



AASW

**Australian Association
of Social Workers**

*Submission to Health, Communities,
Disability Services and Domestic and
Family Violence Prevention Committee –
Queensland Parliament
Re: Adoption and Other Legislation Amendment Bill
2016*

October 2016

© Australian Association of Social Workers
National Office – Melbourne
Level 7, 14-20 Blackwood Street
North Melbourne 3051
PO Box 2008
Royal Melbourne Hospital Vic 3050
T 1800 630 124
F 02 6199 5099
E social.policy@asw.asn.au
www.asw.asn.au

Enquiries regarding this submission can be directed to:

AASW Policy & Advocacy:
Sebastian Cordoba
Email: sebastian.cordoba@asw.asn.au

Senior Manager Social Policy and Communication:
Cindy Smith
Email: cindy.smith@asw.asn.au
Phone: 03 9320 1009

Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia.

We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge. Social workers practice in a diverse range of settings, including the adoption and child protection fields.

Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and how they impact on a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination.

Our submission

Children¹ are adopted for numerous reasons. For some it can be a result of parental abuse and neglect, resulting in the need for state intervention. Children who come into the care of the state are among the most vulnerable members of society. It is the position of the AASW that governments have a responsibility in the first instance to concentrate efforts on creating environments in which children and families are supported and assisted so that the various factors that contribute to the need for intervention by the state is substantially reduced. Adoption should only be considered as one of a suite of possible responses after all other options for achieving the child's safety are exhausted.

For all children who are placed into state care, placement planning (including adoption as one of several options) must be focused on their needs and best interests. This must comply with the minimum standards set down in international conventions including the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights. Planning should include parents, when possible, and recognise the right of children to maintain connection with their family, their culture and with other significant relationships regardless of the proposed placement arrangements, which may include reunification, legal guardianship and adoption. This is a complex and contentious issue but regardless of viewpoints the AASW believes the best interest principle should be central to all decision making.

Social workers play a pivotal role in the adoption process and therefore the AASW welcomes the opportunity to contribute to this inquiry.

¹ Identified in the United Nations (UN) Convention on the Rights of the Child as every human being below the age of 18 years.

Response

Our response will focus on a select set of points in the Bill.

1. Expand who is eligible to have their name entered or remain in the expression of interest register for adoption to include same-sex couples, single persons and persons undergoing fertility treatment

- 1.1. The AASW supports the extension of the eligibility criteria to include same sex couples and single persons ensuring the same rigorous assessment processes are applied, conducted by appropriately trained and skilled professionals.
- 1.2. Greater consideration must be given to the support needs of persons who have undergone unsuccessful fertility treatments and how this may impact on their ability to become an adoptive parent, in line with the best interest principle. Fertility treatment can often be a very challenging experience with significant grief and loss as a result of the process.² It can also place great stress on relationships and individual wellbeing, the consequences of which can be far reaching, experienced throughout the lifespan and requiring professional support. While supporting expanding the eligibility criteria for same-sex couples and single persons, we believe including persons undergoing fertility treatment needs greater research and consultation.
- 1.3. In relation to supports and of relevance to this point, the Act provides little clarification at a legislative level about who is an approved counsellor. This raises significant concerns about the quality of services that are being provided and the ability to regulate it. 'Counselling' is a poorly regulated field and a commonly-used term to describe a whole range of approaches, with several lacking an evidence base. Given the complexity involved in supporting individuals and families through the adoption process, the Act has to ensure that those providing counselling have the necessary qualifications and experience.
- 1.4. While no Adoption Act in Australia provides clarity around qualifications or experience, the AASW favours the approach in Queensland's *Surrogacy Act 2010*, which lists the appropriate qualifications as:

*appropriately qualified means—
is one of the following—*

A member of the Australian and New Zealand Infertility Counsellors Association;

A psychiatrist who is a member of the Royal Australian and New Zealand College of Psychiatrists;

A psychologist who is a member of the Australian Psychological Society;

A social worker who is a member of the Australian Association of Social Workers;

- 1.5. We recommend the use of this model, and furthermore that the word 'Accredited' could be added before the words 'member of the Australian Association of Social Workers'. This gives a guarantee, backed by an AASW registered trademark, that the social worker is not only qualified but has a commitment to ongoing professional development and may be subject to an AASW audit.

² Greil, A. L., Slauson-Blevins, K., & McQuillan, J. (2010). The experience of infertility: A review of recent literature. *Sociology of health & illness*, 32(1), 140-162.

2. Remove the offence and associated penalty for a breach of a contact statement for adoptions that occurred before June 1991

- 2.1. The AASW supports the removal of the criminal offence and associated penalties as it brings the legislation in line with other jurisdictions. The existing penalties are excessive (especially the 2 years imprisonment) and have historically discouraged individuals from accessing adoption information. The removal of the penalties provides a more appropriate balance, while still providing the necessary safeguards.
- 2.2. We also highlight the significant need for the provision of appropriate supports from qualified professionals (see 1.4) when an applicant is requesting access to information contained in the contact statement. This is a complex issue that raise numerous issues for individuals and the Act must recognise that ensuring access to counselling and support by qualified and skilled professionals must be a priority.

3. Improve access to information.

- 3.1. The AASW supports the broadening of the definition of the term 'relative' in the Act for the purposes of accessing, or consenting to the access of information to include future generations and persons recognised under Aboriginal tradition and Torres Strait Island custom. While supporting the reform, the Act still needs greater clarity in relation to the processes and guidelines in place when determining who may be deemed a relative under Aboriginal and Torres Strait Islander custom. The best interest principles must be of paramount importance and inform all decision making, especially when identifying who and what information can be accessed.
- 3.2. Greater consideration must also be given to broadening the concept of 'relative' to also include significant relationships for the child, which may not be covered by the amendments.

4. Require the court to be satisfied that exceptional circumstances exist before including a change to a child's first name in a final adoption order

- 4.1. Article 8 of the UN's Convention on the Rights of the Child states that governments should respect a child's right to a name, a nationality and family links. The Convention highlights the importance of a child's name and the links to identity, culture and history. Changing a child's first name can have numerous detrimental consequences and therefore must only be done under exceptional circumstances.
- 4.2. The example provided by the Bill of 'exceptional circumstances' needs to be reviewed in order to provide greater and improved guidance to the courts. Presenting a scenario where a child's cultural name is 'potentially offensive' within a Western context is too vague and many examples that could fall under this classification would not meet a standard for 'exceptional circumstances'. Besides extreme examples where a name may undeniably be deemed harmful to a child's wellbeing, what is 'potentially offensive' is too subjective an idea and the Act needs to be clearer in this respect so that the change occurs only in truly exceptional cases. The Act must detail a much clearer set of criteria about what exceptional circumstances include and that key to this is maintaining the child's cultural identity and heritage and that wherever possible the child's views must be considered. .

5. Enable the chief executive to facilitate contact between parties to an adoption during an interim adoption order

- 5.1. The AASW supports the amendments that provide much needed clarity in relation to face-to-face contact between parties to an adoption during an interim adoption order. As with all considerations, the need for, or frequency of contact must be made in the child's best interests and in consultation with all key parties. This process must include the provision of support services from professional staff that are appropriately qualified and trained to understand the complexities of adoption.
- 5.2. More broadly, the AASW believes that governments have responsibilities to provide adequate and appropriate life-long adoption services for families, adoptive families and adoptees. There is a significant need for legislation to recognise that individuals and families involved in the adoption process require varying forms of support at different stages throughout the lifespan. Given the degree of divergence in requirements and timeframes for people needing support the Act should not be prescriptive, but needs to highlight its importance and identify it as a key consideration in the process.

Conclusion

The AASW believes that having a robust framework for decision making in relation to adoption is crucial, as is the ongoing support to children and their adopted families, and that this should be reflected in the Act. We welcome the opportunity to provide a submission and look forward to working with the Government towards making the Adoption Act more reflective of the needs and best interests of children.

Submitted for and on behalf of the Australian Association of Social Workers Ltd



AASW
.....
**Australian Association
of Social Workers**

T 1800 630 124
F 02 6199 5009
E social.policy@aaaw.asn.au

National Office – Melbourne
Level 7, 14-20 Blackwood Street,
North Melbourne, Vic, 3051

Postal Address
PO Box 2008, Royal Melbourne Hospital, Vic, 3050

Incorporated in the ACT
ACN 008 576 010 / ABN 93 008 576 010