

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ADOPTION BILL 1992

REPORT NO. 3 OF THE STANDING COMMITTEE ON SOCIAL POLICY

MARCH 1993

TERMS OF REFERENCE

On 8 December 1992 the Legislative Assembly passed the following resolution :

That the Adoption Bill 1992 be referred to the Standing Committee on Social Policy for consideration and that the Committee report back to the Assembly by 23 February 1993.

On 16 February 1993 the Legislative Assembly passed the following resolution :

That the resolution of the Assembly of 8 December 1992, concerning the reference of the Adoption Bill 1992 to the Standing Committee on Social Policy, be amended by omitting "by 23 February 1993" and substituting "by 16 March 1993" and

- (1) if the Assembly is not sitting when the Standing Committee on Social Policy has completed its inquiry on the Adoption Bill 1992 the Committee may send its report to the Speaker, or in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing and circulation; and
- (2) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

COMMITTEE MEMBERSHIP

Ms Annette Ellis (Presiding Member)

Ms Helen Szuty (Deputy Presiding Member)

Mrs Kate Carnell

Mr Greg Cornwell

Mrs Ellnor Grassby

Secretary : Greg McIntosh

Research Support: Vicki Salkin

Administrative Support: Karen Pearce

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RECOMMENDATIONS

The Committee recommends that:

1. the review process as outlined in Section 17 of the Bill be amended to reflect the following –
 - that the Minister be directly responsible for choosing 3 people from the general community, with appropriate qualifications, to make up the review committee;
 - that officials from the Housing and Community Services Bureau not be eligible to sit on such a committee; and
 - that the Minister be responsible for convening the committee of 3 to review the Director's decision.

Paragraph 2.5

2. Section 56 of the Bill be amended so that the 12 month supervision period referred to be extended to cover all adoptions and not just those from overseas.

Paragraph 2.18

3. Section 56 be reworded so that the emphasis is on "support" as opposed to "supervision".

Paragraph 2.20

4. the right of access to the child as contained in Section 56 (1) should be amended to reflect the following –

- that, visits are to be at a mutually agreeable time, provided the Minister may at any time, in writing, authorise such a visit.

Paragraph 2.23

5. Section 56 (3) of the Bill be deleted and that all fees, where appropriate, be imposed on the adoptive parents at the beginning of the adoptive process.

Paragraph 2.26

6. Section 45 (3) of the Bill be amended such that the reference to "surname" be omitted and substituted with "name" so as to allow the Court to be able to order that the child's pre-adoption name remain the same.

Paragraph 2.34.

1. INTRODUCTION

Background

- 1.1 The Standing Committee on Social Policy was formed on 27 March 1992 to inquire and report on matters referred to it by the Assembly or matters that are considered by the Committee to be of concern to the community relating to health, hospitals, nursing homes, welfare, employment, housing, social security, the ageing, people with disabilities, the family, Aboriginal people, youth affairs, the status of women, multicultural affairs, industrial relations, occupational health and safety, education, the Arts, sport and recreation.
- 1.2 On 8 December 1992 the Assembly passed a resolution referring the Adoption Bill 1992 to the Social Policy Committee for inquiry and report by 23 February 1993. On 16 February 1993 a resolution was passed in the Assembly altering the reporting date to 16 March 1993.

The Inquiry Process

- 1.3 The Committee decided that, as a starting point, it should hold discussions with relevant officials from the Housing and Community Services Bureau with a view to obtaining a detailed briefing on the main features of the Adoption Bill 1992.
- 1.4 Accordingly, the Committee, in private session, had detailed discussions with officials from the Housing and Community Services Bureau. This meeting was held on 21 December 1992 and the officials in attendance were the Acting General Manager of the Housing and Community Services Bureau; the Director of Adoption and Foster Care and the Adoption Information Officer.
- 1.5 In the week beginning 19 December 1992 the Committee placed advertisements in the Canberra Times, the Valley View and the Canberra Chronicle calling for written submissions. These advertisements were repeated in the week beginning 16 January 1993. The Committee also wrote to a large number of organisations and individuals specifically requesting a written submission. In all twenty-three written submissions were received from a range of organisations and individuals with an interest in the Adoption Bill 1992. A full list of those who provided written submissions is at Appendix 1.

- 1.6 The Committee also decided to hold a public hearing to enable the various groups/organisations and individuals with an interest in the Bill to put their views directly to the Committee. It also allowed the Committee to question at length officials from the Housing and Community Services Bureau about the proposed legislation and the many issues involved. The public hearing was held on the morning of Wednesday 3 March 1993.

Limitations of the Inquiry

- 1.7 Given the tight time frame of the inquiry the Committee was compelled to restrict its deliberations to some of the main issues that were still of concern to sections of the ACT community. The Committee acknowledges the extensive consultation process that had been undertaken during the course of the preparation of the Bill and was anxious to avoid a lengthy and drawn out repeat of that consultation process.

Acknowledgement

- 1.8 The Committee appreciates the cooperation and assistance provided to it by members of the public and ACT Government officials during the inquiry.

2. MAIN ISSUES

Review of Director's Decision

- 2.1 Section 17 of the Adoption Bill 1992 allows for a review of the Director's decision not to include a particular applicant's name on the register of people who have been approved for placement of an adoptive child.
- 2.2 The call for a review of such a decision must be made in writing and once this has been done..."the Director shall convene a committee, consisting of not more than 3 persons appointed by him or her, to review the decision." [S. 17 (1)]. Further, the Bill states that anyone who was involved in any of the preparatory work that led to the original decision being made is not eligible to sit on such a committee.
- 2.3 The Social Policy Committee received both written and verbal evidence from a number of organisations and individuals that argued the case for a more independent review procedure than that currently contained in the Bill. For example, the Adoptive Parents Association Canberra Incorporated argued that..."The provision [S.17] does not place any requirement on the Director relating to appointments to this committee apart from the requirement that they were not involved in work preparatory to the decision. Therefore they could be drawn from other areas of the Family Services Branch, and if so, would certainly not be seen as independent." (Submission to Committee, 8 February 1993, page 1).
- 2.4 The Committee concurs with the view that the review process as outlined should be an independent one and that there should be no officials from the Housing and Community Services Bureau taking part in any such review. The Committee believes that it should be the Minister who appoints and selects the 3 person review committee and that these 3 people, with appropriate qualifications, should come from the general community.
- 2.5 **The Committee recommends that the review process as outlined in Section 17 of the Bill be amended to reflect the following –**
- **that the Minister be directly responsible for choosing 3 people from the general community, with appropriate qualifications, to make up the review committee;**
 - **that officials from the Housing and Community Services Bureau not be eligible to sit on such a committee; and**
 - **that the Minister be responsible for convening the committee of 3 to review the Director's decision.**

Aboriginal Child

- 2.6 Section 21 of the Bill makes special provision for Aboriginal children and their families in matters pertaining to adoption. Section 21 (2) states that "An adoption order shall not be made in respect of an Aboriginal child unless the Court is satisfied that – (a) it is not practicable for the child to remain in the custody of the birth parents or of a responsible person; and (b) the choice of the adoptive parents has been made having regard to the desirability of the child – (i) being in the custody of a person who is a member of an Aboriginal community; and (ii) being able to establish and maintain contact with his or her birth parents, any responsible person and the Aboriginal community of which the child is or was a member."
- 2.7 Some concerns were expressed to the Committee that Section 21 singled out Aborigines for special treatment and the view was put that Aborigines should be treated in the same way as all other races and ethnic groups are treated in this Bill. Accusations were made that little or no consultation had taken place with members of the Aboriginal community on this issue. (Evidence, page 24).
- 2.8 However, the Committee was informed by officials from the Housing and Community Services Bureau that in fact an extensive consultation phase took place prior to the drafting of the Bill. The issue was thoroughly canvassed and the Aboriginal community was happy to see Section 21 included in the Bill. Moreover, most States in Australia have incorporated similar placement principles for Aboriginal children as those contained in Section 21 into their respective adoptive legislative frameworks. (Evidence, pages 56/57).
- 2.9 The Committee believes that there is a sound basis for Section 21 being in the legislation. Apart from the reasons stated in 2.8 the specific placement principles contained in Section 21 will help ensure that important Aboriginal cultural and tribal ties are maintained.

Overseas Child

- 2.10 The Committee explored the question of whether special requirements of cultural heritage and background of adoption applicants should be taken into consideration as they are in Section 21 – Aboriginal child.
- 2.11 It was decided that Section 6 – Welfare and interests of the child to be paramount – should be the overall determining factor in overseas adoptions and that the Court already has some discretion under Section 19 (2) (b) to take into account – "(1) the racial or ethnic background of the proposed adoptive parents."

Consents of Parents and Guardians and Dispensing with Consent

- 2.12 Another area of concern that was raised with the Committee was the apparent requirement in the legislation that consent needed to be obtained from both birth parents of the child before it could be placed with adoptive parents. For example, Section 27 (2) outlines who is an "appropriate person" whose consent must be obtained before a child under 18 years of age can be the subject of an adoption order. Section 27 (2) states..."a person is an appropriate person in relation to a proposed adoption of a child if the person is – (a) in the case of a child who has not previously been adopted – (i) each parent of the child; or (ii) the guardian of the child...."
- 2.13 The concern raised was the problem that could arise if one of the parents, who had not had any contact or not been supportive of the child for a long period of time, refused to give consent. This would mean that the adoption could be delayed or even halted by a parent who in such circumstances it could be argued should not be involved in the decision at all.
- 2.14 However, the Committee believes that such concerns are covered by the provisions contained in Section 35 – Dispensing with Consent. Section 35 (1) states that "On application, the Court may, by order, dispense with the requirement for consent of a person to the adoption of a child if the Court is satisfied that – (a) the person cannot, after reasonable inquiry, be identified or located; ... (d) the person has, for a period of not less than 1 year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian, as the case may be, of the child; or (e) there are other circumstances that justify the requirement for the consent being dispensed with.

Supervision of Certain Adopted Children

Supervision Requirements for Local and Overseas Adoptions to be the Same

- 2.15 Section 56 specifically refers, among other things, to the supervision requirements of children adopted from overseas. Section 56 (1) allows for the Director, where he/she thinks fit, to..."supervise the welfare and interests of the child for a period not exceeding 12 months commencing on the date of the arrival of the child in the Territory..."
- 2.16 This provision for a 12 months supervision period for overseas adoptions does not extend to cover locally adopted children, although the Committee was advised that in practice a similar supervision period is observed.

2.17 The Committee believes that if it is thought necessary to legislate for overseas adoptions to be supervised for up to a year then similar legislative requirements should apply to local adoptions.

2.18 The Committee recommends that Section 56 of the Bill be amended so that the 12 month supervision period referred to be extended to cover all adoptions and not just those from overseas.

Emphasis to be on "Support" rather than "Supervision"

2.19 The Committee is concerned that the "tone" of Section 56 may be perceived to be too coercive and authoritarian. The Committee would prefer to see an emphasis placed on "support" rather than "supervision". The use of the word "support" will help provide an atmosphere where the adoption process is seen by the main participants to be one of partnership and mutual trust as opposed to an atmosphere that could be seen to be more autocratic and heavy handed if the emphasis is on "supervision".

2.20 The Committee recommends that Section 56 be reworded so that the emphasis is on "support" as opposed to "supervision".

Access to Adopted Children by Welfare Authorities

2.21 In line with comments made in 2.19 the Committee believes that the provision in Section 56 (1) allowing ..."right of access to the child at all reasonable times during that [12 month] period"... places too much discretion in the hands of the Director and his/her officials.

2.22 In terms of access, the Committee would prefer to see a mutually agreeable arrangement put in place and if a mutually agreeable arrangement can not be found, then and only then, should the Director have right of access to the child at all reasonable times. That access is to be approved by the Minister, in writing, following application by the Director in writing.

2.23 The Committee recommends that the right of access to the child as contained in Section 56 (1) should be amended to reflect the following –

- **that, visits are to be at a mutually agreeable time, provided the Minister may at any time, in writing, authorise such a visit.**

Indeterminate/Open Ended Nature of Fees

2.24 Section 56 (3) states "Where the Director supervises the welfare and interests of a child under this section, the Director may require payment by the adoptive parents of the child of a fee not exceeding the determined fee".

- 2.25 The Committee believes that Section 56 (3) is too "open ended". The Committee would prefer to see fees set at the beginning of the adoptive process so that prospective adoptive parents are fully aware of the full costs involved in the adoption of a particular child. The provision that the Director "may require payment by the adoptive parents of the child of a fee" is too discretionary and should be removed.
- 2.26 The Committee recommends that Section 56 (3) of the Bill be deleted and that all fees, where appropriate, be imposed on the adoptive parents at the beginning of the adoptive process.**

Safeguards Against Persons Who Do Not Know Of Their Adoptions Being Contacted By The Other Party Who Has Obtained Identifying Information

- 2.27 The access to origins provisions of this legislation operate on the premise that all adopted people know of their adopted status and have the right to information about their adoption, birth and family of origin.
- 2.28 Most adoptive parents have told their children that they were adopted. It is known that there are some instances where adoptive parents have not told their children but that as adults they find out about the adoption by other means such as information from other family members or finding legal documents relating to the adoption.
- 2.29 It is recognised that there will be cases in the ACT community where the adopted adult is unaware of his or her status. Unless the adoptive parents of these adults tell them of their adoption, they will be unable to exercise the choice to register a veto and there can be no guarantee that a birth relative will not make contact. Such an event would be extremely distressing for all concerned. In order to minimise the likelihood of an adopted person either not knowing of their adoptive status or of the changes in the law, it is envisaged that a large part of implementing the new provisions will include the widespread publicising of the new provisions locally nationally and internationally through Australian diplomatic posts and the offering of counselling to those adoptive parents who have not yet told their children.
- 2.30 A further safeguard that may be offered is an undertaking by the Adoption Information Service to notify a person at his or her last address when information pertaining to that person is accessed.
- 2.31 The Committee recognises the potential trauma involved in some of these cases but accepts that such circumstances are outside the realm of legislation. However, the Committee encourages everyone involved in the adoption process to be aware of this potential and to work towards the alleviation of such trauma.

Names of Adopted Child

- 2.32 The Committee also discussed Section 45 (3) which states that "Where, before making an adoption order, the adopted child had been generally known by a particular surname, the Court may, in the adoption order, order that the child shall have that name as his or her surname."
- 2.33 The Committee believes that in some circumstances it would be appropriate for forenames to be also covered by this part of the legislation. Such a provision would be especially advantageous for older children with distinctive cultural names and who wish to retain them.
- 2.34 The Committee recommends that Section 45 (3) of the Bill be amended such that the reference to "surname" be omitted and substituted with "name" so as to allow the Court to be able to order that the child's pre-adoption name remain the same.**
- 2.35 The Committee notes that acceptance of the recommendation contained in 2.34 will necessarily entail a consequential amendment to Section 45 (2).

Annette Ellis
Presiding Member
10 March 1993

APPENDIX 1

WRITTEN SUBMISSIONS RECEIVED

Mrs Helen Bayes – President, Adoptive Families Association

Mrs Gail Bell

Ms Lorraine Brook – Adoption Triangle ACT

Ms Christine Bond

Mr Mark Boyd – ACT Lesbian and Gay Network

Ms Rita Carroll for Mary Smith – National President, Adoption Privacy Protection Group Incorporated

Mr Bill Chapman – Acting Secretary, Human Rights Australia

D C Dunkley – Office of the Public Trustee for the ACT

Ms Barbara Lemmey

Mr Stephen Lloyd – Director of Research, Administrative Review Council

Ms Margaret McDonald – Manager, Post Adoption Resource Centre

Mr Max Minuis

Mrs Julia and Mr Barry Rollings

Ms Julia Ryan – Convenor, ACT Women's Consultative Council

Mr Lindsay Shaw – Acting ACT Ombudsman

Mrs Ruth Scott

(Rev) John A Southwell – Director, CENTACARE, Archdiocese of Canberra and Goulburn

Mr Roger Thompson – Registrar of Births and Marriages

Ms Louise Voigt – Chief Executive, Barnardos Australia (2 submissions)

Mr Paul Wellsmore – Executive Director, Adoption Advocacy

Mr R J Whitten – Executive Director, ACT Law Society

Mrs Rosalie Woodruff

APPENDIX 2

LIST OF WITNESSES

Mrs Helen Bayes – President, Adoptive Families Association

Ms Christine Healy – Executive Director, Family Services Branch, Housing and Community Services Bureau

Ms Margaret Croucher – Adoption Policy, Housing and Community Services Bureau

Mr Ken Horsham – General Manager, ACT Housing and Community Services Bureau

Ms Jenny Kitchin – Director, Barnados (Canberra)

Ms Evy Lovstad – Empty Arms (ACT)

Ms Margaret McDonald – Manager, Post Adoption Resource Centre

Ms Judy McPherson – Empty Arms (ACT)

Mrs Julia Rollings

Mrs Ruth Scott

(Rev) John A Southwell – Director, CENTACARE, Archdiocese of Canberra and Goulburn

Ms Sue Tregeagle – Program Services Officer, Barnados, Canberra

Ms Marcia Vannithone – Director, Adoption and Foster Care, Housing and Community Services Bureau

Mr Paul Wellsmore – Executive Director, Adoption Advocacy

Committee members have already acknowledged in this report the extensive consultation that has occurred over many years leading to the preparation of the Adoption Bill for consideration by the ACT Legislative Assembly. These consultations have involved adoptees, adoptive parents and birth parents coming to terms with the adoption process from three different perspectives. It has been acknowledged that the Bill as it stands has involved compromises by everyone to achieve legislation which will be acceptable to all parties. I wish to comment further on a number of provisions in the Bill.

The first of these is the issue of "**persons in whose favour adoption orders may be made**" outlined in Section 18 of the Bill.

At present, it is clearly stated that adoption orders may be made in favour of heterosexual married couples and heterosexual couples living in defacto relationships for three years or longer. It is possible in some circumstances for couples who have demonstrated stability and commitment to their relationships to adopt and for single people to adopt, however, it remains impossible for homosexual couples to adopt. Following inquiry it was established that at present homosexual couples are unable to adopt children in any State or Territory in Australia, however, children may be fostered by homosexual couples in some States.

It is important to consider that accusations of perceived discrimination may be made while homosexual couples are precluded from adopting children. While the issue was unable to be examined in depth by the Committee due to time constraints it is one which I am sure will be discussed and debated at length in years to come.

Representatives from Barnardos argued that specific provisions do not exist in the ACT adoption legislation as they do in existing New South Wales legislation regarding the need for children over the age of 12 years to consent to their own adoption.

These circumstances appear to be already covered by the legislation which allows in Section 19(2) in deciding whether or not to make an adoption order, the Court will have regard to – (a) where it is appropriate given the age and understanding of the child – the wishes of the child.

Thus the court has considerable discretion in taking the wishes of a child of any age into account when determining adoption orders, including the child's consent to adoption.

The provisions for revocation of consent in the Bill in Section 31 are important to consider because of the profound decisions made by birth mothers to adopt their babies. Section 34(3) states that in most circumstances an adoption order shall not be made pursuant to an instrument of consent signed by the mother of the child before the expiration of seven (7) days after the day on which the child was born. The revocation period following the signing of consent is 30 days with a possible extension of 14 days. Effectively birth mothers wishing to have their babies adopted have a minimum of 51 days during which their decision to adopt needs to be finalised.

It has been stated that the signing of consent for the adoption of a child can not occur before the expiration of seven (7) days after the day on which the child was born, unless particular circumstances apply.

Following inquiry it appears that the timing of the signing of consent applies to a normal length of stay in hospital of a birth mother considering the adoption of her child. During this time the birth mother can be supported by hospital social workers who are available to offer counselling and support. Every encouragement is given to birth mothers who are doubtful whether they wish to have their babies adopted or who considered adoption at an earlier time and now wish to rear the child to support the child. Advice received indicates that once birth mothers return home with their babies

they are unlikely to then make the decision to adopt. Where adoption orders are made they occur within 9–10 days of the birth of the child and are only revoked in unusual or exceptional circumstances.

The major provision of this Bill which has received the most attention in recent years is Part V Access to Information which will enable adoptees and birth mothers in particular to access information about each other. While not wishing to comment extensively about this section here, I wish to draw attention to Section 65 which concerns the disclosure of medical information in certain circumstances. The certain circumstances described particularly deal with information which may be prejudicial to the physical or mental health or well being of the applicant and while this section appears to deal sensitively with the disclosure of medical information in these circumstances this section should not preclude the normal disclosure of non-identifying medical information.

In addition to these comments I have drawn attention to four sections of the Adoption Bill where drafting improvements could be made. They concern the explicitness of Section 78 and the language and terminology used in Sections 46 and 109 of this Bill. Consideration should also be given to changing the headings of Sections 55 and 57 to achieve consistency in language used throughout the Bill.

In conclusion, although it has taken many years of work to prepare the Adoption Bill, it needs to be remembered that societal changes alone will ensure that the adoption process remains an area of interest and concern for many people in the community.

I wish to express my thanks to the many people who forwarded submissions and who appeared at the public hearing for the energy and commitment that they demonstrated to assist my understanding of the complex issues involved in the adoption process.

Helen Szuty MLA

12 March 1993