

23/5/18

To: The National Children's Commissioner.

Submission on progression of Australia in terms of implementing the Convention on the Rights of the Child by The Adoptee Advocacy and Information Service, South Australia (AAISSA)

We wish to bring your attention to the issue of Adoption legislation in Australia.

As you would be aware, Adoption legislation varies between States and Territories. This means that depending on where a child is adopted, they are the subject – *for their entire lives*, including their adult lives and beyond death – of that particular legislation.

Some States and Territories have legislation which – while not fully implementing the United Nations Convention on the Rights of the Child – at least looks as if those drafting them have taken those Conventions into account on some level. But other States and Territories are still strengthening old legislation written prior to Australia's ratification of the UNCRC, cobbling on more and more additions, and appear to be ignoring the Conventions completely. Instead of trying to implement the Convention, they are reinforcing and increasing older powers which are now in breach of those Conventions.

No-one appears to be the watchdog on what is going on here, and yet supposedly "Open" adoptions are being promoted Australia wide. No-one is paying attention to the Draconian laws that current adoptees and the newly adopted children (subsequently adults) become subject to when they become adopted.

We will try to give a brief explanation of the main issues, with particular regard to South Australian law – although there are many more. We would be happy to provide more detail if required, but would welcome an actual examination of this by those who have the interests of children at heart.

Ideally, there should be an Inquiry and intensive investigation into the diverse Adoption laws in Australia with regard to the Rights and Discrimination issues they give rise to.

The main issues we wish to call your attention to fall under:

Clusters of Rights:

4. Civil rights and freedoms - particularly

- birth registration, name and nationality (art. 7)
- preservation of identity (art. 8)
- protection of privacy and protection of the image (art. 16)

6. Family environment and alternative care - particularly

- separation from parents (art. 9)
- family reunification (art. 10)
- children deprived of family environment (art. 20)
- adoption, national and inter-country (art. 21)
- periodic review of placement (art. 25)

Regarding the right from birth to a name, and as far as possible the right to know and be cared for his or her parents (art.7), we refer you to *Attachments 1 and 2* which are Section 27 of the South Australian Adoption Act, which has just been revised, and the Draft Guidelines that are being applied to Section 27.

There was an Adoption Act Review in South Australia beginning in 2014, with Recommendations released September 2015, and draft legislation released 2 weeks before it was rushed through Parliament in September 2016. The draft legislation contained a lot of very important changes that were not even mentioned in the Recommendations and there was no chance of public consultation.

The Draft Guidelines are 14 pages around releasing information to the adoptee.

As you will see from *Attachment 3 – Summary of Powers to Seal Birth Records by State and Territory*, some states/territories have restrictions – all of which differ, and other states/territories have none.

Firstly this would fall under:

Article 16

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*

as it is clear from the huge differences that these laws are subject to arbitrary decision-making processes.

More importantly, articles 7, 8, and 9 specify the importance of identity, and the right to “know” and be cared for by your parents. The separation of “know” and “cared for” is important here, meaning there is a right to “know” *who* your parents are.

Bearing in mind the 2013 Federal Apology for Forced Adoptions,

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law *without unlawful interference.*

2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*

the Conventions are being ignored in current laws which are being written to increase the roadblocks for people trying to know what their identity was, let alone re-establish it.

The powers to prevent an adoptee from seeing their original birth certificate vary arbitrarily by state and territory. Where they are legislated, the justifications are arbitrary also, around safety and welfare. But other legislation exists which restrains contact – where necessary – among every other citizen. The right to “know” your name and details at birth is a right enshrined in the UNCRC.

One further issue is Article 25, which is not being followed in any Adoption Legislation in any state or territory. It follows from Article 20 which states that:

Article 20

1. A child temporarily or *permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

Part 3. of Article 20 states that “... such care could include, inter alia, foster placement, kafalah of Islamic law, *adoption* or if necessary placement in suitable institutions for the care of children...”

... so it follows that Article 25 should be followed:

Article 25

States Parties recognize the *right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.*

We ask why a child in adoptive care – which is included with all other forms of care inter alia in Article 20 - is not included as requiring periodic reviews? This requirement of the UNCRC is not included in any Adoption legislation in Australia.

In summary, we request that the points raised be investigated and included in the Commission’s Report to the Committee on the Rights of the Child.