



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## SOCIAL POLICY SCRUTINY COMMITTEE

### Public Briefing Transcript

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Litchfield Room, Level 3, Parliament House, Darwin

### INQUIRY INTO ADOPTION OF CHILDREN (EQUALITY) BILL 2017

- Members:**
- Ms Ngaree Ah Kit MLA, Chair, Member for Karama
  - Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
  - Ms Sandra Nelson MLA, Member for Katherine
- Witnesses:**
- Ken Davies: Chief Executive Officer, Territory Families
  - Luke Twyford: Executive Director, Strategy, Policy and Performance, Territory Families
  - Debra Moore: Senior Adoption Practitioner, Territory Families
  - Seranie Gamble: Director Law Reform, Territory Families

## ADOPTION OF CHILDREN LEGISLATION AMENDMENT (EQUALITY) BILL 2017

**Madam CHAIR:** Thank you everyone for resuming this public debate. On behalf of the Committee, I welcome everyone to this public briefing on the Adoption of Children Legislation Amendment (Equality) Bill 2017. I welcome to the table the following representatives from the Department of Territory Families, Ken Davies, Chief Executive Officer; Luke Twyford, Executive Director, Strategy Policy and Performance; Seranie Gamble, Director Law Reforms; Debra Moore, Senior Adoption Practitioner. Thank you for coming before the committee this morning; we appreciate you taking the time to speak with us and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the briefing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Can you please each state your name and the capacity in which you are appearing?

**Mr DAVIES:** Ken Davies, Chief Executive Officer of Territory Families.

**Mr TWYFORD:** Luke Twyford, Executive Director, Strategy, Policy and Performance, Territory Families.

**Ms MOORE:** Debra Moore, Senior Adoption Practitioner with 12-and-a-half years' experience.

**Ms GAMBLE:** Seranie Gamble, Director Law Reform, Territory Families.

**Madam CHAIR:** Thank you very much and welcome. I open it up to the committee now for questions on the Adoption of Children Legislation (Equality Bill) 2017.

**Ms NELSON:** I have some questions to seek clarification on a couple of things because they were identified in some of the submissions that were sent to us.

This legislation—the intent is not to discriminate. The intent of this legislation is not to prevent parents from being called the traditional mum, dad, mother father—is that right?

**Mr DAVIES:** It is a good question—we are responsible for administering this act and so the act actually creates a legal framework for the adoption of children in the Northern Territory, and in terms of what we attempted to do here with the changes is to make it inclusive of all options for families in whatever context to adopt children, and is the kind of legal framework we have tried to create. We think we have done a pretty good job of that. I will go to Luke for him to brief on a bit of the detail in that regard.

**Mr TWYFORD:** The bill does not change any of the assessment or approval processes for people who are wishing to adopt or adoptees—that is, the child. This bill simply changes the eligibility requirements that have excluded certain members of our society from applying to adopt.

**Madam CHAIR:** Can I confirm that? Luke, if this legislation is passed through parliament—all Territorians who will be eligible in essence to be considered for adoption in the Northern Territory?

**Mr TWYFORD:** We are broadening the class of people that can apply, in particular people in de facto relationships. There will still be some requirements maintained, in particular that it is a couple applying. Single individuals would need a special circumstance and exemption in order to apply and other matters such as age requirements would still apply. But broadly, this is taking away current provisions in the existing legislation that will only enable or allow married people in the Northern Territory to apply to adopt.

**Mr DAVIES:** The bill amends the current *Adoption of Children Act* to recognise people in de facto relationships and same sex relationships as being eligible to apply to adopt children in the Northern Territory. It makes it more consistent with the *Sex Discrimination Act*, the Commonwealth *Sex Discrimination Act* and it removes most biological sex and gender specific references such as a man and a woman and replaces them with gender-neutral terms such as a person, spouse and partner to be more consistent with the Australian government *Sex Discrimination Act*—that is the sort of context.

**Ms NELSON:** We are not stopping people from calling the mother mum, we are not stopping people from calling the dad, dad—I just wanted to clear that up.

**Madam°CHAIR:** The only question that I have in regards to this legislation is, I note that there is a plan to do a comprehensive review of the *Adoption of Children Act* in the Northern Territory for 2019. The implications of this legislation and leading into that review as well—because there is a need or an urgency to amend the current legislation and amend the wording of that legislation. It was not able to wait for a comprehensive review of 2019 because then you would be appearing before us in perhaps 2020. Can I confirm that that might be the case?

**Mr°TWYFORD:** Yes, that is the case. As it currently stands, the bill is the only adoption act within Australia that still does not enable same sex and de facto couples to adopt and it was considered important to make that amendment as Territory Families was formed. There are a number of other elements we want to look into, such as the age requirements and other national consistency matters that are worth consulting with but we do recognise our law reform agenda would not have enabled us to deliver that this year.

Therefore, in the interest of becoming more compliant and consistent with t human rights principles this amendment has been proposed.

**Mrs LAMBLEY:** What are the current adoption statistics for the NT over the last few years? How many people are being adopted?

**Mr DAVIES:** I can assist there, Member for Araluen. There were nine adoptions in 2015–16, two adoptions in 2014–15 and in 2016–17 we have had seven adoptions completed. There are a number of adoption applications on foot at the moment. There were 13 in 2016–17 and 32 in 2015–16. These take time. You have to identify children, people have to be able to pass a very strong due diligence scrutiny that is applied.

When people are deemed as being eligible, then there is an opportunity to also find children, especially for an intercountry adoption. There are Australian-based adoptions that take place, but the intercountry ones require time and a lot of negotiation in that country, particularly around the criteria they put on the adoption of children. The countries we have direct relationships with are South Korea, the Philippines, Thailand, Taiwan and Columbia. They are authorised intercountry adoption points for the Northern Territory at the moment.

**Mrs LAMBLEY:** At this stage, people who are not married cannot engage in any sort of adoption at all?

**Mr DAVIES:** That is correct.

**Mrs LAMBLEY:** Okay.

**Mr DAVIES:** There is a time limit, even when a married couple apply. Part of these amendments will allow de facto couples to come into that frame. If they have been in a de facto relationship, that time frame could be built into the extent to which we take the time to make the assessment. Perhaps Deb might explain how that works.

**Ms MOORE:** It is the Northern Territory criteria and those overseas criteria. All our overseas countries require our applicants to be married. It can vary in time. In Korea, for example, it must be three years. In places like Taiwan, one of the programs there is five years. For Thailand it is one year, but they will take evidence of de facto.

**Mrs LAMBLEY:** How many domestic adoptions would there be, as opposed to international adoptions? What are the statistics around that?

**Ms MOORE:** Member for Araluen, very few. That is Australia and Western countries. Unplanned pregnancies are either terminated or people continuing parenting with society's support financially and not stigmatised.

**Mrs LAMBLEY:** So, is it one or two a year perhaps, or ever less?

**Ms MOORE:** Our last one was three years ago.

**Mrs LAMBLEY:** Right. Thank you.

**Mr DAVIES:** Member for Araluen, one of things we do not have is the option to change the rules those countries apply. That is one of the underlying challenges.

**Mrs LAMBLEY:** Another question. Do people pay the Northern Territory government to process those international adoption applications?

**Ms MOORE:** Perhaps I can answer.

**Mr DAVIES:** Yes, sure.

**Ms MOORE:** We have scheduled fees under the act for intercountry adoption. They are set in four stages and generally, they total \$6000. Then people have fees for their overseas country, which vary from \$1000, for Thailand for example, up to \$19 500 for South Korea. Then you should factor in travel and accommodation costs.

**Mr DAVIES:** Deb, could you explain the time frame that you apply once an adoption takes place and the scrutiny you apply.

**Ms MOORE:** People provide an expression of interest and we get a general idea. Then we meet the couple face-to-face or with a teleconference if they are outside Darwin. We travel to Alice Springs, usually about twice a year. We find it better face-to-face because we are talking about a very emotional situation. We assess their situation and whether there is an option for them to apply, because we do not assess people and have false dreams.

Then, people are invited, if there is a place. Some countries have quotas. Then they send an application. Once they put the application in, we assess them. The application consists of extensive information form about their education, their marriage referees, their finances and then people must provide a police check and a 'person believed responsible' child protection check. Also, they each write a life story and provide referees and medicals.

We gather all those documents and then a full assessment takes place and either myself or Janene, who is here—the other Senior Practitioner—will go to their home, usually twice, and spend a number of hours with them, building on some of the topics from their life story, that will look at their upbringing, their education, their employment, their relationship, their attitudes towards adoption.

What we look for a united couple that are on the same page. We also look at their attitudes towards adoption because we are very much for a spirit of openness. Parents that enable the birth parent—even if they never meet them—to be part of the child's life. With an overseas adoption, that may mean being open and honest about your story, 'you had a birth mum, a tummy mummy that loved you but she could not look after you, and we adopted you'. We do that assessment.

At the same time we provide mandatory adoptive training—and that is two days—and the same criteria—the mandatory training is Australia wide. And that covers an understanding of the legislation in the NT, Australia-wide through CDSMAC, also the Hague—most of our countries—Australia is a part of the Hague Convention on the Rights of the Child, and the Immigration Act so people have an understanding that Australia is professional, authentic and what we call subsidiarity guidelines are upheld.

And that means if a child is found abandoned, for example, birth family is found or attempted to be found, and that is through media, connections in the community. If there is no birth family, is there any extended family? If there is no extended family, often the child is put on what they call a local platform—their information—so is there anyone in country that can adopt that child. Then if it is decided that there are none of those options, then the child is deemed suitable for intercountry adoption.

At the moment we are working with children that are abandoned or relinquished as a young child, as well as children that are coming through the welfare systems intercountry. The last few years we have had sibling groups that have come through their welfare system from the Philippines at Taiwan and the same process always happens. It is kind of parallel to the Aboriginal placement principles. Determining that there is no local—because ideally a child would be best with their birth family and in country, but then intercountry family adoption is a very good option.

Then they are assessed and if they are approved the assessment goes through my team leader, through my manager, through my director. He is delegated to approve applicants on behalf of the minister.

Then we put a lot of information together called a dossier that goes overseas and then our overseas partners will match the couple with a child—so if people are open to older children or siblings, the matching happens then we get allocated the couple. We look at the information and usually accept the child or children and then there is a period of time before the couple travel to meet their child. All our families must travel overseas once or twice, meet their child and then come back to Australia with their child.

Did that answer the question?

**Madam CHAIR:** Yes that was a lot of information. That was really good. I will hand it over to the Member for Katherine for a question.

**Ms NELSON:** Thank you. All of this also applies to the adoption agencies like private adoption agencies?

**Ms MOORE:** Our overseas partners?

**Ms NELSON:** Yes.

**Ms MOORE:** They vary. We either work with countries that are through the governments like the Philippines ...

**Ms NELSON:** Do we have adoption agencies in the Northern Territory?

**Ms MOORE:** No, all adoptions in Australia are through government for intercountry adoption and usually local adoptions. There are some agencies, Barnardos for example, but they are doing more children in foster care system that are then adopted. And it is run through the Attorney-General's and the Department of Social Services. The Attorney-General's is what they call the Central Authority for Australian Adoption and the Department of Social Services do a lot of the relationships between the countries. The countries we work with are either members of The Hague or we have a bilateral agreement and that would be Korea and Taiwan for example.

**Mr DAVIES:** Madam Chair, I might ask Luke to talk about—going to the in country benefits of the amendments, to the impact. This goes to your question, Member for Araluen, about how many children are adopted in Australia for step-families.

**Mr TWYFORD:** Madam Chair, I understand and believe that one of the main benefits of this act will be for de facto couples who may wish to adopt the children of their partners. We anticipate there may be adoptions, not necessarily intercountry as we have just heard that process—or indeed relinquish children where the birthmother has enabled her child to be adopted by another couple. In fact, it will be people already in established relationships seeking to adopt the children of their partners which is not possible under our current legislation.

**Madam CHAIR:** Thank you. I have a couple of questions I want to fire away.

Following on from that, Luke, if this legislation is passed through parliament there could be a potential increase in the amount of adoption applications which would be fantastic. I guess this goes to you, Ken, as the CEO; is your department of Territory Families adequately resourced to deal with an influx of adoption applications?

**Mr DAVIES:** That is a very good question, Madam Chair. The answer is yes. Both of the officers involved, as you have just heard, are fantastic. You have just heard the description of what Deb is involved in. There is a huge commitment there and no changes. Unless Deb wanted to add anything, I think they are adequately resourced to handle the volume at this stage but clearly if we needed to put more people in to help we would ...

**Madam CHAIR:** That would be addressed. Can I also ask a couple of other questions? Feel free to chime in, my other committee members. Deb, I think it is touching on something you mentioned and also from friends of mine who have adopted children in the Northern Territory, does the adoption agreement include a provision for ongoing parenting of a child who has been adopted should there be a relationship breakdown?

**Ms MOORE:** Of the adoptive parents?

**Madam CHAIR:** If there is a breakdown—relationships sometimes end—is there still that ongoing provision that child will receive the same love, nurture and support from both people living separately?

**Ms MOORE:** You would hope so. With adoption, once the adoption is granted people are the same as any other biological parent. As we know, biological families separate and so do adoptive parents. In my experience over 12 years, we have had a couple of parents who have separated because we know people so well that they have told us.

**Madam CHAIR:** I guess we do all the stringent provisions up front and vet it as much as possible and then life occurs. It is making sure that child is at the centre of our focus if there happens to be a relationship breakdown.

**Ms MOORE:** The child will always be both parents' child like a biological family. The ones I know of have really made commitments to the children.

**Mr TWYFORD:** Can I quickly add to that answer? After a child is placed there is actually 12 months of ongoing supervision by the adoptions unit. It is not until after the couple successfully passes that 12 months of supervision that the court grants the order for an adoption. It is not a quick decision and it is one that is monitored and supports are put in place by Deb and her team and others to ensure that family is able to adopt that child and transition into being a family.

**Madam CHAIR:** That is great to hear, thank you.

**Ms NELSON:** So the divorce and custody legislation does not change just because—it is all applicable to the same ...

**Ms MOORE:** Yes.

**Madam CHAIR:** Ken, I think it might have been on something you said, I have written a question here: will overseas countries allow adoption by same-sex Territorians or is that only in Australia?

**Mr DAVIES:** Madam Chair, the advice I have is the one that would most likely do that is Colombia, but the precursor with Columbia is that they tend to look for people who actually may have migrated here from Colombia. Others put arrangements around maybe wanting a Christian family; all the others are very clear they want it to be female-male adoptee parents. It will be a challenge for same sex couples to adopt a child internationally under the current conventions those countries apply.

**Ms NELSON:** The point is that we are making it inclusive from our end.

**Mr DAVIES:** That is correct. I think, Member for Katherine, the point that Luke just made, the main benefit will be for couples right now who have children, in relationships and families, where they are the same sex and they will be married or they might be in a de facto relationship and might choose to adopt the children. It will be interesting to see how that flows out in the Territory numbers.

**Ms NELSON:** Yes, that will be interesting. I am looking forward to it.

**Mr DAVIES:** Then, if things change internationally, I am sure there will be people working with our adoption unit on what the possibilities might be there as well.

**Ms NELSON:** Thank you.

**Madam CHAIR:** Can I confirm that in Australia, if someone is putting their child up for adoption, they can put stipulations—as well as overseas—that they prefer their child go to a heterosexual couple, as opposed to a same sex couple?

**Ms MOORE:** I can answer that. If we have a local citizen child born, the birth parents have gone through the process, and the child becomes available to be adopted—and that is at least two months after the child is born—the birth parents are asked questions about their preference. My understanding is it is not absolute.

When you allocate a child, it then goes to a senior Territory Families panel. If, for example, if the child is Indigenous, there would be an Indigenous person on the panel. They are senior directors who make the decision of the best fit between the child and the adoptive parents. They look at maybe about 20 different categories, so it is a very long, thorough process because it is such an important decision. We usually have three or four potential adoptive parents. They do not know they are being considered.

The birth parents may get a non-identifying summary of the potential adoptive parents and they may say, 'I really favour one because of this'. My understanding and experience is that it is not the absolute decision of the birth parents.

**Ms NELSON:** Because the number one focus is the wellbeing of that child ...

**Ms MOORE:** The best interests.

**Ms NELSON:** The best interests, yes.

**Madam CHAIR:** I have another question ...

**Ms GAMBLE:** Excuse me, Madam Chair, if I could add something quite specific to the legislation about those requirements. The welfare and interest of the child is to be of paramount consideration and the only two characteristics under the current legislation that are factored in but are not final, are ethnicity and religion. Those are characteristics that are listed, but adding things to do with sexual orientation and things like that are not considered or addressed in the new amendment. There are no changes to those characteristics.

**Madam CHAIR:** Thank you for clarifying that. I was wondering whether, through Territory Families, we promote local adoption over international adoption.

**Mr DAVIES:** I will have to go to Deb for that.

**Ms MOORE:** From my side, people apply to adopt and the reality is that local adoption is very limited. We have close connections with social workers at the hospital and we often support women, maybe a few months before birth, who would like to relinquish their child. But often, we have found at birth, that people continue parenting or someone in the family steps up. We have close connection with social workers and we talk to places like Family Planning. But the reality is if people put in an application just for local, it may never happen.

So, you can put in an application for local, as well as one overseas country. If a child becomes available, they would be considered.

**Madam CHAIR:** I did not think I had many questions. My final question, I believe. Will a parent who relinquishes the responsibility of their child for adoption be able to have access to that child? Is it part of the agreement for the new parents who come on board to agree to? How is that managed?

**Ms MOORE:** We have what is called open adoption. But at the moment, that is fairly non-open in a way. People can exchange letters ...

**Ms NELSON:** It is an option that is available to the birth parents as well as the adoptive parents. They make the decision, do they not?

**Ms MOORE:** Yes. It always has to be the best interest of the child and in my experience some people have come back later in life. There have been times when they have come back later and the birth family would like to know and the adopted family would like to know. Communication has happened, though at a distance—different sides of Australia. They communicate by mail through me, then it got to be telephone. My understanding—is one couple I am thinking of—they all met. The birth family was still very supportive that this child was adopted because she had some minor mental health issues so she did not have the capacity—and the grandmother was very supportive.

**Madam CHAIR:** Fantastic. That is good to hear. That is all the questions from me. Committee, any more questions?

That concludes our briefings for today, so thank you, representatives from the Department of Territory Families, for enlightening us on the Adoption of Children Legislation Amendment (Equality) Bill 2017. Thank you, everyone, for attending today. That concludes our public briefing.

The committee concluded.