permanent care context

Australian jurisdictions differ in the extent to which they use adoption as a measure to achieve permanency and stability for children in out of home care. Victoria has focused instead on improving stability and permanency for these children through long-term care orders that transfer parental responsibility until the child turns 18, to a third party (who may be unrelated or converting from foster care or kinship care arrangements). Victoria's permanent care program provides an alternative to adoption, especially for older children and children whose parents do not consent to adoption. There were 482 new permanent care orders granted in 2016-17.<sup>30</sup>

The proposed regulations are made under the authority of the Act. The Act establishes the legislative framework for adoption in Victoria. Each Australian state or territory has its own adoption legislation, therefore, a child awaiting adoption in a jurisdiction is subject to the laws of that jurisdiction..

## 1.6 Incidence of adoption in Victoria

The number of adoptions in Victoria is currently very low. It has declined substantially over several decades, reflecting both changing social attitudes and responses to a wide range of relevant public policy changes.

### Rate of adoptions 2016-2017

- There are very small numbers of Victorian parents who consent to adoption for their children for adoption. Fourteen (14) local adoptions were finalised in 2016-17 in Victoria (including nine infant and five additional needs adoptions). This was more than any other state (NSW had twelve (12) and Queensland had 5 finalised local adoptions).<sup>31</sup>
- There was one 'known' adoption in 2016-17 in Victoria. In NSW, where adoption by carers is actively encouraged, there were 152 known adoptions, of which 143 were adoptions by carers.<sup>32</sup> Nationally there were 204 known child adoptions by carers.<sup>33</sup>
- There were eight intercountry adoptions finalised in Victoria in 2016-17 which was 11.6 per cent of the total intercountry adoptions in Australia (compared to thirteen (13) in NSW and sixteen (16) in Queensland).<sup>34</sup>

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30 Adoptions Australia 2016-17, AIHW, data tables, Table S20.

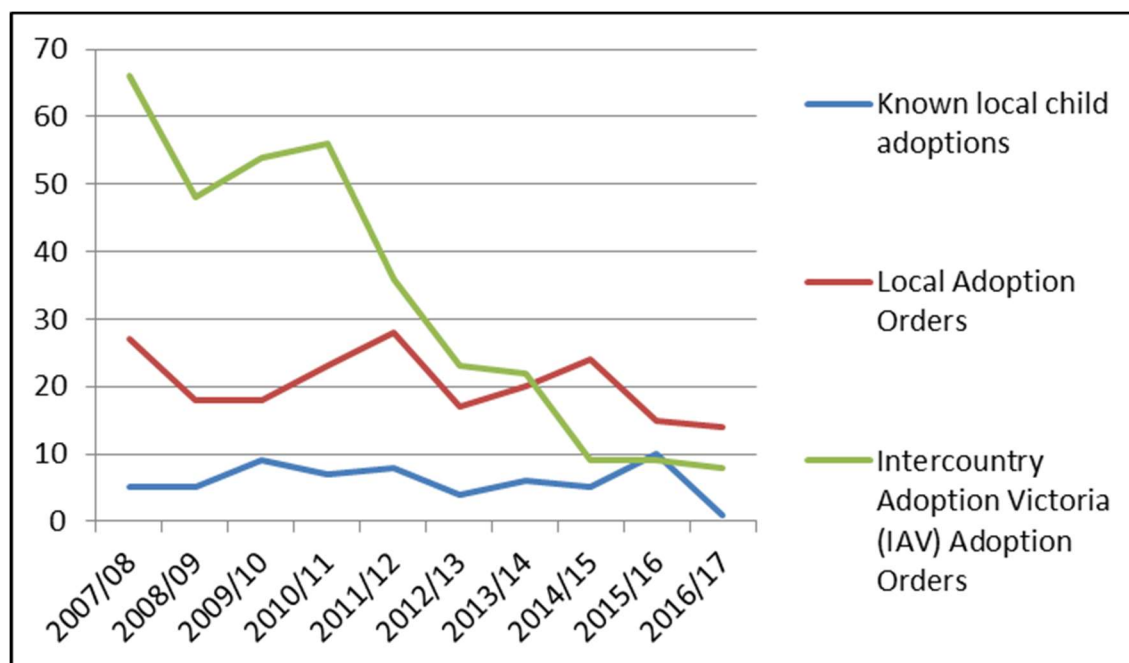
31 Adoptions Australia 2016-17, AIHW

32 Adoptions Australia 2016-17, AIHW pp. 28-29.

33 Adoptions Australia 2016-17, AIHW pp.28-29.

34 Adoptions Australia 2016-17, AIHW p.17

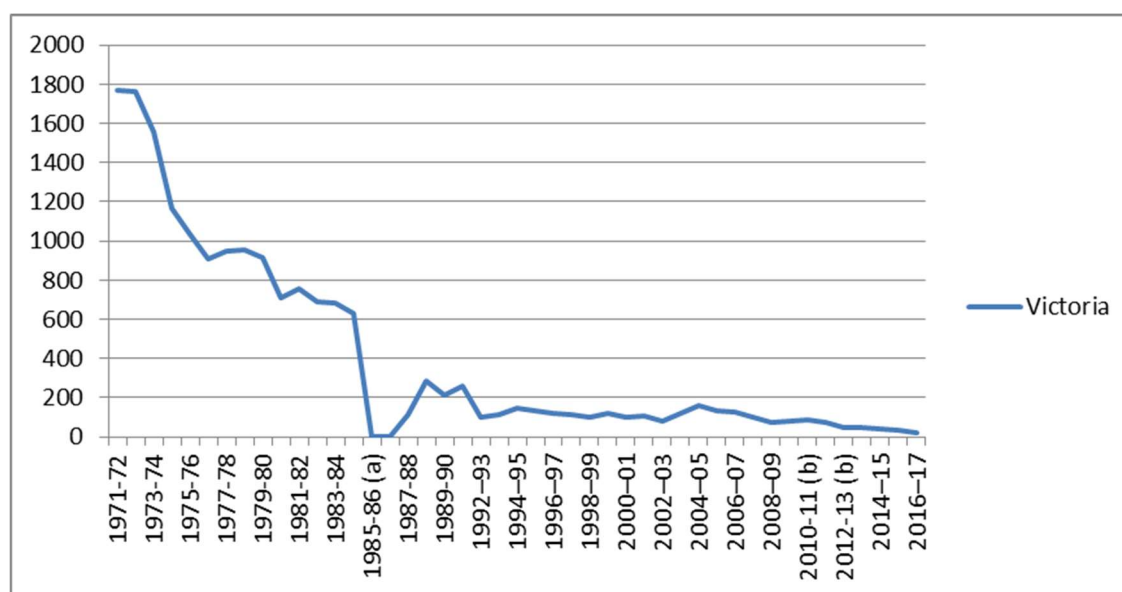
**Figure 1: Adoption trends in Victoria 2007-08 to 2016-17**



The decline in the incidence of adoption appears to be continuing, as indicated in the data contained in **Table 1 at Appendix 2** and reflected above in **Figure 1**. **Table 1 of Appendix 2** is a summary of Victorian adoption data published by the Australian Institute of Health and Welfare between 2007-08 and 2016-17. **Table 1 of Appendix 2** shows that the average number of local infant adoption placements (i.e. local children placed with approved applicants other than family members) has averaged 18 per annum over the last five years, whereas it averaged 22.8 in the preceding five years between 2007-08 to 2011-12.

In 1972, 1,529 infant adoption placements were made. Thus, the number of such placements has declined more than 99 per cent in 45 years. **Figure 2** below shows adoption trends in Victoria from 1972 to 2017.

**Figure 2: Adoption trends in Victoria 1971-72 to 2016-17**





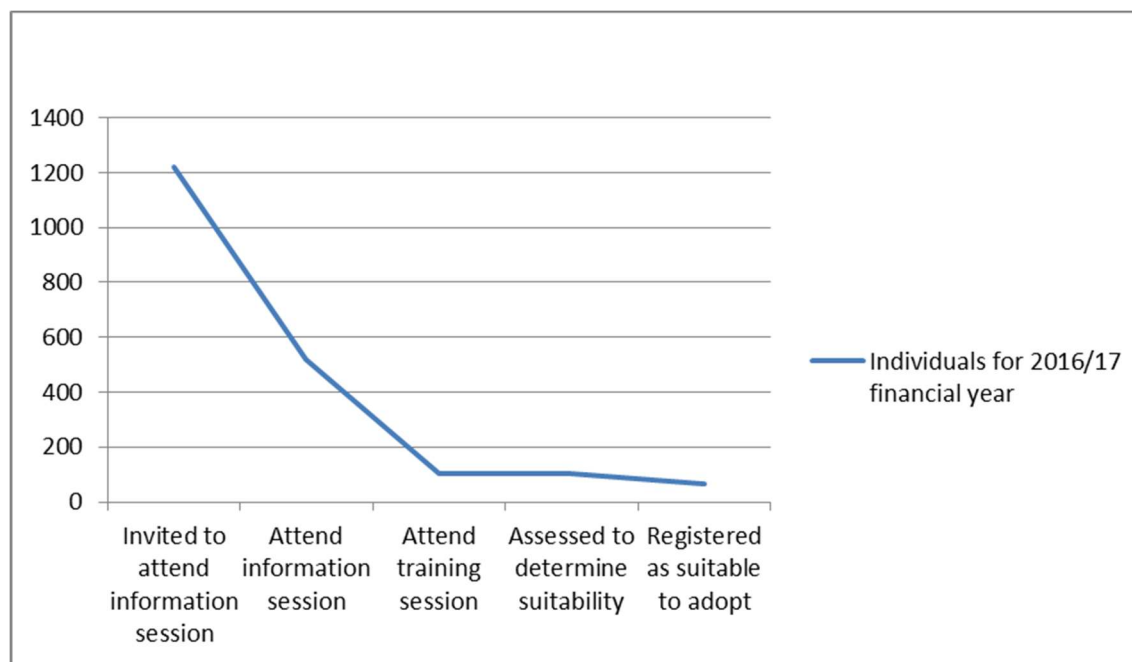
- (a) No data on adoptions were collated nationally for 1985-86 and 1986-87.
- (b) On 4 March 2014, amendments to the Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 began. These have meant that some adoptions from Ethiopia and Taiwan, not yet finalised in Australia, were recognised during 2013–14 as being finalised in previous periods. These updated data are reflected in this Figure: 1 adoption from Ethiopia in 2006–07; 1 adoption from Ethiopia in 2009–10; 1 adoption from Ethiopia and 1 adoption from Taiwan in 2010–11; 1 adoption from Ethiopia and 7 adoptions from Taiwan in 2011–12; and 9 adoptions from Taiwan in 2012–13.

**Data sources:** 1986-1991: Wilkinson K & Angus G (1993) Adoptions Australia 1990-91. Australian Institute of Health and Welfare: Child Welfare Series No. 1, AGPS, Canberra; 1992 -2017: Australian Institute of Health and Welfare 2017. Adoptions Australia 2016–17. Child welfare series no. 67. Cat. no. CWS 61. Canberra: AIHW.

**Table 2 of Appendix 2 – Application assessment – local adoption** shows the number of prospective parents seeking to adopt children substantially exceeds the number of children available for adoption.

**Figure 3** shows that the number of individuals who are invited to attend training declines sustainably over the assessment process with few continuing to training and subsequently being approved as suitable to adopt a child. (Training over three days covers topics including the application and assessment process, childhood development and parenting requirements).

**Figure 3 – Attendance rates throughout assessment for 2016-17 financial year**



In 2016-17, approximately 1,222 individuals formally expressed interest in adopting a child, however, only 14 children were placed for adoption in Victoria. Given the demand to adopt a child outweighs the availability of children placed for adoption, potential risks to the welfare of adoptive children may arise from this situation, supporting the need for regulation of adoption practice. Even in 1964 the then Minister of Immigration and future Premier Hamer said: For many years, the demand for children for adoption in Victoria has greatly exceeded the supply.<sup>35</sup>

<sup>35</sup> Victorian Parliament, Hansard, Thursday, 13 November 1997 COUNCIL 525, Hon. M. M. GOULD (Doutta Galla).

## 1.7 Adoption Service Delivery

### Adoptive children

The overarching principle which governs adoption in Victoria is that the 'welfare and interests of the child' are the 'paramount consideration'.<sup>36</sup> The major focus when making arrangements for adoptive children is to ensure that they are placed in a family situation which is best suited to their needs, provides the child with a sense of stability, and promotes their welfare and development.

With the introduction in 1984 of the Adoption Act, the Minister for Community Services at the time, the late Pauline Toner, in her second-reading speech on the introduction of the Adoption Bill on 2 May 1984 said, as reported at page 4245 of Hansard of that date:

Adoption is one of a number of services which provide substitute family care for children not able to be adequately cared for by their own parent or parents. It should therefore be seen as part of a range of services which include foster care, children's homes and family group homes, as well as informal arrangements with other members of the family or family friends.

The Act prescribes prospective adoptive parents meet the eligibility and suitability criteria set out in regulation before approval to be an adoptive parent will be granted. Applicants generally have no pre-existing relationship with the child before the child comes into their care.

### Natural parents

A primary purpose of adoption is to find a stable and caring family who will care for a child as their own on a permanent basis. The proposed regulations require that parents are provided with the information and support necessary to enable them to parent their own child, should this be an option for them. After parents have received adequate information and counselling to develop a fully informed decision, parents may decide that they will give informed consent to another family to become the permanent adoptive parents of the child.

### Prospective and adoptive parents

The Act and regulations provide legislative protections designed to ensure the suitability of adoptive parents and minimise inappropriate placements.

All applicants are to be formally assessed by the Secretary to the DHHS or principal officer of an approved adoption agency to determine whether they are suitable to adopt. Approval does not guarantee that applicants will have a child placed with them. This depends on the needs of the children who require an adoptive family, and in the case of local adoptions the wishes of the birth parents. For intercountry adoptions, the matching of proposed adoptive parents to a child is also the responsibility of the relevant authority in the country of origin of the child.

The current and proposed regulations provide that in determining whether the applicants are suitable to adopt, consideration must be given to whether each applicant has the capacity to provide a secure and beneficial emotional and physical environment during a child's upbringing until the child reaches social and emotional independence. This involves considering factors such as the applicant's personality, emotional maturity, and financial circumstances. The general stability of character of each applicant and their family relationships are also relevant. The importance of such factors has been emphasised by bodies that are involved in or have an interest in the adoption process.

Although there are no age specifications within the Act or current or proposed regulations, this does not prevent appropriate consideration being given to the age of each of the applicants and, if the application

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<sup>36</sup> Adoption Act 1984 s 4(1) (definition of 'child' and s 10(1)(a))

is made for a couple the stability of their relationship, and the long-term prospects that they would offer to a child in terms of providing a secure family environment. This accords with the primary objective of the legislation that the welfare and interests of children placed for adoption are met.

The suitability factors are considered as part of a comprehensive assessment of the single applicant or couple, rather than being used as an arbitrary means of determining whether they are eligible to have their application for approval considered. This assessment methodology enhances equal opportunity by enabling each application to be considered on its merits.

When a couple is applying for approval, their ability to demonstrate a stable relationship is important before a child will be considered for placement with that prospective adoptive family. The Act highlights the importance of couples who are seeking to adopt having a permanent and stable relationship by making provision for when an application can be made to a court and when an application seeking approval can be dealt with. Since the *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* amendments, the Act sets the relevant period for a couple to be eligible to adopt at two years - two years married, two years registered, two years living together in a domestic relationship, or two years of a combination of informal and formal coupledness.

### Local adoption service delivery

The Attorney-General and the Minister for Families and Children jointly administer the Act. Local adoption services in Victoria are provided by a combination of government and not for profit community service organisations that are approved adoption agencies under the Act across Victoria's regions as listed below:

<b>Metropolitan areas</b>	South Southern Suburbs (Private)	Uniting (Formerly Connections)
	North-Northern Suburbs	DHHS
	East-Eastern Suburbs	DHHS
	West-Western Suburbs	Anglicare
<b>Rural and regional areas</b>	Hume Shepparton, Seymour, Benalla, Wangaratta, Wodonga and surrounding areas	DHHS
	Barwon.Geelong, Warrnambool, Portland, Hamilton	DHHS
	Loddon-Mallee Bendigo, Maryborough, Castlemaine, Echuca, Swan Hill, Mildura and surrounding areas	Anglicare Victoria St Luke's Region
	Grampians Ballarat, Horsham, Stawell and surrounding areas	Child And Family Services
	Gippsland Central and Eastern Gippsland	Anglicare
<b>Statewide</b>	Statewide	CatholicCare

The Secretary to the DHHS (the Secretary) may approve a community service organisation to arrange adoptions. Approved organisations are called 'approved adoption agencies' and the provision of adoption services is one among a wider range of welfare and related activities they provide.

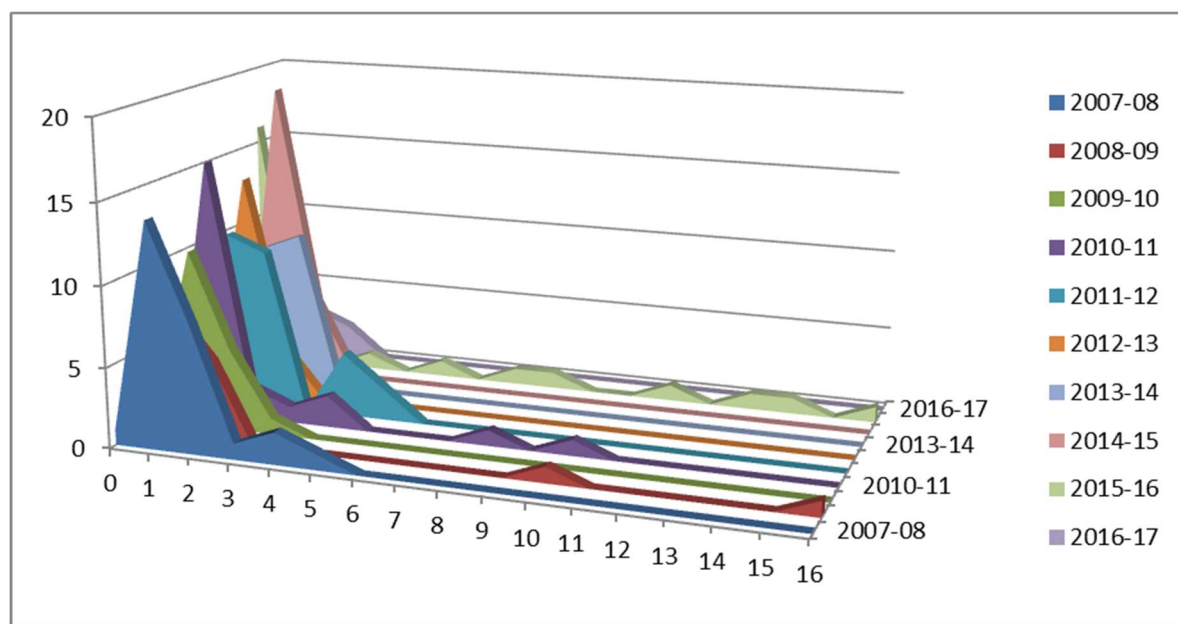
The Secretary and the principal officers of approved agencies have powers and responsibilities under the Act. For example, the Secretary or a principal officer is the legal guardian of a child who consent has been given, or dispensed with, to be adopted. They also have the power to approve people as 'fit and proper persons' to adopt a child. When carrying out their responsibilities, the Secretary and principal officers must have regard to the principle that adoption is a service for children. Section 9 of the Act provides that in the administration of the Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

The DHHS and approved adoption agencies may assist with arrangements for the adoption of any child under 18 years of age.<sup>37</sup> The Act refers to children generally, but it contains specific provisions which deal with the adoption of particular groups of children, including:

- step-children
- children who are related to the people who want to adopt them
- Aboriginal and Torres Strait Islander children; and
- children who are not Australian citizens.

While the Act refers to adoption of children under 18 years of age,<sup>38</sup> in practice most children adopted in Victoria are infants under 12 months of age and adoption arrangements are made through the ‘infant adoption program’. **Figure 4** below shows the trends between 2007-08 and 2016-17 of the total number of, and age of, adopted children over that period of time.

**Figure 4 – Change over time in the trends of age of adopted child between 2007-08 and 2016-17**



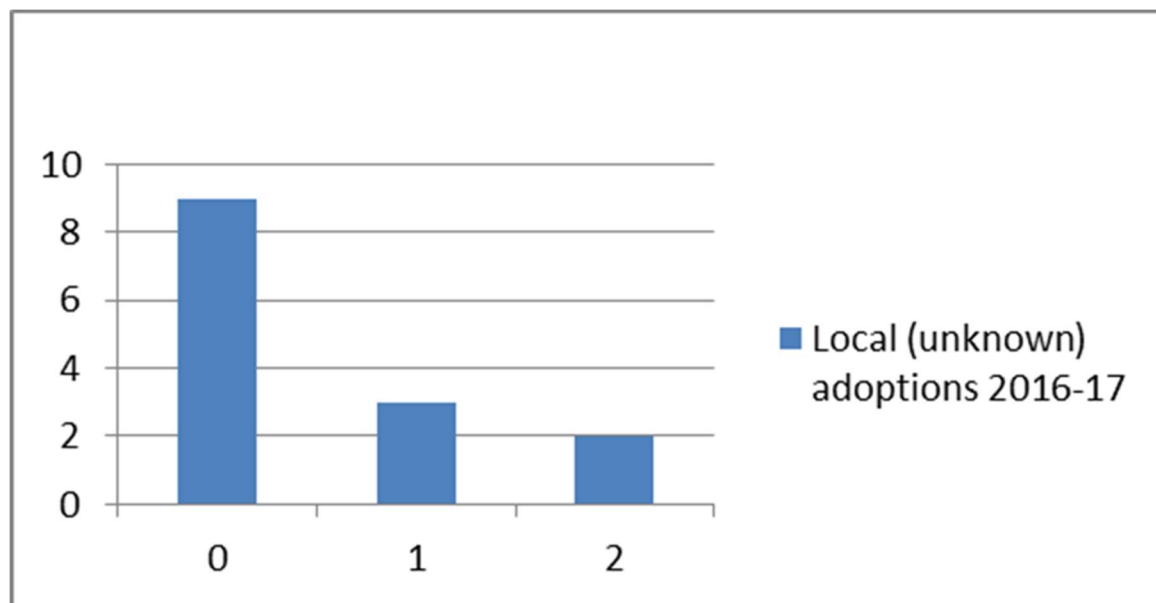
### Infant adoption

Today, infant adoption is the main form of adoption in Victoria. As shown in **Table 1** at **Appendix 2** and reflected above in **Figure 1**, 14 infants were placed for local adoption, where the final adoption orders were made in 2016-17. This figure does not include the one ‘known’ child adoption that occurred in 2016-17. **Figure 5** below shows that of the 14 unknown local adoptions in 2016-17, nine children were aged between 0-12 months, three were between 1-2 years and two children between 2-3 years of age.

<sup>37</sup> Adoption Act 1984 s 10(1)(a).

<sup>38</sup> Adoption Act 1984 s 4(1) (definition of “child”) and s 10(1)(a)

**Figure 5 – Age groups for 2016-17 local unknown adoptions in Victoria**



### **Additional needs adoption**

Section 105 of the Act provides that the Secretary may, out of moneys available for that purpose, make grants or provide other financial or other assistance on such terms and conditions as the Secretary determines to a person or persons with whom a child of a prescribed class has been placed for the purposes of adoption or to an adoptive parent, or adoptive parents, of a child of a prescribed class.

The Act requires regulations to define the prescribed class. Reregulation 48 of the Adoption Regulations 2008 provides that for the purposes of section 105 of the Act, the prescribed classes of children are—

- (c) children with a physical, sensory, intellectual or emotional disability;
- (d) children of a family group who have been adopted by the same adoptive parent or parents, or placed with the same person or persons for the purposes of adoption;
- (e) children who the Secretary considers have unusual or difficult circumstances.

Arrangements for the adoption of children of a prescribed class or classes are made through the 'additional needs local adoption' program (formerly called 'special needs local adoption'). The DHHS care allowance policy establishes the eligibility, levels of financial support and processes for the provision of payments to contribute to meeting costs in caring for children placed through the department's local adoption pre-adoption phase and additional needs local adoption program.

Prospective adoptive parents are expected to demonstrate additional competencies to care for children with additional needs, as well as demonstrate a clear understanding of the complexities they may face should they adoption a child or children with additional needs.

### **Known child adoption**

The Adoptions Australia 2016–17 report defines 'known child adoption' as: 'adoptions of children born or permanently residing in Australia before the adoption, who have a pre-existing relationship with the adoptive parent(s), and are generally not able to be adopted by anyone other than the adoptive parent(s). Known child adoptions include adoptions by step-parents, other relatives and carers.'<sup>39</sup>

<sup>39</sup> Australian Institute of Health and Welfare, Adoptions Australia 2016–17, Child Welfare Series Number 67 (2017) 4.

Adoption is not the preferred court order to provide permanency for children of step-parents and other relatives. When considering adoption of a child by step-parents or other relatives the court must not make an order for the adoption unless the court is satisfied that the making of an order in relation to the guardianship or custody of the child under the *Family Law Act 1975* of the Commonwealth as amended and in force for the time being in relation to the child would not make adequate provision for the welfare and interests of the child.<sup>40</sup>

### **Roles within the local adoption program**

The local adoption program structure supports the program's capacity to fulfil the roles listed below.

- screen and provide support to people wanting to make an application for approval as a prospective adoptive parent
- provide training to applicants, potential applicants and adoptive parents
- undertake assessments and re-assessments of applicants and complete the reports for the court to consider in the determination of an adoption order
- liaise between adoption and permanent care teams about current applicants to achieve suitable placements for children awaiting adoption
- undertake the supervision of pre-adoptive placements prior to the granting of an adoption order
- support applications for adoption through the Victorian County Court; and
- provide post placement supervision and post adoption support, including adoption information services

### **Incidence of Intercountry adoption**

Intercountry Adoption Victoria (IAV) delivered statewide by DHHS, is responsible for assessing the families that are interested in providing a permanent, legal family for children who require adoption from an approved overseas country. IAV arranges adoptions of children from overseas by adoptive parents in Australia. Currently the cost to run the program annually is approximately 2.82 million dollars (this includes the provision of information services through the Family Information Networks and Discovery (FIND) program). IAV works in partnership with the Commonwealth Attorney General's Department to support overseas adoption programs. This is Australia's commitment to other nations who are developing their services to children. All the overseas programs have been found to meet legal and ethical standards and are generally part of a broader reform strategy..

The role of IAV is to ensure that Victorians applying to adopt children through the program:

- meet the requirements for adoption
- have received the appropriate training and information; and
- they receive post adoption support.

IAV aims to educate, assess and approve appropriate and suitable families for adoptive placement of vulnerable and traumatised children from overseas countries. These children will have been abandoned, orphaned or relinquished and all opportunities to place them in family care in their country of origin will have been exhausted.

IAV considers itself a resource for the countries where children are deemed to require international adoption. This is a complex program, and shares with the local adoption and permanent care programs the need to consider the sensitive issues of relinquishment, applicant suitability, family formation and the development of the child's identity. In addition, there are further complexities of race and culture and the working relationships with overseas countries, for example more complex support may be required for an

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<sup>40</sup> Adoption Act 1984 s 11(6)(a) and s 12(a)

adoptive family to support the identity of the child and any contact with country and culture needs. It is also important to note that some countries/cultures have additional considerations such as their assessments being less reliable. Frequently, overseas countries will underestimate the severity of health issues or the impact of trauma.

The same complexities of race and culture are also prominent in local adoption, but likely to be more frequent or pronounced for intercountry adoption given the child will always be from another country or culture.

A particular issue in relation to intercountry adoption is to ensure that the children in question are legitimately available for adoption. Historical experience has demonstrated that, in some cases, children have been abducted and sold to adoptive parents. A 1994 inquiry by the New South Wales Law Reform Commission found that some South American and Asian countries that had high rates of legitimate intercountry adoption also experienced high rates of child abduction and sale. Contributing factors were identified as: '...poverty, ineffective legislation and bureaucracy in donor countries, [together] with money and desperation for children in receiving countries.'<sup>41</sup>

Given the nature of this problem, data on the extent of child abduction and sale are, unsurprisingly, largely absent. A vibrant international network for intercountry adoption is a human rights imperative because of its potential to provide homeless and institutionalised children a greater opportunity to form a new family. Child trafficking that results from ineffective regulation of the placement process in intercountry adoptions violates the human rights of children.<sup>42</sup>

However, widespread international concern over the dangers to child welfare posed by intercountry adoption has arisen over time and led to the development of the Hague Convention<sup>43</sup>, which was concluded at the Hague in May 1993 and entered into force on 1 May 1995. Australia ratified the convention on 1 December 1998. Many intercountry adoptions now take place within the framework established by the convention. That said, some bilateral arrangements or agreements for intercountry adoption continue to exist outside of the Convention. These bilateral arrangements and agreements govern the adoption by Australians of children from countries that have not yet ratified the convention. Australia's status as a signatory to the Hague Convention effectively requires that all regulation made in relation to overseas adoptions must be consistent with the provisions of that convention.

## Intercountry adoption trends

As shown in **Figure 6** below, of the eight children adopted through the intercountry adoption program in 2016-17, one was age between 2-3 years, two were aged between 3-4 years, one child was aged between 4-5 years, two children were aged between 6-7 years, one child was aged between 7-8 years and one child was aged between 11-12 years.

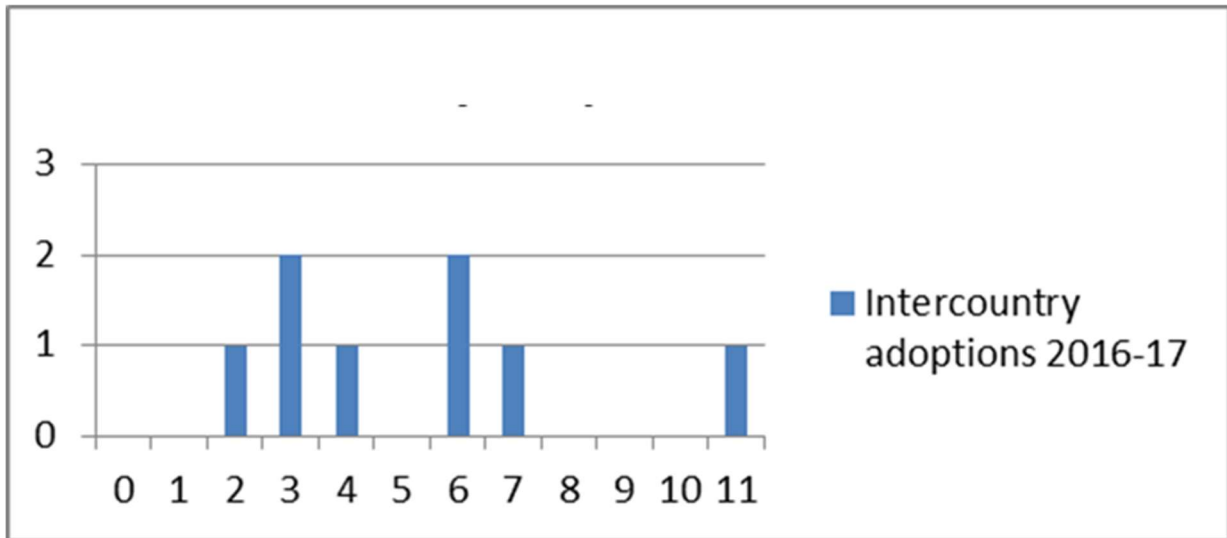
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41 New South Wales Law Reform Commission (1994): Review of the Adoption of Children Act 1965. Discussion paper No. 34. This is available at: <https://www.findandconnect.gov.au/ref/nsw/bib/NP0000195.htm>

42 Capital University Law Review, 34 Cap. U. L. Rev. 339 (2005), p.355.

43 The full text of the Hague Convention on Intercountry Adoption is available at [HCCH](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=69)  
<[http://www.hcch.net/index\\_en.php?act=conventions.pdf&cid=69](http://www.hcch.net/index_en.php?act=conventions.pdf&cid=69)>

**Figure 6 – Age groups for 2016-17 intercountry adoptions in Victoria**



Children on average are five years of age. According to the Australian Institute of Health and Welfare 2016-2017 (p. 45-46), the percentage of infants with a finalised adoption from overseas has substantially declined across Australia. In turn, the relative proportion of adoptees aged 5–9 has increased. In 2006–07, this age group comprised 8 per cent of all intercountry adoptions. This percentage generally increased to a high of 33 per cent in 2014–15, before pulling back to 20 per cent in 2016–17. The proportions of adoptees aged 1–4 and 10 and over have also increased in recent years since 2006–07 from 41 per cent of intercountry adoptions to 9 per cent in 2016–17. In Victoria there has been a similar concentrating of adoptions of children who are older than one but younger than nine.

Year	Number of adoptions	Average of age at adoption
2012-2013	24	5.85
2013-2014	22	4.46
2014-2015	9	4.96
2015-2016	10	4.00
2016-2017	8	6.63
<b>Total</b>	<b>73</b>	<b>5.15</b>

Year	<1	1-4	5-9	10+	Total
2012-2013		13	9	2	24
2013-2014	1	10	11		22
2014-2015		4	5		9
2015-2016		7	3		10
2016-2017		3	4	1	8
<b>Total</b>	<b>1</b>	<b>37</b>	<b>32</b>	<b>3</b>	<b>73</b>



## Service delivery of intercountry adoption

**Figure 6** above shows the change over time in the trends of age of adopted child through the intercountry program between 2007-08 and 2016-17. Having remained relatively stable in Victoria throughout the 1990s, the number of children adopted from overseas increased significantly up until the early 2000s, more than doubling from 60 in 2000-01 to 132 in 2004-05. By 2009-10, however, this number decreased by more than half to 54, and in a further five years, by 2015-16 that number again reduced by more than three quarters to 9. This data shows a substantial declining trend in the total number of intercountry adoption orders, with the average number per year being 14.2 in last five years, just over one quarter of the average of 52 recorded in the preceding five years between 2007-08 to 2011-12.

The decrease in the number of children placed from overseas since 2004-05 has coincided with the movement of responsibility for the management of overseas programs from the states and territories to the Commonwealth. Between 2004 and 2014, no new programs opened. Existing programs such as those for adoptions from Korea and China developed within country capacity for healthy infants and moved to a focus on children with special needs. After 2014 five new programs have opened but none have led to the adoption of any children into Australia. It is expected that the numbers of children adopted in Victoria, and Australia, from overseas will plateau over the next several years. As the data in **Table 1 of Appendix 2** indicates, the majority of adoptions made in Victoria currently relate to local children.

## Adoption Information Services for local and intercountry adoption

The Act recognises the importance of providing people affected by adoption with information about that adoption. Section 102 of the Act requires all approved adoption agencies to provide an Adoption Information Service. People who are, or who have been, parties to an adoption may apply for information relevant to that adoption. Adults who have been adopted may apply to an adoption information service to obtain their records including their original birth certificate and information, where available, about the circumstances of their adoption.

Under section 90 and Division 2 of the Act, the approved adoption agency is the relevant authority to receive an application to provide information in relation to an adoption arranged by that agency. For the purpose of providing adoption information, people affected by adoption include the adopted person, natural parents, other natural relatives and the children of adopted people. Section 4 of the Act defines relative, in relation to a child, to mean a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of the whole blood or half-blood or by affinity, and notwithstanding that the relationship depends upon the adoption of any person; does not define relatives. In practice, adoptees and natural parents receive the adoption record while other people receive less information.

In accordance with section 103 of the Act, people who are entitled to apply for information under the Adoption Act may ask for certain details to be recorded in an Adoption Information Register maintained by each approved adoption agency. Under Section 103(3)(a) of the Act, a person may, in writing, request the following information is entered onto the register:

- Name
- Contact details; and
- Preferences about exchanging information

This means the adopted person, parents and other parties are able to record their wishes regarding contact on the Adoption Information Register. As all contact is mediated by agencies, efforts are made to ensure an adopted person's wishes are known and honoured.

The Family Information Networks and Discovery (FIND) team sits in the South Division of the DHHS and provides the DHHSs Adoption Information Service on behalf of the four DHHS adoption and permanent care teams. The external approved adoption agencies also are required, under the Act and as part of

their approval or renewal under the current and proposed regulations, to provide Adoption Information Services.

FIND deals with approximately 90 per cent of all applications statewide. For 2016-17, FIND was resourced for approximately ten staff and is funded just under one million dollars to provide the FIND service. In 2016-2017 there were 742 applications made to FIND, all of whom received counselling and document preparation and release, see **Table 9 of Appendix 2**. The remaining 83 applications made to external approved adoption agencies. These numbers represent a consistent trend over a ten year period in Victoria, in which the numbers of applications to FIND have remained relatively constant.

The following table sets out the number of applications for information made by adults in 2016-17, by type of application and by person who lodged application:

<b>Person who lodged the application</b>	<b>Number of identifying information applications</b>	<b>Number of non-identifying information applications</b>
Adopted person	492	-
Adoptive mother	27	2
Adoptive father	23	2
Mother/ birth mother /natural mother	50	-
Father/ birth father /natural father	16	2
Other birth relative(s)	-	117
Other adoptive relative(s)	-	1
Child of adopted person	90	-
Unknown	3	-
<b>Total</b>	<b>701</b>	<b>124</b>

The DHHS receives on average three applications per year to discharge an adoption. Applications are made directly to the County Court but the DHHS is required to provide a report to the court in order that the discharge be granted. This report provides recommendations to the court as to whether the relationship has irretrievably broken down, whether the adoption was arranged appropriately and whether it is in the welfare and interests of the adopted person to discharge the adoption.

## 2. Identification of the problem

This chapter describes the risks or problems that would exist for children and families involved in adoption in the absence of regulation. The proposed regulations are intended to replace the current regulations, which are due to sunset on 25 February 2019. Therefore this Regulatory Impact Statement (RIS) addresses and analyses the situation that would exist in the absence of the proposed regulations, referred to as the 'base case' The base case includes the continued operation of the Act.

As a threshold issue, in addition to the wide-ranging regulation making power conferred by section 130 of the Act, numerous other references in the Act require certain matters to be set out in regulation in order to enable the provisions of the Act to function effectively.

The remaining parts of this chapter describe the key risks the proposed regulations are designed to address. The parties involved in adoption and the lifelong impacts

There is never only one party involved in an adoption. Instead, in addition to the child, the natural (birth) mother and father (whether or not he is known and named during the consent process), the person or couple who adopt the child, the adoption agency and approved counsellors, the courts and Registry of Births Deaths and Marriages are all involved. In addition to this parties that are not directly involved in the arrangement of the adoption are also impacted, such as other family members like siblings, other relatives and extended family.

Adoption has lifelong implications for the child, parents, adoptive parents and other family members. Post-adoption, over time other parties may become interested parties in the adoption. The Act contemplates this and allows adoption information to be provided to other people, such as children of the adopted person. Adoptions therefore inherently involve many parties with different interests.

A child has the right to be raised in a safe and nurturing environment, and have the best chance possible to reach social and emotional independence. At the same time, parents placing their child for adoption should feel confident that the adoptive parents will respect their wishes, allow the child to remain connected to their identity and culture, and be equipped to parent the child to social and emotional independence. Adoption practice that cannot provide these safeguards creates both risks to the child and to the parent placing the child for adoption.

### Risks associated with adoption

The current regulations mitigate a number of risks and ensure that the welfare and interests of the child are central to all decision making and associated procedures and practices.

The base case would render the Act less effective in an operational sense, because there would be no regulated means to achieve, among other things, the following:

- prescribed practice and procedure in or in connection with consents to adoption under the Act;
- prescribed forms to be used for the purposes of the Act;
- requirements to be observed and facilities to be provided in relation to the making of arrangements with a view to the adoption of children;
- qualifications and experience of persons engaged in making arrangements with a view to the adoption of children and standards and procedures to be observed in providing any service to the public in relation thereto;
- factors to be considered in the placement of children for the purposes of adoption under this Act;
- the keeping of registers by the Secretary or the principal officer of an approved agency of persons approved by the Secretary or principal officer as fit and proper persons to adopt children;
- all matters that are necessary or convenient for giving effect to the Hague Convention, including—

- criteria for the accreditation of accredited bodies;
- a code of conduct for an accredited body and its staff members;
- penalties, not exceeding 5 penalty units, for offences against the regulations.

## Risks for children

Under the base case, the safeguards that are put in place by regulations would cease to exist, thus exposing vulnerable children to the risk of harm from potential:

- placement in unsafe, unsuitable and/or unstable family environments; and
- trafficking and sale from overseas when placed with an adoptive family in Victoria.

The Act, and the proposed regulations, are fundamentally concerned with safeguarding the welfare of children. Section 9 of the Act states:

*In the administration of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.*

Section 130 of the Act enables regulations to be made for all matters that are necessary or convenient for giving effect to the Hague Convention.

The Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention (the Convention) is a multilateral treaty developed by the Hague Conference on Private International Law that provides an expeditious method to return a child internationally abducted by a parent from one member country to another.

The Hague Convention is a multilateral treaty in force between Australia and a number of other countries. It provides a lawful procedure for seeking the return of abducted children to their home country. It also provides assistance to parents to obtain contact or access to children overseas. The regulations assist with compliance with the Convention, which is the governing statute relating to international child abduction.

In its report, Review of the Adoption Act 1984 (the report), the Victorian Law Reform Commission (the Commission) made 88 recommendations. Relevant to the review's findings, recommendations were made around implementation of adoption plans, greater emphasis on the rights of the child, and expanding the information to be provided by counsellors to parents considering adoption for their child.

A number of risks were identified in the report which suggest that more can be done to provide better support in the interests of the child. The Commission received comments from stakeholders in the course of preparing its report on the review of the Act, which resulted in the Commission concluding that:

- the best way to provide for successful contact and information exchange is for a written adoption plan to be developed for each adoption placement. An adoption plan can provide for contact and information exchange with the family of origin and significant others<sup>44</sup>
- there is a risk to the child that unregulated adoption practice will provide insufficient protections to ensure the maintenance of cultural identity for Aboriginal and Torres Strait Islander children<sup>45</sup>
- greater efforts need to be made to identify and contact the father of the child to obtain his consent to an adoption<sup>46</sup>; and
- the level of information provided as part of the counselling and consent process is inadequate.<sup>47</sup>

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<sup>44</sup> Review of the Adoption Act 1984, p. 67

<sup>45</sup> Review of the Adoption Act 1984, p. 67. This is available at the following website:  
[https://www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Adoption\\_Report\\_forweb.pdf](https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Adoption_Report_forweb.pdf)

<sup>46</sup> Review of the Adoption Act 1984, p.127

<sup>47</sup> Review of the Adoption Act 1984, p.142

The Commission concluded that the best way to provide for successful contact and information exchange is for a written adoption plan to be developed for each adoption placement. An adoption plan can provide for contact and information exchange with the family of origin and significant others. These recommendations recognise the long-term rights and interests of the child in having knowledge of their origins, including the relevance of genetic and medical information and importance of this knowledge for the development of the child's identity.

The right to know genetic heritage, no matter when a person was born, has been recognised through amendments made to the *Assisted Reproductive Treatment Act 2008* that allows all donor-conceived people will have the same rights to access donor information regardless of when their gametes were donated.

## Risks for natural parents

Regulating the manner in which consent to adoption is provided, counselled and recorded, as well as setting qualifications for approval of adoption agencies and prospective adoptive parents provides appropriate safeguards to control the arrangement of adoption practice.

Relevant to the risks faced by parents, the Commission heard that currently there is:

- an inadequate level of information to be provided as part of the counselling and consent process;<sup>48</sup>
- the level of effort to be made to identify and contact the father of the child to obtain his consent to an adoption is inappropriate;<sup>49</sup>
- insufficient protections to ensure the maintenance of cultural identity for Aboriginal and Torres Strait Islander children;<sup>50</sup> and
- procedures for determining applicant suitability, particularly in relation to the development of an adoption plan is inadequate.<sup>51</sup>

To mitigate the risks to parents the level of information provided as part of the counselling and consent process needs to be adequate to ensure consent is informed and adequate information is recorded to promote the best interests of the child and ensure that parents, particularly fathers, have an opportunity to consider whether they wish to raise their child. The Victorian history of forced adoptions and the Stolen Generations demands that every possible effort be made to provide safeguards in the consent process.

There are particular risks to fathers and it is important to mitigate the risks that a father may not be given the right to decide whether he is willing or able to take care of his child. The Commission also received feedback from stakeholders that it is in best interests of the child to know their identity and more could be done to safeguard a fathers right to take care of his child.<sup>52</sup>

There is also a risk that should there be inadequate written information provided by an approved counsellor, parents will not know what financial or other support may be available to them (whether or not the child is placed for adoption) and what different arrangements that may be made for the care of the child. If not adequately counselled, parents may not also understand the possible psychological effects of adoption for both themselves and their child, and should they decide to proceed with the adoption, the rights and responsibilities of parties to adoption.

To protect the interest of parents and to support a connection for the child adequate planning should occur before an adoption is finalised to establish early on what contact and information exchange with the family of origin and significant others will take place.

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48 Review of the Adoption Act 1984, p.152

49 Review of the Adoption Act 1984, p.152

50 Review of the Adoption Act 1984, p.142

51 Review of the Adoption Act 1984, p.127

52 Review of the Adoption Act 1984, p .56

## Risks for prospective adoptive parents

DHHS has heard that the eligibility criteria for prospective adoptive parents to apply for approval could be better articulated to improve transparency and process. Without providing a clear assessment framework, there is a risk that transparency of process will be lost, and that applicants may not understand whether or not they are likely to meet the requirements set out in the Act and regulations. As explained in **Chapter 1**, the time and effort required for applicants to undertake the application process is significant. Although the current regulations prescribe the criteria for applicant suitability, DHHS has heard that there are other risks to prospective adoptive parents in the current regulations, such as they:

- do not prescribe adequate procedures for determining applicant suitability, particularly in relation to the development of an adoption plan;<sup>53</sup> and
- do not consistently recognise the ability of single people to adopt children

The rectification of these shortcomings will ensure that the objectives of the Act and the proposed regulations are achieved. The above issues have been discussed with the adoption and permanent care teams and other stakeholders during an initial consultation. Where considered to be the best option, steps have been taken to mitigate these risks in the proposed regulations. Also further detail around the measures taken to acquit against a number of the Commission's recommendations are addressed in **Chapter 5** below, which discusses direct regulation in further detail and considers the specific matters to prescribed in the proposed regulations.

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<sup>53</sup> *Review of the Adoption Act 1984*, p.142

### 3. Objectives of the proposed regulations

The primary objective of the legislation is that the welfare and interests of children placed for adoption are met. The proposed regulations seek to achieve this and avoid harms that might occur if adoption practice were to be unregulated.

The proposed regulations set out to achieve the following hierarchy of objectives:

- to protect the rights and wellbeing of adoptive children;
- to protect the rights and wellbeing of natural parents;
- to protect the rights and wellbeing of adoptive parents; and
- to minimise the administrative burden in achieving the other three objectives.

#### For adopted children and adult adoptees:

- To protect the rights and wellbeing of the child. Ensuring that proper arrangements are made for a child awaiting adoption. Providing consistent terminology around Child Care Agreements and the Secretary's or principal officer's guardianship of children once a parent consents to the adoption of their child.
- To ensure the care and protection of children who are to be adopted by Victorian prospective adoptive parents applicants.
- To ensure proper oversight of intercountry adoption in Victoria and give effect to the Hague Convention.
- To ensure children and adult adoptees have as much information as possible about their genetic inheritance and culture, including a right of access to information.
- If the child is an Aboriginal child, maintaining their Aboriginal identity and connection to culture.
- Recognise the importance of providing people affected by adoption with information about that adoption and clarify processes for applying for adoption information.
- Providing greater clarity about access to original birth certificates under the *Births, Deaths and Marriages Registration Act 1996* (BDMR Act).

#### For parents:

- To protect the rights and wellbeing of parents by setting out the written information that should be provided to a parent considering placing their child for adoption.
- Putting safeguards in place to ensure that parents signing consents to adoption understand the effect of an adoption order, the procedures for revoking consent and the procedure for extending the period for revoking consent.
- Fully inform parents requiring approved counsellors to provide written information to ensure parents understand the implications of proceeding with an adoption and have information around other care options and support available to enable them to decide whether they might be able to care for their child themselves.
- Putting safeguards in place to never repeat past forced adoption practices by ensuring that persons signing consents to adoption understand the effect of an adoption order, the procedures for revoking consent and the procedure for extending the period for revoking consent.
- To require prospective adoptive parent(s) have a suitable appreciation of the importance of participation in forming an adoption plan.
- To ensure all efforts are made to provide adopted child with information on their father, and or to protect the rights of a father by strengthening efforts to identify a father and obtain his consent.

- Placing adoption planning at the forefront of an adoption, to ensure that all parties to an adoption consider and document any agreements to contact and information exchange, and explore options for cultural planning before an order is made.
- Ensure the parent is made fully aware of their rights to information, providing greater clarity about access to original birth certificates under the BDMR Act, and that an application is subject to the Registrar's discretion.

### **For prospective and adoptive parents:**

- Make it clear for prospective and adoptive parents, the framework they will be assessed against to measure their ability to bring up an adopted child, through to adulthood, in a positive, stable, family environment.
- Improve participation of applicants in an adoption plan, to assist in determining the applicants' capacity to support contact and exchange information with a child's birth parent and family.
- Make clear the requirements for approval of a single person to adopt a child, to dispel confusion that currently exists in this area.
- Promoting fairness and equality by making it clear that singles and gender diverse persons may adopt children.

### **For the reduction of administrative burden:**

- Make the administration of the Act more user friendly and reduce the current administrative burden imposed by the current regulations, by updating the forms and structure of the regulations to
- To update current regulations that are outdated but necessary to be remade
- Improve readability and usability of the regulations, by consolidating regulations that are necessary and repetitive, and restructuring the regulations so that the structure more closely aligns with the Act
- To modernise the regulations by updating language in the regulations, forms and schedules
- To ensure the regulations are within the power of section 130 of the *Adoption Act 1984*
- To prescribe the requirements for application for approval as an approved adoption agency and renewal requirements
- To prescribe the qualification of a principal officer of an approved adoption agency
- To prescribe the requirements for approved counsellors



## 4. Options

### 4.1 Non-regulatory alternatives

#### No regulation

In addition to the wide-ranging regulation making power conferred by section 130 of the Act, numerous other references in the text of the Act require certain matters to be set out in regulation in order to enable the provisions of the Act to function effectively. As noted above, if the 'base case' where there was no adoption regulation whatsoever existed, but the operation of the Act continued, there would be no way of giving practical effect to the operative provisions of the Act.

Apart from making the Act more difficult to navigate in the absence of legislation, this option is not preferred because the safeguards that are put in place by the proposed regulations would cease to exist, thus exposing vulnerable children to the risk of harm from:

- the placement of children in unsafe, unsuitable and/or unstable family environments; and
- the trafficking and sale of children within Victoria and from overseas when placed with an adoptive family in Victoria.

#### Self-regulation/co-regulation

Self-regulation would require self-governing of the operations of adoption agencies and could be developed by an association of such agencies, where members agree to abide by agreed standards and practices.

Co-regulation is also another alternative arrangement through which the adoption program could share regulatory responsibilities.

Self-regulation or co-regulation approaches are not considered to be feasible because, as already highlighted, the Act requires regulation and these approaches are unlikely to adequately achieve the stated objectives of the Act for the reasons set out below:

Self-regulation or co-regulation may be more likely to result in instances of non-compliance. This is because self-regulatory arrangements do not allow for effective sanctions to be imposed in the case of non-compliance. Self-regulatory arrangements are more suitable as a policy option in circumstances in which the consequences of non-compliance are of low impact.

As adoption services are delivered by both government and non-government approved adoption agencies, key practice standards and procedures need to be enforceable, consistent and well documented to promote the best interests of the child and promote best practice.

Because the Act requires regulation and these approaches would require amendment to the Act. Self-regulatory or co-regulatory approaches to achieving the identified regulatory objectives is not feasible and is not considered further.

### 4.2 Direct regulation – preferred option

Direct regulation is required to give effect to key components of the Act, including:

- factors to be considered in the placement of children for the purpose of adoption;
- requirements, practices, procedures to be followed in organising adoptions;
- the keeping of registers of approved agencies and persons;
- qualifications and experience of persons engaged in organising adoptions
- specifying forms for use in organising adoptions; and

- the making of fees.

Regulations concerning these matters are necessary to give effect to the Act, especially registers, requirements, practices, procedures and forms. Together, these set out a consistent set of rules and identify the parties allowed to adopt and subject to these rules. Furthermore, regulation is necessary to give effect to the intention of the Act that the welfare and interests of the child are the paramount consideration. The regulations do this by setting out which factors are to be considered in placing children for adoption and by setting out the standards of qualifications and experience persons engaged in making adoption must have.

Regulation is the only practicable means of achieving the purposes of the Act and ensuring the welfare of the child, and the other objectives noted above in **Chapter 3**. This is because other non-regulatory or quasi-regulatory tools would not be practicable and would not have legislative force when Courts make orders regarding adoption. Furthermore, the matters must be set out in regulation to be enforceable and have associated penalties. Therefore, prescribing matters in direct regulation is the only practicable means of achieving the purpose of the Act and mitigating the potential risks of adoption to an acceptable level, due the legislative force and consistency regulation provides.

**Chapter 5** below discusses direct regulation in further detail and considers the specific matters to be prescribed in the proposed regulations.

## 5. Analysis of regulatory options

Following consideration of the options it is clear that the most feasible option is for regulations to be made. The current regulations will sunset in February 2019 as a result of the operation of the *Subordinate Legislation Act 1994*.

DHHS consulted with the adoption and permanent care teams, as well as other government agencies concerned with adoption practice, to assess the usefulness and currency of the current regulations, the forms contained within the numerous Schedules and any practice issues experienced with the Regulations or incompatibility with the Act.

This chapter considers the proposed changes to key parts of the regulations to improve administration of the Act and demonstrates that the objectives in Chapter 3 are better served by the proposed regulations. In summary the key parts considered are:

- requiring additional information to be provided by counsellors
- increasing efforts to identify and contact the natural father
- maintaining the cultural identity of Aboriginal and Torres Strait Islander children
- expressly requiring that adoption plans be put in place
- clarity for single applicants

These are described and analysed in section 5.1 below.

The proposed regulations also make a number of procedural, mechanical or otherwise low-impact changes. These are briefly described in section 5.2 below, but their impacts are not analysed as part of this RIS.

Where the current regulations are mechanical or do not have a significant impact, and are largely working well, they are proposed to continue in their current form and are also not analysed further.

### 5.1. Key proposed changes

The most significant proposed changes to the regulations improve the Act's administration and deliver on the objectives in Chapter 3 as described below.

#### **(a) Requiring additional information to be provided by counsellors**

The current regulations require counsellors to provide a parent considering giving consent for their child to be adopted with certain information, including:

- the procedures and relevant provisions applying to the giving of consent
- the procedures and relevant provisions relating to extending the period for revoking consent and the process for revoking consent within that period;
- the procedures and relevant provisions that apply once consent may no longer be revoked but before an adoption order is made;
- support (financial and otherwise) that may be available to the parent; and
- information about different arrangements that may be made for the child.

Some stakeholders have commented that this is inadequate because parents may not understand the psychological impact for both them and their child due to the possible lifelong effects and trauma associated with adoption.<sup>54</sup> Although the current regulations require a person to be provided information

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<sup>54</sup> *Review of the Adoption Act 1984*, pp 152-153.

in writing in the prescribed form about financial and other support, rights of the parties to the adoption and the effect of adoption, the Commission recommended that more information be provided, including (as part of its recommendation number 35) information about:

- possible short and long-term psychological effects for the parent and child; and
- the rights and responsibilities of the parties to an adoption., including those relating to adoption plans

The proposed regulations add the recommended information.

DHHS sought feedback from the adoption and permanent care teams about the likely impact of this change. They noted the impact is likely to be minimal because this information is already provided by counsellors.as part of good practice.

Although the additional information required under the proposed regulations is likely to be minimal, DHHS considers the additional certainty of requiring these items under direct regulation will improve protections of the rights of adoptive children and natural parents. There is no significant cost to government or the parties to an adoption associated with the proposed change.

#### **(b) Increasing efforts to identify and contact the natural father**

The current Act does not oblige anyone to identify the father. The proposed amendments include greater emphasis on collecting any relevant information around the possible father to support the rights of their child in knowing their heritage. Currently the Act contains obligations to contact a man reasonably believed to be the father of the child.

The Secretary or principal officer of the approved agency arranging the adoption must contact a man they believe on reasonable grounds may be the father. This must happen within two business days of the mother giving her consent to the adoption.

The obligation to contact the man believed to be the father only applies if his name or address is known, this step alone is considered inadequate to safeguard the rights of the child. In order to increase efforts to be required to be taken to identify the father legislative change would be required.

The Commission's report recommended that the Adoption Act should require that, where the father has not been identified, the Secretary must take reasonable steps, as specified in the Regulations, to establish the identity of the father because to do so is in the welfare and interest of an adopted child in discovering their identity and learning about their history. The Regulations should specify that:

- (a) the mother should receive counselling that encourages her to disclose as much information as possible to give to the child
- (b) if the mother is unwilling or unable to disclose details identifying the father, the certificate of compliance (currently provided for in regulation 26) should include a statement specifying that the counsellor gave the mother information relating to the following matters and the dates on which they were discussed:
  - (i) the importance to the child of knowing that both parents have had the opportunity to participate in planning the adoptive placement
  - (ii) the long-term rights and interests of the child in having knowledge of their origins, including the relevance of genetic and medical information and importance of this knowledge for the development of the child's identity

- (iii) the importance of the child's future rights as separate from the mother's own immediate needs and rights.<sup>55</sup>

The proposed regulations in part meet these requirements (noting that in order to meet the full objective legislative change is required). Part of the information provided to a person proposing to give consent to the adoption of their child requires that counsellors should provide mothers with information about:

- the importance to the child of knowing that each parent has had the opportunity to participate in the planning of the adoption placement;
- the long-term rights and interests of the child in knowing their origins, including knowledge of genetic and medical information and the importance of knowledge of this information in the development of the child's identity;
- the importance of considering the child's rights and interests as separate from the mother's interests and needs.

Although in the absence of legislative change this recommendation cannot be fully implemented, the proposed regulation recognises that there are important benefits to the adopted person of identifying and contacting their father. These include the possibility that better care options than adoption may be available through the father or his family, assistance with an adopted person's identity development, and increased access to genetic and cultural history for the adopted person.

Compared to the current regulations, the proposed regulations are expected to better support the rights of adopted children and their fathers. These changes are unlikely to carry any significant administrative cost to the parties to an adoption or to government, because they simply require that counsellors check off on this additional requirement in the course of providing mandatory counselling and in practice conversations about the father already take place.

DHHS considers the additional requirement will improve protections of the rights of adoptive children and natural parents. There is no significant cost to government or the parties to an adoption associated with the proposed change.

### **(c) Maintaining the cultural identity of Aboriginal and Torres Strait Islander children**

Special provisions in the Act enable the parents of Aboriginal and Torres Strait Islander children to give conditional consent to an adoption, providing that consent is only given subject to conditions about ongoing contact with the child.<sup>56</sup> It provides special rights to the parents of Aboriginal and Torres Strait Islander children who are considering the adoption of their child, including:

- specific counselling requirements and a version of the Aboriginal and Torres Strait Islander Child Placement Principle<sup>57</sup>
- the ability for a parent to give consent to an adoption of an Aboriginal or Torres Strait Islander child subject to conditions about contact with the child<sup>58</sup>
- requirements, in some cases, that an adopted Aboriginal or Torres Strait Islander child and their adoptive parents are notified when the child reaches the age of 12 years that the child may be entitled to certain rights and privileges.<sup>59</sup>

The current regulations contain forms to assist with compliance with these special requirements for the adoption of Aboriginal children.

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<sup>55</sup> Review of the Adoption Act 1984, p 147.

<sup>56</sup> Adoption Act 1984, s 59.

<sup>57</sup> Adoption Act 1984 (Vic) s 50.

<sup>58</sup> Adoption Act 1984 (Vic) s 37.

<sup>59</sup> Adoption Act 1984 (Vic) s 70(2), 114.

DHHS heard from stakeholders that the current regulations that concern adoption of Aboriginal children are unclear and could be improved to better reflect current practice and protect the cultural identity of Aboriginal and Torres Strait Islander children. The proposed regulations attempt to give effect to stakeholders' wishes in relation to Aboriginal and Torres Strait Islander culture.

The current regulations also require applicants to provide appropriate support to the maintenance of a child's cultural identity and religious faith (if any), however, DHHS heard from stakeholders that both parents considering adoption for their child and the adoptive parents should understand the importance of the child maintaining their Aboriginal identity.

The proposed regulations attempt to give effect to stakeholders' wishes in relation to Aboriginal and Torres Strait Islander culture. While extensive changes were outside the scope of the Act, the proposed regulations add the following requirements:

- That parents giving consent to the adoption of an Aboriginal child may request the connection of the child to their Aboriginal community be included as a condition of the adoption;
- That parents considering adoption are informed of, and prospective adoptive parents understand, the importance of the child maintaining their Aboriginal identity and maintaining a connection to their Aboriginal community.

Statutory adoption is generally considered not a culturally appropriate option for Aboriginal and Torres Strait Islander children. In practice, few adoptions of Aboriginal and Torres Strait Islander children occur each year in Australia. During the initial consultation DHHS heard that there may have been instances where adoptions have been arranged, where it was later discovered that the child was of Aboriginal heritage.

The proposed changes seek to mitigate the risk of this occurring in the future, by strengthening the requirements to consult about a child's cultural heritage prior to adoption. Any adoption must ensure that cultural connections for Aboriginal and Torres Strait Islander children are not merely preserved but also promoted and developed. The likely impact of this regulatory change is largely positive. Adoption program and practice materials are being updated and will contain a new section to be developed in consultation with Aboriginal Community Controlled Organisations.

The proposed regulations add to the required information provided by counsellors, information (if the child is an Aboriginal Child) about the importance of maintaining their Aboriginal identity. For parents considering adoption for their child, the proposed regulations specify that, among other things, a person who provides counselling under section 35(1) of the Act to a person (a relevant person) proposing to give consent to the adoption of the relevant person's child must give the relevant person written information about the following matters in a language readily understood by the relevant person:

- the procedures, and the provisions of the Act and these Regulations, applying to the giving of consent, including, if applicable, the specific procedures and provisions applying to the adoption of an Aboriginal child;
- if the child is an Aboriginal child, the importance of the child maintaining their Aboriginal identity.

The proposed regulations also contain specific provisions around the right of access to a child and for the purpose of section 37(1) of the Act, if a person referred to in that subsection seeks access to a child, it is a prescribed term that the person must in the first instance attend a conference, if any, with a representative of an Aboriginal agency.

The proposed regulations provide that a conference, as referred to above, may also be attended by the following persons:

- the natural parents of the child;
- the adoptive parents of the child;
- the child;

- any other member of the Aboriginal community to which the child belongs.

Where a parent wishes their child be adopted within the Aboriginal community, a number of statements are contained within the consent form of the proposed regulations to safeguard that parent(s) understand the implications of consenting to the adoption.. Among other things, the statements are to safeguard the parent understands the following:

- that the Secretary or the principal officer of an approved agency is required to contact the parent if the parents conditions for access cannot be met or no suitable adoptive parent or parents are available within the Aboriginal community.
- if the Secretary or the principal officer of an approved agency does contact the parent, the parent understands that they may within 28 days revoke their consent to the adoption or vary the conditions for access.
- that the Secretary or the principal officer of an approved agency is not required to contact the parent if the only suitable adoptive parents are not Aboriginal but are approved as suitable by an Aboriginal agency.
- they the parent understands that any conditions relating to access by the parent, relatives of the child or members of the Aboriginal community or the connection of the child to the Aboriginal community will be included as conditions of an adoption order as long as suitable adoptive parents can be found who accept those conditions.

It is important to note that the proposed regulations and the forms contained within do not impose these conditions rather, their purpose is to inform the parent how the Act operates and that the Act does not require the parent to be contacted.

For prospective adoptive parents, the proposed regulations also provide that in an application for approval as fit and proper person, for the purposes of section 13(3) of the Act, among other things, the prescribed requirements include that in the case of an applicant or applicants who may be considered for the adoption of an Aboriginal child, the applicant or applicants have a suitable appreciation of the importance of and a commitment to:

- maintaining and developing the child's Aboriginal identity; and
- maintaining a connection between the child and members of the Aboriginal community to which the child belongs.

These proposed amendments aim to strengthen the connection of adoptive children to their Aboriginal and Torres Strait Islander culture, and that are consistent with the Act.

DHHS considers the proposed regulations clarify the operation of the Act and will improve protections of the rights of adoptive children and natural parents. Feedback is welcomed to inform how these proposed amendments may be further developed in practice. There is no significant cost to government or the parties to an adoption associated with the proposed changes.

#### **(d) Encouraging that adoption plans be put in place**

According to the Commission's report, adoption plans are used to provide for contact and information exchange after adoption in the Australian Capital Territory, Queensland, Western Australia and New South Wales.<sup>60</sup>

There is currently no formalised requirement for an adoption plan in Victoria, and it is left to the court to make provision in an adoption order for contact and information exchange after adoption. In practice, adoption and permanent care teams discuss these matters with parents and prospective adoptive parents before proceeding with legalisation to ensure the placement is compatible and appropriately meets the parents' wishes.

The Commission recommended that a written adoption plan should be made for each child who is to be placed for adoption. Adoption plans providing for information exchange and contact would replace the current limited ability of the Court to place conditions on an adoption order.<sup>61</sup>

The proposed Regulations include that prospective adoptive parents have a suitable understanding of the importance of participating in an adoption plan, and that parents considering adoption for their child are informed about the importance of:

- adoption plans;
- contact with a child's natural parent and family; and
- Exchange of information about the child with their natural parent and family.

By encouraging that adoption plans are prepared, DHHS considers the proposed regulations clarify the operation of the Act and will improve protections of the rights of the parties to an adoption process. There is no significant cost to government or the parties to an adoption associated with the proposed change.

The Act currently enables, if the adoptive parents and the natural parent agree, arrangements about information or access to the child may be included as conditions of an adoption order. If conditions are included in an adoption order, an adoptive parent of the adopted child, a parent who gave consent to the adoption of the child, the adopted child or a person on behalf of the adopted child may later apply to the Court to vary or revoke the conditions. The proposed regulations prescribe the form to safeguard that natural parents understand their rights and those of the adoptive parent post legalisation.

DHHS considers the proposed regulations clarify the operation of the Act and will improve protections of the rights of adoptive children, natural parents and adoptive parents. There is no significant cost to government or the parties to an adoption associated with the proposed change.

#### **(e) Clarity for single applicants**

Changes were made to the Act in 2016 to promote fairness and equity for same-sex couples. The *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* enabled couples to adopt regardless of their sex or gender identity. This change meant that lesbian, gay, bisexual, trans, and/or intersex couples can adopt under the same circumstances as any other couple.

The Act provides that single people are permitted to adopt a child in special circumstances.<sup>62</sup> The limitation on single people's eligibility to adopt is not unique to Victoria, with similar provisions existing in the Northern Territory<sup>63</sup>, Tasmania<sup>64</sup>, and South Australia<sup>65</sup>, whereas the eligibility requirements for one person to adopt in New South Wales<sup>66</sup>, Queensland<sup>67</sup>, Western Australia<sup>68</sup> and the Australian Capital Territory<sup>69</sup> are similar to those that apply to couples.

Although amendment is required to the Act to amend the requirement that single applicants are permitted to adopt a child only in special circumstances, improvements can be made to the regulations to clarify the application process for single applicants. The prescribed requirements to be satisfied by 'applicants' for adoption of a child is set out in the current regulation 35, which uses the phrase 'applicants' without. The current regulations did not consistently recognise the ability of single people to adopt children. The

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61 *Review of the Adoption Act 1984*, p 70.

62 Adoption Act 1984, s 11(3).

63 Adoption of Children Act (NT) s 14(1)(b).

64 Adoption Act 1988 (Tas) s 20(4).

65 Adoption Act 1988 (SA) s 12(3)(b); Adoption Regulations 2004 (SA) reg 19(3).

66 Adoption Act 2000 (NSW) s 27.

67 Adoption Act 2009 (Qld) s 68(1).

68 Adoption Act 1994 (WA) ss 38(2), 39.

69 Adoption Act 1993 (ACT) ss 13–14.



current regulations contain multiple references to applicants (plural) rather than allowing singular application, such as applicant (single). Further the existing forms prescribed in the current regulations for a person or persons to apply to the court for a making of an adoption order, did not include language in the singular.

The proposed regulations now use the phrase 'applicant or applicants' appears, instead of 'applicants' to better reflect that single people are able to adopt children in special circumstance. The forms have also been updated in the application form and form for the memorandum of an adoption order.

DHHS considers the proposed change to the regulations clarifies the operation of the Act and will improve process for adoptive parents and the court when considering an application. There is no significant cost to government or the parties to an adoption associated with the proposed change.

## **5.2. Additional proposed changes not further analysed**

The proposed regulations also make a number of procedural, mechanical or otherwise low-impact changes. These are not analysed in detail, but a brief summary is provided below.

### **(f) Updating the list of approved overseas adoption agencies**

For overseas adoptions, the Secretary is authorised to publish a list of approved agencies.

As part of its consultation activities, the department received a suggestion that the Secretary either:

- publish a list of approved agencies for overseas adoption on the department's website, instead of listing these agencies in a schedule attached to the current regulations; or
- simply refer to the list maintained by the Commonwealth of Australia for this purpose.

However, it is neither possible to provide that the Secretary will publish on the department's website a list of approved persons and organisations for overseas adoption, nor to simply refer to the Commonwealth list. This is because sections 23 and 115 of the *Adoption Act 1984* require the relevant persons and organisations to be prescribed in regulations rather than published on the department's website as approved persons and organisations, or for the list to be maintained by the Commonwealth government.

The right of overseas governments to prohibit adoption of their children is respected. The current and proposed regulations also deal with the accreditation of bodies for Hague Convention adoptions. In practice, approved agencies that act on behalf of DHHS (i.e. domestic Victorian community service organisations) do not play a role in overseas adoptions, despite this being permitted by the Act. Instead, DHHS partners with overseas agencies who are assessed by the Commonwealth of Australia for the purpose of facilitating overseas adoptions.

These measures are intended to safeguard against the risk of child trafficking and other unconscionable practices. The proposed regulations have been updated to ensure that the list of overseas adoption agencies is accurate and up-to-date.

### **(g) Updating the application form for prospective adoptive parents**

The current regulation 36 provides for the purposes of section 13(2) of the Act, an application for approval as a fit and proper person to adopt a child must—

- (a) be in writing; and
- (b) contain the information set out in Schedule 4; and
- (c) be accompanied by a completed statement of personal details specified in Schedule 5.

It was proposed that regulation 35 be amended and for schedules 4 and 5 to be removed and the regulation provide instead that, 'An application to adopt a child is to be made in the form approved by the Secretary.' This proposal was aimed to simplify the application for applicants, as the current forms are

somewhat repetitive, allow the department to keep the form up to date, not relying on the review of the regulations every ten years when they sunset or sooner if required.

The prescribed requirements/information for the approval of applicants as fit and proper are now set out under proposed regulations, instead of current including forms in the schedules. It is proposed that further consultation occur in relation to this proposed change. This is discussed further in **Chapter 6**.

#### **(h) Removing the Child Care Agreement from the current regulations**

Division 4 of the Act addresses the care of a child awaiting adoption and the steps to be followed when authority is given to the Secretary or principal officer to exercise custody in respect of the child. The current regulations contain a form called a child care agreement. The child care agreement relates to section 45 of the Act which provides for a person having the custody or guardianship of a child to authorise the Secretary or principal officer to have care of a child awaiting adoption. The current regulations prescribe a child care agreement form for the agreement. Because an agreement for the authorisation is not required, a regulation relating to section 45 is not needed. This is because the requirements about authorisation are set out in section 45 of the Act.

#### **(i) Updating procedural, mechanical and linguistic references that are not consistent with modern legislative drafting practices**

At the time of its introduction, the current regulations represented an accurate reflection of Victorian adoption policy. However, the regulations are now over 10 years old, and in many respects out of step with modern understandings of the needs of children and contemporary law in relation to family and community. The language and structure of the current regulations are not in line with modern drafting, and they are difficult to navigate alongside the Act.

To rectify this issue, amendments have been made in the proposed regulations so that:

- the structure of the regulations more closely follows, or ‘mirrors’ the structure of the Act;
- references in the current regulations to departments and agencies that have since been renamed or changed, have been updated to reflect their current names; and
- terminology has been updated throughout the regulations so that terms are consistently and accurately used. For example:
  - the proposed regulations use the phrase ‘applicant or applicants’, instead of ‘applicants’ (which appears in regulation 35 of the current Regulations). This change is being made to better reflect that single people are now able to adopt children.

These changes to terminology and language do not represent a significant impact on the operation of the Act or the proposed regulations, because they are not operational changes.

#### **(j) Qualifications of the principal officer and deputy principal officer**

The proposed regulations expand regulation 7 of current regulations to require that, as well as the principal officer of an agency being required to hold particular qualifications, the deputy principal officer must also hold those qualifications. This change is not considered to impose a significant burden for approved adoption agencies as it is intended to reflect current practice. The proposed regulations also better clarify the qualification requirements for the principal officer of approved adoption agencies as compared to the current regulations. This change does not impose a significant burden but rather clarifies current practice.

#### **(k) Current regulations that go beyond the power of section 130 of Act**

Some of the Adoption Regulations 2008 went beyond the power of section 130 of the *Adoption Act 1984* (the Act) and are therefore being removed because they were an unauthorised use of the regulation making power.

For example, the current regulation 34 (Care of child before guardianship effective) is being removed because sub regulations (1) to (3) limit section 4 of the Act. An agreement for the authorisation is not required by the Act. Sub regulation (4) replicates the requirements of the Act. Sub regulation (5) mandates a form for the unauthorised agreement. Sub regulation (6) deals with extensions to the agreement and mandates a form. However section 45(2) of the Act already provides for extension of the period of the authorisation.

Some of the current regulations also made unauthorised sub delegations, which are now being omitted from the proposed regulations. These include:

- Sub regulation 22(2): Approval by the Registrar, in the case of paragraph (b), is an unauthorised sub delegation and has been omitted from the new regulation 15.
- Regulation 38: Approval by the Registrar, in the case of paragraph (b), is an unauthorised sub delegation and has been omitted from the new regulation 31.

**(l) Current regulations considered unnecessary and are no longer required**

Some of the current regulations are considered to be no longer required, for example:

- Sub regulation 41(2), as no fees are payable under Part VI of the Act other than the prescribed fee under section 92(4) (which is now addressed in new proposed regulation).
- No fees are payable where a person subject to past practices of forced adoption is seeking information.
- Regulation 14 proposed for removal prescribes the People's Republic of China as an overseas jurisdiction for the purposes of Part IVB of the Act until 1 January 2009. China is now a signatory to the Hague Convention, so this provision is no longer required and is being removed.
- Regulation 24 (Offence to accept fee for being present at a consent to adoption) is being removed because it is covered by section 119(1)(b) of the Act.
- Regulation 29 (Expression of wishes of a parent of an Aboriginal child at the time of giving consent) is being removed because it is subsumed into the proposed regulations 8 and 13, and the substance of the current regulation 29 is included in Form 4.

**(m) Requirements for keeping a register of approved persons**

A new regulation was requested to be inserted clarifying the requirements for keeping a register of approved persons under section 13A of the Act. It is proposed that there be a register of approved persons kept by the Secretary and that each approved agency also keep a register of approved persons. The register kept by the Secretary would be relevant to local and intercountry adoptions and those kept by approved agencies would relate only to local adoptions. There are currently different registers kept for intercountry adoptions, and infant and additional needs adoptions. It is proposed that further consultation be undertaken with stakeholders in relation to this proposed change.

**(n) Process of matching a child with an applicant or applicants**

It has been requested that a new regulation be created to guide the process of matching a child with an applicant or applicants, once an applicant or applicants have been approved for adoption and included in the adoption register. It is proposed that further consultation occur in relation to this proposed change.

**(o) Duration of an applicant's approval**

Neither the Act nor the regulations specify the duration of an applicant's approval. The practice is to consider reassessing an applicant every two years. It has been requested that the regulations specify a maximum number of years for which an applicant may be approved. Further consultation in relation to this proposed change is required.

**(p) Known child adoption**

It has been proposed that a new regulation be created to address the process of approving an applicant who seeks to adopt a child who is known to them, such as the child of a spouse or relative. Further consultation in relation to this proposed change is necessary.

**(q) Steps to contact a natural father**

It has been proposed that a new regulation clarify the steps approved agencies are required to take to contact a natural father, and specify the means of doing so without breaching a person's privacy. As the Act does not provide a power to make a regulation addressing this issue, this change cannot be made. An amendment to the Act is required to address this issue.

**(r) Guardianship orders**

It has proposed that a new regulation be made empowering the court to make a guardianship order confirming that the Secretary or principal officer of an approved agency is the guardian of a child, in accordance with section 46, until an adoption order is made in respect of the child. This change has been requested as approved adoption agencies have experienced difficulties in proving their status as guardians when carrying out necessary functions for children, such as dealing with Medicare. The court cannot be given this power in a regulation, as the Act does not permit a regulation of this kind to be made. The Act must be amended to achieve this change.

**(s) Fees**

The proposed regulations continue the fee charged under sub regulation 92(4) of the Act at its current value. The amount is set under the *Births Deaths and Marriages Registration Act 1996*.

## Summary of preferred option

The proposed regulations will make a number of changes to the current regulations as described in **Chapter 5** above, including:

- Requiring counsellors to provide parents considering adoption for their child with additional information;
- Requiring mothers considering adoption for their child to be encouraged to disclose additional information about an adopted child's father;
- Requiring the prospective adoptive parents of an Aboriginal child be counselled to appreciate the importance of maintaining that child's Aboriginal cultural identity; and
- Expressly requiring that adoption plans be put in place for all new adoptions.

## Expected impacts of the proposed regulations

The proposed regulations provide several benefits, including:

- increasing the transparency of the making of an arrangement for an adoption and the process of assessing applicants;
- prescribing forms in the regulations, which provide an administrative benefit to the court by promoting consistency in the forms that are used by parties;
- improving consistency in practice across adoption services delivered by both government and community service organisations;
- setting standards for adoption service provision, which protect the wellbeing of children and parents;
- prescribing matters to be considered in the arranging of adoptions, which ensure that adoptions are made to appropriate prospective parents.
- Ensuring the successful operation of the Act and that standards are legally enforceable.

DHHS expects that the proposed regulations will have large qualitative benefits for both children and parents by providing consistency and transparency in the adoption process as well as by prescribing standards to ensure the wellbeing of children and parents.

The 2017-18 costs for Adoption services was \$4.245 million. The estimated costs for the 2018-19 financial year are forecast to be \$4.470 million. It is expected that this cost is likely to remain the same under the proposed regulations. The proposed regulations are expected to result in negligible to no additional burden beyond that already borne by parents consenting to adoption, prospective and adoptive parents and adoption agencies through the operation of the Act. These include the process for parents to consent to adoption, the procedural requirements undertaken throughout the counselling process, and the assessment process for prospective adoptive parents. Further detail is provided in **Appendix 2**.

Some of the financial costs and administrative burdens of arranging adoptions would be incurred regardless even in the absence of the proposed regulations, as there would be costs incurred by adoption services in arranging adoptions and burdens incurred by both parents consenting to adoption and prospective parents in engaging those service providers. Although the costs and burdens incurred without the proposed regulations are difficult to estimate, DHHS expects that similar levels of effort and time would be employed in their absence and as a consequence, costs and burdens incurred would be similar to those incurred under the proposed regulations. Therefore the additional costs and burdens imposed under the proposed regulations are considered to be low.

DHHS considers that the expected qualitative benefits of ensuring the wellbeing of parents and children, as well as a fair, consistent and transparent adoption process far outweigh the expected costs the Government incurs and the burden that parents considering adoption, prospective and adoptive parents bear in complying with the regulations.

## Competition Assessment

The National Competition Principles Agreement requires that the analysis of all regulatory proposals considers whether the preferred option will restrict competition. If so, the analysis must demonstrate that the Government's objectives can only be achieved by restricting competition and that the benefits of the restriction outweigh the costs.

### Will the preferred option restrict competition?

The proposed regulations prescribe a number of matters under the Act, including specifying the prescribed requirements that enable agencies to participate in the adoption process and the information that must be collected during the process.

These may all have an impact on the ability for prospective adoption agencies to participate in the process, or for the widest-possible cohort of prospective parents to adopt a child. For example, a prospective adoptive parent or agency may reconsider participating in the process on the basis of not wanting to discuss the required information, or pay the relevant fees.

DHHS considers the proposed regulations will restrict competition.

### Is the restriction necessary to achieve the Government's objectives?

As discussed in **Chapter 4** above, non-regulatory or self-regulatory frameworks are not appropriate in this context because some matters must be prescribed in regulation for the adoption process to function properly under the Act, and because the risks to child safety and the other objectives discussed in **Chapter 3** above cannot be adequately reduced without the force of law, and consistency of practice, provided through direct regulation.

DHHS considers the proposed regulations and their competition impacts are necessary.

### **Will the benefits of the restriction outweigh the costs?**

The proposed regulations and the restrictions they make are in the interest of child safety and Government's other objectives for this reform. As discussed in **Chapter 5** above, DHHS policy teams and external stakeholders have noted the impacts of the proposed regulations are expected to be minimal.

DHHS considers that the benefits to child safety, and to the rights and welfare of children and parents, by far outweigh the administrative costs discussed in **Appendix 2** below, and the potential impacts to competition outlined above.

## 6. Implementation plan

DHHS is updating adoption policy and practice within the scope of the existing Act, and new resources will assist the adoption and permanent care teams to undertake adoption practice. The adoption and permanent care teams delivering adoption and permanent care services have specialist skills and expertise required to easily work with the proposed changes making implementation a negligible and smooth undertaking.

The proposed regulations largely reflect existing processes and practice. It is anticipated that implementation will require minimal additional effort and some of the proposed changes reflect matters considered in current practice but not required by the current regulations. For example, where a mother is considering placing her child for adoption, discussions take place between a mother and the approved counsellor about identifying the child's father if she is unwilling or unable to identify him. Although these conversations already take place in practice, the proposed regulations now require approved counsellors to record the dates on which discussions take place. The impact of this change will be minimal to implement because the details of these conversations are recorded in current practice.

All approved adoption agencies, government and non-government, are required to meet the regulatory requirements imposed by the proposed regulations. To a large extent, the risk of non-compliance is mitigated by the inclusion of prescribed forms in the proposed regulations.

In addition to the proposed regulations, adoption and permanent care teams need to comply with the Act and administer adoption practice, including in the making of applications to the court for an adoption order, in accordance with the Supreme Court (Adoption) Rules 2015, further strengthening practice compliance.

Some of the proposed changes to the regulations provide greater clarity to prospective adoptive parents on issues such as the assessment process. The proposed regulations do this by simplifying and modernising the language used in the existing regulations which will assist prospective adoptive parents to better understand the standards they are required to meet. The prescribed requirements for the approval of applicants as fit and proper are now set out under proposed regulations only, instead of also including forms in the schedules like the current regulations. DHHS will be working to develop a standard form of assessment that clearly identifies the requirements prescribed in the proposed regulations.

Where consistent with the Act, the proposed amendments to the regulations strengthen the connection of adoptive children to their Aboriginal and Torres Strait Islander culture. Feedback is welcomed to inform how these proposed amendments may be further developed in practice.

### Communication strategy

A formal briefing will be provided to the Managers/Team Leaders of the adoption and permanent care teams and Family Records and Intercountry Services outlining the proposed changes. Feedback will be invited to identify specific issues and to consider training implications.

Written communications either in the form of a fact sheet/question and answer style or a power point presentation will be developed by DHHS and distributed to the adoption and permanent care teams. This communications approach will deliver a consistent message.

The bi-monthly adoption and permanent care program and practice meeting will provide an additional platform to discuss any challenges and what these might mean in practice. It is unlikely with the current proposed changes that specific training will be required, however should it be identified in discussions with the adoption and permanent care teams and Family Records and Intercountry Services that it is required, sessions will be managed within the adoption and permanent care ongoing training program.

## Consultation

DHHS has engaged with Victoria's adoption and permanent care teams, DHHS's Family Records and Intercountry Services, the Department of Justice and Regulation (including Civil Justice Policy, Births, Deaths and Marriages, Court Services and Koori Justice), the Victorian Aboriginal Child Care Agency and the Equality Branch of the Department of Premier and Cabinet.

Comment has also been sought from the Supreme Court of Victoria and the County Court of Victoria around matters in the current regulations that impact court services.

The Victorian Aboriginal Children and Young People's Alliance have been asked to inform the proposed regulations impacting Aboriginal and Torres Strait Islander communities.

An additional form of consultation undertaken to date in connection with the remaking of the current regulations has involved providing the proposed changes to stakeholders across the government and non-government sectors, and inviting those stakeholders to give feedback on the proposed regulations at a stakeholder forum on 24 July 2018. The following stakeholders attended the forum:

- Intercountry Adoption Victoria
- Uniting Connections
- CatholicCare
- Anglicare
- Barwon South Western Region (DHHS)
- North and West Region (DHHS)
- Eastern Region (DHHS)
- Hume Region (DHHS)
- Victorian Aboriginal Child Care Agency (VACCA)

Following the forum, stakeholders were given a further opportunity to provide comments and suggestions in writing about the proposed regulations.

## Comments on the RIS

This RIS is being released for a public consultation period of 28 days, as required by the Subordinate Legislation Act 1994, opening on 19 October 2018 and closing on 16 November 2018.

## Availability of RIS

Copies of the RIS and the proposed regulations may be obtained from:

- Out of Home Care, Department of Health and Human Services by phoning (03) 9096 7819 (between 9.00 am and 5.00 pm).
- The Victorian Department of Health and Human Services [Adoption regulations regulatory impact statement page](https://dhhs.vic.gov.au/publications/adoption-regulations-regulatory-impact-statement) <<https://dhhs.vic.gov.au/publications/adoption-regulations-regulatory-impact-statement>>.

Public comments and submissions are invited on the proposed regulations and in response to information provided in the RIS. Written comments and submissions should be forwarded by no later than 5.00 pm, 16 November 2018 to:

Mary Roberts, Acting Assistant Director, Out of Home Care  
Department of Health and Human Services  
Level 10, 50 Lonsdale Street  
Melbourne, Victoria 3000

or [emailed to Mary Roberts](mailto:mary.roberts@dhhs.vic.gov.au) <[mary.roberts@dhhs.vic.gov.au](mailto:mary.roberts@dhhs.vic.gov.au)>

Please note that all comments and submissions received will be treated as public documents.



## 7. Evaluation strategy

The effectiveness of the proposed regulations in meeting the policy objective and any unintended consequences will be monitored and evaluated.

Monitoring will occur through existing, regularly occurring meetings and interaction with adoption service providers as well as through the reporting template used by adoption and permanent care teams. The reporting template will be updated to ensure it captures and complies with the new requirements. This update will occur as part of the review of the adoption policy and practice materials currently underway.

The evaluation will use the reporting template as a data source well as consultation with operational staff and stakeholders. The evaluation will assess:

- the effectiveness of implementation of the new regulations.
- the effectiveness of the new regulations in practice, including the extent to which regulations have:
  - protected the rights and wellbeing of adoptive children;
  - protected the rights and wellbeing of natural parents;
  - protected the rights and wellbeing of adoptive parents; and
  - minimised the administrative burden in achieving the other three objectives.

Taking into account privacy conditions, DHHS are considering how best to develop an opt in approach to surveying relevant parties to adoption following the implementation of the regulations. This may include, adoptive parents and parents who have placed their child for adoption. Feedback on this proposed method is sought via this consultation process.

# Appendix 1: Proposed Adoption Regulations

The Adoption Regulations Exposure Draft is available on the [Department of Health and Human Services Adoption regulations regulatory impact statement page](https://dhhs.vic.gov.au/publications/adoption-regulations-regulatory-impact-statement) <<https://dhhs.vic.gov.au/publications/adoption-regulations-regulatory-impact-statement>>.

## Appendix 2: Statistics and activity based costings

**Table 1: General Adoption Statistics – Victoria**

Financial Year	Known local child adoptions	Local Adoption Orders	Inter country Adoption Victoria (IAV) Adoption Orders	Total adoptions for financial year
2007-08	5	27	66	<b>98</b>
2008-09	5	18	48	<b>71</b>
2009-10	9	18	54	<b>81</b>
2010-11	7	23	56	<b>86</b>
2011-12	8	28	36	<b>72</b>
2012-13	4	17	23	<b>44</b>
2013-14	6	20	22	<b>48</b>
2014-15	5	24	9	<b>38</b>
2015-16	10	15	9	<b>34</b>
2016-17	1	14	8	<b>23</b>
<b>Total</b>	<b>60</b>	<b>204</b>	<b>331</b>	<b>597</b>

**Table 2: Applicant assessment – local adoption**

Applicant assessment	For 2016-17 financial year
Number of applicants invited to attend information session	1222 individuals (611 couples)
Number of applicants who attended information session	520 individuals (260 couples)
Number of applicants who attended training session	104 individuals (52 couples)
Number of Applicants <b>assessed</b> to determine suitability for approval to adopt across all local adoption and permanent care teams	102 individuals
Number of applicants <b>registered</b> as suitable to adopt on the Central Resource Exchange	68 individuals (34 couples)
Number of applicants considered for adoption of a known child	4 individuals

**Table 3: Estimated average time input by a local adoption and permanent care team per approved applicant for 2016-17 financial year – local adoption**

<b>Requirement</b>	<b>Average time local infant adoption (hrs)</b>	<b>Average step parent adoption (hrs)</b>
Initial information sessions and preparation including invitations	6	0
Education and training sessions: Training, preparation for training and preparation of training materials	16	0
Document preparation: Application paperwork, report writing, editing and revising report, panel administration, panel, minute preparation, revision and filing, reference checks, medical checks, document preparation and liaison with solicitor	78	16
Interviews: Interviews, travel, case noting and writing up	50	14
Total average hours	Up to 150	Up to 30
Estimated cost of applicant's time, based on 2017 Victorian median hourly rate of \$36.00 per hour	\$36.00 x 150 \$5,400.00	\$36.00 x 30 \$1,080.00
Total estimated cost of applicant's time for 2016/17 financial year based on number of applicants registered as suitable to adopt on the Central Resource Exchange at 30 June 2017.	68 x \$5,400.00 = \$367,200.00	1 x \$1,080.00 = \$1,080.00
Number of applicants considered for adoption of a known child	N/A	4 x \$1,080.00 = \$4,320.00

*Note: In these estimates, the time taken by adoption and permanent care teams, and approved applicants in these processes, is assumed to be equivalent or roughly equivalent.*

**Table 4: Estimated average time input by adoption and permanent care team per consent to adoption by natural parent/s for 2016-17 financial year – local adoption**

<b>Requirement</b>	<b>Average time local infant adoption</b>	<b>Average known adoption</b>
Document preparation: File notes from counselling, consent signing, summary of placement report, consent paperwork, correspondence with solicitors, attendance at court, collating quarterly reports by carers	30	7
Interviews: Counselling for minimum of three sessions, telephone contact between sessions, weekly supervised contact for duration of pre-adoption placement	32	4
Total estimated hours	Up to 62	Up to 11
Estimated cost of natural parent's time, based on 2017 Victorian median hourly rate of \$36.00 per hour	\$36.00 x 62 \$2,232.00	\$36.00 x 11 \$396.00
Total estimated cost of natural parent's time for 2016/17 financial year based on number of adoptions that took place as at 30 June 2017.	14 x \$2,232.00 = \$31,248.00	1 x \$396.00 = \$396.00.00

*Note: In these estimates, the time taken by adoption and permanent care teams, and natural parents in these processes, is assumed to be equivalent or roughly equivalent.*

**Table 5: Applicant assessment – intercountry adoption**

<b>Applicant assessment</b>	<b>For 2016-17 financial year</b>
Number of Applicants attending 1st training session	4
Number of Applicants attending 2nd training session	4
Number of Applicants assessed to determine suitability for approval to adopt	4
Number of applicants registered as suitable to adopt	13

**Table 6: Intercountry adoption figures**

<b>Intercountry</b>	<b>2016-2017</b>
Hague Adoption	7
Bilateral	1
<b>Total</b>	<b>8</b>

**Table 7: Estimated average time input per applicant for 2016-17 financial year – intercountry adoption**

<b>Requirement</b>	<b>Average time intercountry adoption (Hague)</b>	<b>Average time intercountry adoption (Non-Hague)</b>
Initial information sessions: Information session, preparation including invitations, providing duty advice to individuals	13	13
Education and training sessions: Training with multiple attendees, preparation per training session, hours providing individual follow-up to training	53	53
Document preparation: Application paperwork, liaison with overseas program, report writing, editing and revising report, reference checks, life story, parenting plan, medical checks follow up	85	85
Interviews: Interviews, travel, case noting and writing up	50	50
Post approval support: Support before placement, support preparing to travel, post placement support, supervision, report writing and correspondence with overseas country program, application to the Victorian County Court	80	95
Total estimated hours	Up to 281	Up to 296

**Table 8: Estimated average time input per file sent to IAV for 2016-17 financial year – intercountry adoption**

<b>Requirement</b>	<b>Average time intercountry adoption (Hague and Non-Hague)</b>
Document preparation: Reviewing file notes from counselling and consent paperwork, preparing child profile and placement report, correspondence with solicitors, attendance at court, collating quarterly reports by carers	39
Total estimated hours	Up to 39 hours
Estimated cost of service based on intercountry adoption team's wages for FY 2016-2017, inflated by 75% for overhead costs.	$\$70.83 \times 39$ $= \$2,762.37$
Total estimated service cost for 2016/17 financial year based on number of adoptions that took place as at 30 June 2017.	$8 \times \$2,762.37$ $= \$19,336.59$
Total estimated service cost for 2016/17 financial year	\$2,820,000.00

**Table 9: Adoption Information Service requests processed for 2016-17 - DHHS**

<b>Requirement</b>	<b>Total number of requests</b>
Counselling	742
Document preparation and release	742

**Table 10: DHHS Adoption Service costs forecast for ten year period 2016-17 – 2025-26 (millions)**

<b>Section</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-2027</b>	<b>Ongoing</b>
Inter country	\$2.82	\$2.89	\$3.097	\$2.968	\$3.043	\$3.129	\$3.219	\$3.30	\$3.38	\$3.47	\$3.55	\$3.466
Local Adoption	\$0.90	\$0.92	\$0.943	\$0.904	\$0.926	\$0.953	\$0.980	\$1.00	\$1.03	\$1.06	\$1.08	\$1.055
External Agency Costs	\$0.42	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431	\$0.431
<b>Grand Total</b>	<b>\$4.138</b>	<b>\$4.245</b>	<b>\$4.470</b>	<b>\$4.303</b>	<b>\$4.400</b>	<b>\$4.513</b>	<b>\$4.629</b>	<b>\$4.734</b>	<b>\$4.842</b>	<b>\$4.952</b>	\$5.065	<b>\$4.952</b>

*Notes:*

*The costs for the delivery of the Adoption program in Victoria have been calculated based on a resource price build.*

*All prices used are at 2018-19 and have been de-escalated for 2017-18 and 2016-17.*

*The number of DHHS internal staff that work on Adoption has been estimated based on input from subject matter experts in the adoption and permanent care teams working in the department's operational divisions.*

*A weighting was applied to estimate the number of resources that work on Adoption versus Permanent Care tasks.*

*A total number of staff undertaking Adoption tasks was then totalled based on this weighting.*

*The number of staff at each CYF or VPS level was then multiplied by the commensurate unit price (annual salary) to understand the internal cost.*

*The external costs are solely based on the departments expenditure to agencies delivering adoption services.*

*The ten year costs have been escalated at 2.5 per cent from the known prices 2022-23.*

**Tables 10.1, 10.2 and 10.3** below contain the reference material upon which the ten year figures in **Table 10** are calculated.



**Table 10.1: Adoption Service costs for ten-year period 2016-17 – 2025-26 (Current understanding of staffing allocated to work on Adoptions)**

**a) Divisional local adoption services**

<b>Roles</b>	<b>West</b>	<b>East</b>	<b>North</b>	<b>Total</b>
<b>CYF 5.2</b>	0	0.9	0	<b>0.9</b>
<b>CYF 4</b>	0.2	0.5	0.4	<b>1.1</b>
<b>CYF 3</b>	0.8	0.4	1.6	<b>2.8</b>
<b>CYF 2</b>	0	2	0	<b>2</b>
<b>VPS 3</b>	0	0	0	<b>0</b>
<b>VPS 2</b>	0	0	0	<b>0</b>
<b>Total</b>	<b>1</b>	<b>3.8</b>	<b>2</b>	<b>6.8</b>

**b) Statewide services**

<b>Roles</b>	<b>FIND</b>	<b>IAV</b>	<b>ASU</b>	<b>Total</b>
<b>CYF 5.2</b>	1	1	0	<b>2</b>
<b>CYF 4</b>	2	2	0	<b>4</b>
<b>CYF 3</b>	7	5	0	<b>12</b>
<b>CYF 2</b>	0	0	0	<b>0</b>
<b>VPS 3</b>	0	0	1	<b>1</b>
<b>VPS 2</b>	0	0	3	<b>3</b>
<b>Total</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>22</b>

Tables 10.2 and 10.3 are the salary calculations for local and intercountry adoptions, respectively.

**Table 10.2: Estimated Local Adoption Service costs for 2018-19**

<b>Role</b>	<b>Number of FTE</b>	<b>Price</b>	<b>Estimated 2018-19 cost</b>
CYF-5.2 (mid) price	0.9	\$171,136	\$154,022
CYF-4 (mid) price	1.1	\$151,716	\$166,888
CYF-3 (mid) price	2.8	\$137,464	\$384,900
CYF-2 (mid) price	2	\$118,356	\$236,711
<b>Total</b>	<b>6.8 FTE</b>	<b>N/A</b>	<b>\$942,521</b>

**Table 10.3: Estimated Intercountry Adoption Service costs for 2018-19**

<b>Role</b>	<b>Number of FTE</b>	<b>Price</b>	<b>Estimated 2018-19 Cost</b>
CYF-5.2 (mid) price	1.9	\$171,136	\$325,158
CYF-4 (mid) price	4.2	\$151,716	\$637,209
CYF-3 (mid) price	12.4	\$137,464	\$1,701,807
VPS-3.2 (mid) price	1.0	\$124,130	\$124,130
VPS-2.2 (mid) price	3.0	\$102,932	\$308,795
<b>Total</b>	<b>22.5</b>	<b>N/A</b>	<b>\$3,097,099</b>