



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the
Adoption of Children Legislation
Amendment (Equality) Bill 2017**

March 2018

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Chair's Preface

The Adoption of Children Legislation Amendment (Equality) Bill amends the *Adoption of Children Act* and associated regulations to broaden the eligibility criteria for prospective parents applying to adopt in the Northern Territory. By removing legal barriers which discriminate on the grounds of marital status, sexual orientation, gender identity or intersex status, the Bill ensures the Northern Territory legislation is compatible with human rights, complies with the Commonwealth *Sex Discrimination Act* and the recent changes to the *Marriage Act*, and is consistent with equivalent laws in all other Australian jurisdictions.

Not all of the submissions received supported the proposed amendments to the legislation. However, following its examination of the Bill and consideration of the evidence, the Committee has recommended that the Assembly pass the Bill. The Committee is of the view that passing the Bill is in the best interests of children which is the Committee's primary consideration. As stated by the Minister for Territory Families, the Hon Dale Wakefield MLA, the Committee also notes that "these amendments will better reflect current social values that recognise the diversity of relationships and people in the Northern Territory."¹

On behalf of the Committee, I would like to thank the Department of Territory Families for briefing the Committee on the Bill and all those who provided written submissions to the inquiry. I would also like to thank Committee members for their bipartisan support of the legislative review process.








Ms Ngaree Ah Kit MLA

Chair

¹ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, p.17, https://parliament.nt.gov.au/data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf

Committee Members

| | | |
|---|---|--|
|  | Ms Ngaree Ah Kit MLA Member for Karama | |
| | Party: | Territory Labor |
| | Committee Membership | |
| | Standing: | Standing Orders and Members' Interests |
| | Sessional: | Social Policy Scrutiny |
| | Select: | Estimates |
| | Chair: | Social Policy Scrutiny, Estimates |
|  | Mrs Robyn Lambley MLA Member for Araluen | |
| | Party: | Independent |
| | Parliamentary Position: | Acting Deputy Speaker |
| | Committee Membership | |
| | Standing: | Standing Orders and Members' Interests |
| | Sessional: | Social Policy Scrutiny |
| | Deputy Chair: | Social Policy Scrutiny |
|  | Mrs Lia Finocchiaro MLA Member for Spillett | |
| | Party: | Country Liberals |
| | Parliamentary Position: | Deputy Leader of the Opposition, Opposition Whip |
| | Committee Membership | |
| | Standing: | Public Accounts, Privileges |
| Sessional: | Social Policy Scrutiny | |
|  | Ms Sandra Nelson MLA Member for Katherine | |
| | Party: | Territory Labor |
| | Committee Membership | |
| | Standing: | House |
| Sessional: | Social Policy Scrutiny | |
| Select: | Estimates | |
|  | Mr Chansey Paech MLA Member for Namatjira | |
| | Party: | Territory Labor |
| | Parliamentary Position: | Deputy Speaker |
| | Committee Membership | |
| | Standing: | House |
| Sessional: | Social Policy Scrutiny | |
| Select: | Estimates | |

Committee Secretariat

Committee Secretary: Julia Knight
Administration/Research Officer: Annie McCall
Administration Assistant: Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801
Tel: +61 08 8946 1485
Email: SPSC@nt.gov.au

Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions to the inquiry.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Adoption of Children Legislation Amendment (Equality) Bill 2017.

1 Introduction

Introduction of the Bill

1.1 The Adoption of Children Legislation Amendment (Equality) Bill 2017 (the Bill) was introduced into the Legislative Assembly by the Minister for Territory Families, the Hon Dale Wakefield MLA, on 23 November 2017. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 13 March 2018.²

Conduct of the Inquiry

1.2 On 24 November 2017 the Committee called for submissions by 24 January 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. The Committee also directly contacted a number of individuals and organisations.

1.3 As noted in Appendix A, the Committee received five submissions to its inquiry. The Committee held a public briefing with the Department of Territory Families on 31 January 2018.

Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee, after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Adoption of Children Legislation Amendment (Equality) Bill 2017.

² Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, pp.16-18

2 Provisions of the Bill

Background to the Bill

2.1 As of 1 August 2013 amendments to the Commonwealth *Sex Discrimination Act 1984* came into force which made it unlawful to discriminate against a person, not only on the basis of marital or relationship status, but also on the grounds of their sexual orientation, gender identity or intersex status. While a number of important laws in the Northern Territory have been amended in recent years to recognise same sex relationships as de facto relationships, it is the only jurisdiction in Australia that does not recognise couples in de facto relationships and same sex partnerships as eligible to adopt a child.³ The Adoption of Children Legislation Amendment (Equality) Bill seeks to address these issues.

Purpose and Overview of the Bill

2.2 As noted in the Explanatory Statement, the purpose of the Adoption of Children Legislation Amendment (Equality) Bill is to amend the *Adoption of Children Act* and *Adoption of Children Regulations* to ensure that these laws are consistent with Commonwealth anti-discrimination legislation and enable de facto couples, including same sex couples, to apply to adopt children in the Northern Territory. The Bill removes the legal barriers that currently discriminate against prospective parents applying to adopt on the basis of their marital status, sexual orientation, gender identity or intersex status.⁴

2.3 In addition, the Bill removes most biological sex and gender specific references and replaces them with gender neutral terms.⁵ However, as noted by the Department of Territory Families, there are a number of instances where gender and biological sex references are not being amended in this Bill. For example, the definitions of ‘*traditional Aboriginal marriage*’ or ‘*relative*’ in section 3(1).⁶ As indicated in the *Statement of Compatibility with Human Rights*, removal of biological sex and gender specific references is limited to instances “where it is material to the person applying to be eligible to adopt a child.”⁷

³ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, p.16

⁴ Explanatory Statement, *Adoption of Children Legislation Amendment (Equality) Bill 2017 (Serial No. 39)*, <https://parliament.nt.gov.au/committees/spsc/ACL>, p.1

⁵ Explanatory Statement, *Adoption of Children Legislation Amendment (Equality) Bill 2017 (Serial No. 39)*, <https://parliament.nt.gov.au/committees/spsc/ACL>, p.1

⁶ Territory Families, *Table Summary of Gender and Biological Sex References to Remain in the Act*, <https://parliament.nt.gov.au/committees/spsc/ACL>

⁷ Statement of Compatibility with Human Rights, *Adoption of Children Legislation Amendment (Equality) Bill 2017 (Serial No. 39)*, <https://parliament.nt.gov.au/committees/spsc/ACL>, p.1

3 Examination of the Bill

Introduction

3.1 The majority of submissions received were extremely supportive of the Bill and commended the Government for bringing forward this legislation. While no issues were raised with any specific clauses in the Bill, two submissions were opposed to the policy intent of the Bill and did not support the proposed amendments to the existing legislation. Following is a summary of points raised in submissions and the public briefing provided to the Committee by the Department of Territory Families.

Summary of Evidence Received

3.2 The Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG), the Northern Territory Women's Legal Service (NTWLS) and Rainbow Territory supported the proposed amendments to the *Adoption of Children Act* and associated regulations and recommended that the Assembly pass the Bill.⁸ However, Mr Gerry Wood MLA and the Australian Christian Lobby raised philosophical objections to the intent of the Bill and did not support the proposed amendments to the existing legislation.⁹

3.3 Mr Wood MLA raised concerns that the proposed legislation:

takes away the right of a child to have only a mother and a father when adopted. It places no emphasis on the importance of the rights of a child ... Having a mother and father, adopted or not, is a right that should be protected and it is not protected by the legislation.¹⁰

3.4 The Australian Christian Lobby raised a similar concern noting that:

the importance of providing both a mother and father, who are committed to each other for life to every child where this is possible may be obscured if revised legislation is unduly concerned to signal obeisance to an artificial requirement for genderlessness.¹¹

3.5 In accordance with Article 21 of the *United Nations Convention on the Rights of the Child*¹², section 8(1) of the *Adoption of Children Act* (NT) provides that, as a service for the child concerned, "the welfare and interests of the child shall be the paramount consideration." The Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission) has further noted that:

Adoption laws which arbitrarily exclude a couple on the grounds of sexuality will breach these rights because they fail to consider the best interests of a particular child.¹³

⁸ Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG), Submission No. 1; Northern Territory Women's Legal Service, Submission No. 3; Rainbow Territory, Submission No. 5

⁹ Mr Gerry Wood MLA, Submission No. 2; Australian Christian Lobby, Submission No. 4

¹⁰ Mr Gerry Wood MLA, Submission No. 2, p. 1

¹¹ Australian Christian Lobby, Submission No. 4, p.2

¹² United Nations Human Rights Office of the High Commissioner, *Convention on the Rights of the Child*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, p.6

¹³ Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements*, <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/same-sex-same-entitlements>, p.94

3.6 Mr Wood also raised concern that the Bill:

makes no allowance for the rights of the parents who may offer a child for adoption. What happens if the mother and/or father who may be offering up a child for adoption do not want that child to be raised by a same sex couple?¹⁴

The Department of Territory Families advised that while the ultimate decision as to the best fit between the child and the adoptive parents rests with the adoption panel, birth parents are asked questions about their preferences:

We may have three or four potential adoptive parents ... 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."¹⁵

3.7 In support of the Bill, Rainbow Territory noted that in acknowledging the diversity of family units across the Territory:

The proposed reforms will enable children who are part of a family unit to be formally recognised as a family member, thus strengthening their bond with family and forging an identity that promotes their best interests. Practically, adoptive parents are able to make important decisions to promote the care and welfare of their children including for example, determining medical treatment and the removal of impediments to families wanting to travel interstate/overseas with children.¹⁶

3.8 Given the recent changes to the *Marriage Act* and current Commonwealth anti-discrimination legislation, the Northern Territory Women's Service noted their support for:

the current movement within the Territory toward equality for same sex couples ... and ... the ongoing review of legislation to allow for gender neutral terms and plain English.¹⁷

3.9 Similarly, BLAG pointed out that:

As adoption is available to all married couples, it makes sense that adoption will be available to same sex married couples too. It also makes sense to broaden the pool of potential adoptive parents by opening adoption to de facto couples, including same sex de facto couples ... The move by all other jurisdictions to open the adoption process to same sex couples, is a reflection on the evolution the community as a whole has undergone. It is fair, just and appropriate that legislation has followed community expectations. Most important, this has always been in the best interest of the children awaiting adoption.¹⁸

3.10 The submission from BLAG also highlighted the significant amount of research that has been undertaken into same sex parented families and child development¹⁹ As noted by the Australian Institute of Family Studies:

Overall, the evidence does not support the view that same-sex parented families are harmful to children, with a review of Australian and international research (Dempsey, 2013) concluding that children in same-sex parented families do as well emotionally, socially and educationally as those in opposite-sex parented families ... In some of the studies reviewed by Dempsey (2013), selected

¹⁴ Mr Gerry Wood MLA, Submission No. 2, p.1

¹⁵ Committee Transcript, 31 January 2018, p.5

¹⁶ Rainbow Territory, Submission No. 5, p.2

¹⁷ Northern Territory Women's Legal Service, Submission No. 3, p.2

¹⁸ BLAG, Submission No. 1, p.2

¹⁹ BLAG, Submission No. 1 – appendices 1, 2, and 3

measures of wellbeing were more positive among children in same-sex parented families compared to other children.²⁰

Committee's Comments

- 3.11 Having considered all of the evidence, the Committee has formed the conclusion that passing the Bill is in the best interests of children which is the Committee's primary consideration.
- 3.12 While acknowledging that not all submissions supported the intent of the Bill, the Committee is of the view that the laws of the Northern Territory should be compatible with human rights, comply with Commonwealth anti-discrimination legislation and, where applicable, be consistent with equivalent legislation in other Australian jurisdictions.
- 3.13 The Committee also notes that by removing the legal barriers that currently inhibit prospective parents in de facto or same-sex partnerships from applying to adopt a child, the Bill more accurately reflects contemporary social values that "recognise the diversity of relationships and people in the Northern Territory."²¹

²⁰ Qu, L., Knight, K., Higgins, D., *Same-sex couple families in Australia*, Australian Institute of Family Studies, Fact Sheet, July 2017, <https://aifs.gov.au/publications/same-sex-couple-families-Australia>, p.2

²¹ Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/_data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf, p.17

Appendix A: Submissions Received and Public Briefing

Submissions Received

1. Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG)
2. Mr Gerry Wood, MLA
3. Northern Territory Women's Legal Service
4. Australian Christian Lobby
5. Rainbow Territory

Public Briefing – Wednesday 31 January 2018

- Ken Davies: Chief Executive Officer, Department of Territory Families
- Luke Twyford: Executive Director, Strategy, Policy and Performance, Department of Territory Families
- Debra Moore: Senior Adoption Practitioner, Department of Territory Families
- Seranie Gamble: Director Law Reform, Department of Territory Families

Note: Copies of submissions and the transcript of the public briefing are available at:
<https://parliament.nt.gov.au/committees/spsc/ACL>

Bibliography

Adoption of Children Act (NT)

Adoption of Children Legislation Amendment (Equality) Bill 2017 (Serial No. 39), <https://parliament.nt.gov.au/committees/spsc/ACL>

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Australian Human Rights Commission, "Sexual orientation, gender identity & intersex status discrimination Information Sheet", <https://www.humanrights.gov.au/sites/default/files/Information%20sheet%20on%20new%20protections%20in%20the%20Sex%20Discrimination%20Act%20-%20FINAL.pdf>

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Legislation Summary Brief, *Adoption of Children Legislation Amendment (Equality) Bill 2017* (Serial No. 39), <https://parliament.nt.gov.au/committees/spsc/ACL>

Marriage Act 1961 (Cwlth)

Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cwlth)

Parliamentary Record, (Hansard) and Minutes of Proceedings, 13th Assembly, Debates, 23/11/2017, https://parliament.nt.gov.au/data/assets/pdf_file/0017/463202/DEBATES-DAY-3-23-NOVEMBER-2017.pdf

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Sex Discrimination Act 1984 (Cwlth)

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United Nations Human Rights Office of the High Commissioner, *Convention on the Rights of the Child*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>