

12 October 2018

Mr Argiri Alisandratos
A/ Deputy Secretary, Children, Families, Disability and Operations
Department of Health and Human Services
50 Lonsdale Street
MELBOURNE VIC 3000

Dear Mr Alisandratos

REGULATORY IMPACT STATEMENT FOR THE ADOPTION REGULATIONS 2019

I would like to thank your staff at the Department of Health and Human Services (DHHS) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Adoption Regulations 2019* (the Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. The Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 12 October 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

Background

In Victoria, adoptions are administered by a combination of government and approved not-for-profit agencies, and fall into two general categories:

- Local adoptions where the adoptive parents could be known by the relinquishing parents (known adoptions) or not (unknown adoptions). These are regulated under the *Adoption Act 1984* (the Act) and the Regulations.
- Intercountry adoptions, which are generally unknown adoptions. These are complex due to the involvement of international agencies and laws, and the potential for cultural differences between the two countries involved. Further, they must be completed in accordance with the *Hague Convention on the Civil Aspects of International Child Abduction*, to which Australia is a signatory.

The number of adoptions in Victoria has declined substantially in recent years, from 98 in 2007-08 to only 23 in 2016-17. This has been influenced by a range of factors, including changing social values and the Victorian Government's policy position that other permanent care arrangements (which maintain the connection and rights of a child's natural parents) are preferable to adoption.

The current Regulations were made in 2008 and will sunset on 25 February 2019. They prescribe a number of matters under the Act, including the requirements for approval of adoption agencies, information that must be collected during the adoption process, and the application form for a prospective adoptive parent to be deemed "fit and proper" to adopt a child.

On 7 June 2017, the Victorian Law Reform Commission tabled its *Review of the Adoption Act 1984* (the Review) in Parliament. The Review made 88 recommendations, including to repeal and replace the Act. The Victorian Government committed to carefully consider the Review and its recommendations and start implementing changes to policies and service delivery to address some of the immediate issues raised.

The proposed Regulations, while drafted in the context of the current Act, address a number of the Review's recommendations, as noted in the RIS.

Analysis

In the RIS, DHHS highlights the possible lifelong impacts of adoption on children, relinquishing and adopting parents, and their families. DHHS considers the risks to those parties of an unregulated adoption system, including that:

- children may be placed in unsafe family environments;
- parents considering adoption for their child may make uninformed decisions in relinquishing rights and connections to their children; and
- prospective adoptive parents may invest time and money in the process, without successfully adopting a child.

The Act sets out that "the welfare and interests of the child concerned shall be regarded as the paramount consideration". In designing these Regulations, DHHS considers a hierarchy of objectives focused on the welfare of all parties to an adoption, including:

- to protect the rights and wellbeing of adoptive children;
- to protect the rights and wellbeing of parents considering adoption for their child;
- to protect the rights and wellbeing of adoptive parents; and
- to minimise the administrative burden in achieving the other three objectives.

As many parts of the Act require there to be regulations to underpin their proper operation, and given the critical and lifelong implications of some of the risks identified, direct regulation is considered the only feasible option to adequately address the risks of unregulated adoption systems.

DHHS focused its analysis on four particular areas of the Regulations and how they could be best-designed to support the welfare of the groups above, while avoiding unnecessary administrative burden and cost.

Given the social impact of the Regulations and the scarcity of robust information, the analysis is based on qualitative discussion, the policy expertise of DHHS staff and the experience of its stakeholders.

The Preferred Option

The preferred option is to retain most of the regulations as they currently exist, with some new key requirements, including:

- additional information to be provided by counsellors to parents considering adoption for their child;
- prospective adoptive parents of an Aboriginal child to be counselled to appreciate the importance of maintaining that child's Aboriginal cultural identity; and
- that adoptive parents to have a suitable appreciation of the importance of preparing an adoption plan.

DHHS expects the proposed changes to result in benefits through more informed decision-making by the parties to an adoption. While many of these steps are already in place as part of good practice, DHHS expects the proposed Regulations to provide additional certainty that they will occur, and better support the parties' rights and wellbeing.

The current Regulations lead to approximately \$4.2 million in costs per year to the Victorian Government in operating adoption services, including arranging adoptions and the provision of information, counselling and training. DHHS expects the proposed Regulations will not materially affect this cost, and notes there are no substantial financial costs to the regulated community.

Implementation and Evaluation

As the proposed Regulations are broadly consistent with current requirements and practice, DHHS expects their implementation to be relatively straightforward. A communications strategy is proposed, including formal briefings with relevant staff in adoption and permanent care teams, to ensure the proposed Regulations and their changes are implemented consistently.

DHHS outlines its commitment to monitoring the impact of the proposed Regulations to ensure that they are operating effectively. The RIS invites community views about the impacts of the proposed Regulations including how best to monitor their effectiveness.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issues raised in this letter, the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation