

Queensland Family and Child Commission Submission

To: Department of Communities, Child Safety and Disability Services Date: 11th March, 2016

Topic: Public Consultation for the review of the operation of the Adoption Act 2009

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Department of Communities, Child Safety, Disability Services (DCCSDS) regarding the review of the operation of the *Adoption Act 2009* (the Act).

This submission aims to provide the DCCSDS with research, information and advice to inform the review of the operation of the Act.

Note: This submission will limit its response to questions contained in the Discussion Paper which the QFCC has information, research and advice to inform this review.

The QFCC would appreciate being consulted by the DCCSDS during the development of policy and legislative proposals in relation to this review.

Queensland Family and Child Commission

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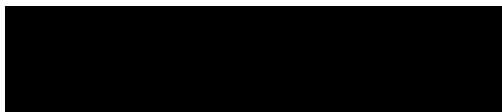
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QFCC is pleased to provide a submission to the DCCSDS outlining our research, feedback and recommendations relating to the *Public Consultation for the review of the operation of the Adoption Act 2009*.

Q2. Do you consider the eligibility criteria provisions of the Act to be fair and continue to meet the needs of children who require adoptive families?

QFCC's position

QFCC recommends amendments to the Act to enable same-sex couples and single persons to be eligible to adopt children and young people in Queensland.

The QFCC recommends:

- same-sex couples being eligible to adopt
- single persons being eligible to adopt with consideration of their available support networks in assessing them as suitable

Supporting QFCC's position

Same-sex couples are eligible to adopt children and young people in other jurisdictions in Australia. Currently in Queensland same sex couples are ineligible to adopt, and as such couples must look towards other options to achieve legal parentage.¹

The specific and targeted exclusion of individuals based on sexual orientation or marriage status to adopt in Queensland is biased, unfair and discriminatory. Importantly, same-sex couples and individuals are currently able to foster children and young people in all states and territories including Queensland.

QFCC supports that a future adoptive parent's capacity and ability should be specific to a child's care needs rather than a person's sexual orientation, religion or gender including:

- *an applicant's capacity to meet the emotional, psychological, physical and social needs of the child*
- *an applicant's health and its impact on their ability to care for the child into their adult years*
- *the length and stability of an applicants' married or de facto relationship (heterosexual or same sex) if applicable*

¹ Gay and Lesbian parenting (Accessed 22/02/2016) Australian Institute for Family Studies

- *an applicant's age, to ensure they can care for the child into their adult years as required*
- *the number and ages of the other children in the family*
- *the readiness of the applicant to adopt*
- *an applicant's good character and repute.*²

In February 2007, a review of the Victorian *Adoption Act 1984* by the Victorian Law Reform Commission (the Commission) recommended same-sex couples to adopt children and young people in all circumstances in which heterosexual couples can.³

The Commission *recommended that single people be eligible to apply in the same way that a heterosexual couple can including:*

- *assessing the suitability of a single person to adopt a child, without the need to prove to the court that 'special circumstances' exist*
- *single people be able to adopt children in the same way an order is made in favour of a couple*⁴

The QFCC however recognises the challenges that single parenting presents which must be considered in the context of an individual's support networks. The QFCC recommends that in assessing the suitability of a single parent their available support networks are considered.

In relation to same-sex couples, the Commission found that *based on the available research on outcomes for children in a range of diverse families, the commission is unable to conclude that prohibiting same-sex couples from adopting children is justified according to the principle of best interests of the child*⁵

The inability for a child or young person to be adopted by a same-sex couple or single person where it is in the best interests of a child or young person may compromise article 3(1) *Convention on the Rights of the Child* which requires that the best interests of the child be the paramount consideration in all actions concerning children.⁶

² Adopting children with special needs (Accessed 26/02/2016) Community Services, NSW

³ Assisted Reproductive Technology & Adoption (2007) Victorian Law Reform Commission, pg. 109

⁴ Assisted Reproductive Technology & Adoption (2007) Victorian Law Reform Commission, pg. 109

⁵ Assisted Reproductive Technology & Adoption (2007) Victorian Law Reform Commission, pg.107

⁶ Recognising children of same sex couples (Accessed 16/02/2016) Australian Human Rights Commission

The reality is there are children and young people being raised by same sex couples that may have previously been in heterosexual relationships. It has been identified that *in cases where Australian lesbian or gay parents are raising adopted children, it is highly likely these children were adopted in the context of a previous heterosexual relationship due to the legal prohibition on same-sex adoption in Australian states and territories*⁷

Q3. Are there any additional aspects that should be considered in a suitability assessment?

QFCC position

QFCC considers the current factors under s78 of the Act taken into consideration in a suitability assessment of potential adoptive parents are holistic, provides a high level of scrutiny, enables children to be matched according to their individual needs and provides safeguards for children and young people. The QFCC cautions against amendments which diminish the safeguards of children and young people being adopted.

The QFCC recommends:

- maintaining legislative safeguards which protect children and young people

Supporting QFCC's position

Under Division 5 of the Act suitability of an applicant/s including other household members assessment includes:

- unacceptable risk of harm by the applicant or any other household members
- health
- criminal history
- person's capacity to be an adoptive parent
- person's financial capacity and financial stability
- person's character
- attitude towards parenting
- relationship with spouse

⁷ Commonwealth of Australia, Australian Institute of Family Studies, Dempsey, D (2013) "Same sex parented families in Australia", *CFCA PAPER NO. 18 2013*

- infertility
- step parents
- Aboriginal and Torres Strait Islander matters
- other prescribed matters⁸

QFCC recommends that such safeguards within the Act should remain to safeguard the ongoing wellbeing and protection of children.

7. Are there approaches in other jurisdictions that Queensland could consider?

QFCC's position

QFCC strongly supports the Act being administered under the principle that the wellbeing and best interests of an adopted child and young person are paramount. QFCC suggests that consideration be given to including provisions which provide guidance in determining the “best interests of a child” within the Act. To support decision makers the QFCC recommends prescribing guiding factors in relation to best interests including specific factors for Aboriginal and Torres Strait Islander children and young people.

QFCC also recommends clearly recognising Aboriginal and Torres Strait Islander marriages in the Act.

The QFCC recommends:

- prescribing a non-exhaustive list of matters for consideration in order to provide guidance in determining the best interests of children and young people
- recognition of traditional Aboriginal and Torres Strait Islander marriage

Supporting QFCC's position

Currently under s6(1), the Act is *to be administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount.*⁹

The guiding principles of the Act would be further assisted by the inclusion of a non-exhaustive list of matters for consideration in determining the best interests of children and young people similarly to s60cc of the *Family Law Act 1975* and s8 of the *Adoption Act 2000* (NSW).

⁸ *Adoption Act 2009* (Accessed 04/03/2016) Queensland

⁹ *Adoption Act 2009* (Accessed 07/03/2016) Queensland

In addition, under s5(1)(2) of the Australian Capital Territory's *Adoption Act 1993*, a clear criteria is provided in determining the best interests of child or young person as the paramount consideration.¹⁰ Incorporation of similar criteria in the application of the Act in Queensland would further strengthen safeguards for children.

A list of matters for consideration would assist decision makers in determining the best interests of an adopted child or young person in Queensland.

Aboriginal and Torres Strait Islander adoption

QFCC supports the consideration of recognising traditional Aboriginal and Torres Strait Islander marriages in the criteria. Some other jurisdictions in Australia clearly recognise the definition of Aboriginal marriage as being eligible to adopt for example:

- 1) In South Australia, under s3 of the *Adoption Act 1988*, *If a man and woman are married according to Aboriginal tradition, they will be regarded as husband and wife for the purposes of this Act.*¹¹
- 2) In Victoria under the *Adoption Act 1984* an adoption order may be made which recognises traditional Aboriginal marriage:
*by an Aboriginal community or an Aboriginal group to which they belong and has been so recognised for not less than two years*¹²

¹⁰ *Adoption Act 1993* (Accessed 03/02/2016) Australian Capital Territory

¹¹ *Adoption Act 1988* (Accessed 03/02/2016) South Australia

¹² *Adoption Act 1984* (Accessed 03/03/2016) Victoria