

Queensland Family and Child Commission

Submission

To: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Date: 30 September 2016

Topic: Adoption and Other Legislation Amendment Bill 2016

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee outlining our feedback and recommendations on the Adoption and Other Legislation Amendment Bill 2016 (the Bill).

The QFCC supports the broad policy objectives of the Bill, which allow same-sex couples, single persons and people undergoing fertility treatment to register an expression of interest to adopt. The QFCC also supports removing contact order penalties, improving access to information, and clarifying the process of step-parent adoption.

Queensland Family and Child Commission



Submission contact:

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Recommendation

The QFCC supports allowing same-sex couples, single persons, and persons undergoing fertility treatment to register interest to adopt.

The QFCC supports removing discrimination against same-sex couples in Queensland's adoption law, along with allowing single persons, and persons undergoing fertility treatment, to express interest to adopt.

These changes will ensure Queensland is consistent with most other jurisdictions in Australia, which have already removed discrimination against same-sex couples in adoption law. In 2002, Western Australia was the first jurisdiction to allow same-sex couples to adopt,¹ followed by the Australian Capital Territory,² New South Wales,³ Tasmania⁴ and, most recently, Victoria.⁵ South Australia is currently considering the Adoption (Review) Amendment Bill 2016. If passed, legislation would allow same-sex couples to adopt in that state.⁶ The Northern Territory is now the only jurisdiction in Australia without an Act or a Bill before Parliament to allow same-sex couples to adopt.⁷

The Bill proposes, for the first time in Queensland, eligibility for single persons to register an expression of interest to adopt. This is also in keeping with most other jurisdictions across Australia, although some, like the Northern Territory, only allow adoption by single persons in 'exceptional circumstances'.⁸ The QFCC supports provisions in the Bill which require a person, who previously registered an expression of interest as a single person but subsequently entered into a spousal relationship, to be removed from the register as a single person and to enter the register jointly with their new spouse. This will ensure both spouses are registered as adopting parents where couples adopt.

Adoption Services should consider the broader support networks available to applicants when determining adoption outcomes.

¹ *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* (WA)

² *Parentage Act 2004* (ACT)

³ *Adoption Amendment (Same Sex Couples) Act 2010* (NSW)

⁴ *Adoption Amendment Act 2013* (TAS)

⁵ *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (VIC)

⁶ *Adoption (Review) Amendment Bill 2016* (SA)

⁷ *Adoption of Children Act* (NT), s. 13.

⁸ *Adoption of Children Act* (NT), s. 14(1)(b)

The QFCC has no objection to provisions that allow a person who has registered an expression of interest to undergo fertility treatment during this period. This would allow people, who may be on the suitable adoptive parent register for a significant period of time, to pursue parenthood by other means.

Contact statement offence

Recommendation

The QFCC supports the removal of the contact statement offence and associated penalty, while still allowing parties to an adoption to make contact statements.

The *Adoption Act 2009* contains provisions for an adopted person or birth parent to give the chief executive a contact statement (a signed document) setting out their wishes about being contacted by another stated person.⁹ The Act makes it an offence to breach a contact statement for adoptions occurring before June 1991, with a maximum penalty of 100 penalty units or up to two years imprisonment.

The QFCC supports provisions in the Bill to remove the contact statement offence and associated penalty. This is in keeping with the principles of open adoption and laws in other Australian jurisdictions.

In New South Wales, a 'contact veto' can only be registered if an adoption took place before 26 October 1990 – there are no restrictions on contact or information for adoptions after that date.¹⁰ In South Australia, the Adoption (Review) Amendment Bill 2016 currently before Parliament removes restrictions on information after a five-year transition period, and does not provide for any restrictions on contact.¹¹

⁹ *Adoption Act 2009* (QLD), s. 269.

¹⁰ Department of Community Services (NSW), *Contact Veto Register*, available at https://www.families.sa.gov.au/sites/g/files/net916/f/adoption_bill_2016_faq.pdf, accessed 27 September 2016.

¹¹ Adoption (Review) Amendment Bill 2016 (SA).

Access to information, contact during interim orders and adoption by step-parents**Recommendation**

The QFCC supports provisions in the Bill related to access to information, and to clarify that a child's birth name should only be changed in exceptional circumstances.

The QFCC supports the Bill clarifying face-to-face contact between a child and their birth parents can occur during an interim adoption order, and proposing improvements to the process of adoption by step-parents.

The QFCC supports the provisions in the Bill to improve processes for parties to an adoption to access information. These include extending the definition of 'relative' to include grandparents and grandchildren, and a person who is regarded as a parent or child under Aboriginal tradition or Island custom. These are necessary improvements to Queensland's adoption law, which allow future generations, and Aboriginal and Torres Strait Islander people, to gain information about their own or their family's history.

The provision to ensure a child's first name should only be changed in 'exceptional circumstances' is also an important measure to ensure a child's identity, including language, cultural and religious ties, is preserved by law. This is in keeping with law in some other Australian jurisdictions, such as New South Wales¹² and Western Australia,¹³ and follows the principles of Article 8.1 of the United Nations' *Convention on the Rights of the Child*.¹⁴ The QFCC is concerned, however, that the example of 'exceptional circumstances' to be introduced in s215 (2) of the Act – "a child's first given name is harmful to their wellbeing because the name may be culturally inappropriate"¹⁵ – is ambiguous, and does not fully explain the intent of the provision. The Bill may be improved by a more specific example, such as a situation where an adopted child's first name is perceived as offensive.

The QFCC has no objection to the Bill removing doubt that face-to-face contact between a child and their birth parents can occur during an interim adoption order through the adoption plan framework. The QFCC also supports improving the provisions around step-parent adoptions by clarifying the existing framework, and more clearly defining the 'exceptional circumstances' in which a step-parent adoption can occur.

¹² *Adoption Act 2000 (NSW)*, s.8.

¹³ *Adoption Act 1994 (WA)*, s. 74(2)(aa).

¹⁴ 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>, accessed 27 September 2016.

¹⁵ Adoption and Other Legislation Amendment Bill 2016 (QLD), clause 43.