

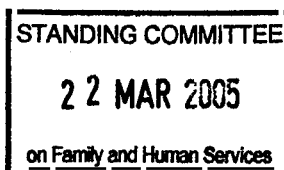
**House of Representatives
Standing Committee on
Family and Human Services
Inquiry into Adoption of Children from
Overseas**

Submission from:

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This submission addresses the first term of reference for the inquiry:

Any inconsistencies between state and territory approval processes for overseas adoptions.

The focus of the submission is on the diverse requirements for joint applicants for adoption in each jurisdiction. These requirements are not specific to joint applicants for overseas adoption but nonetheless apply also to such applicants.

REQUIREMENTS FOR JOINT OR COUPLE APPLICATIONS FOR ADOPTION: SUMMARY FOR EACH STATE OR TERRITORY

Western Australia (Adoption Act 1994)

A joint applicant must have been married to or in a de facto relationship with the other applicant for 3 years and not be married to or in a de facto relationship with any other person. (Section 39 (1)).

According to the Interpretation Act 1984 (Section 13A (3)) for two persons to be in a de facto relationship "it does not matter whether the persons are different sexes or the same sex".

Tasmania (Adoption Act 1988)

Children may be adopted by a couple in a registered significant relationship only if the child is already a relative of one of the applicants (Section 20(2A)). This may apply to some overseas adoptions.

Any two adult persons who have a relationship as a couple and who are not married or related by family may register a significant relationship. (Relationships Act 2003 (Section 4)).

For non-related children an adoption order may only be made in favour of two persons where they have been married for three years, including any period prior to marriage in which they were in a continuous stable relationship. (Adoption Act 1988 Section 20).

Australian Capital Territory (Adoption Act 1993)

An adoption order may be made in favour of 2 people jointly, being a couple who, whether married or not, have lived together in a domestic partnership for a period of not less than 3 years. (Section 18 (1))

The Legislation Act 2001 Section 169 (2) defines a domestic partnership as "the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis."

South Australia (Adoption Act 1988)

An adoption order may be made in favour of two persons who have been cohabiting in a marriage relationship for a continuous period of at least five years. (Section 12 (1)).

The interpretation section 4 (1) of this Act defines a marriage relationship as “the relationship between two persons cohabiting as husband and wife or de facto husband and wife”.

Victoria (Adoption Act 1984)

An adoption order may be made in favour of a man and a woman who are married to each other; who are in a relationship recognised as a traditional marriage by an Aboriginal community or group to which they belong or who live in a de facto relationship. The couple must have been living with each other for two years in any of these relationships or in any combination of these relationships. (Section 11 (1)).

A de facto relationship is defined in Section 4 (1) of this Act as “the relationship of a man and a woman who are living together as husband and wife on a genuine domestic basis, although not married to each other.”

New South Wales (Adoption Act 2000)

Two persons who are a couple may adopt a child (Section 28 (1)) provided they have been living together for a continuous period of not less than 3 years immediately before the application for the adoption order.

The Dictionary of this Act defines a couple to mean “a man and a woman who are married or have a de facto relationship”. A de facto relationship means “the relationship between a man and a woman who live together as husband and wife on a bona fide domestic basis although not married to one another”.

Northern Territory (Adoption of Children Act)

An order for the adoption of a child shall only be made in favour of a couple where the man and woman are married to each other and have been so for not less than 2 years or have entered into a relationship that is recognised as a traditional Aboriginal marriage that has been so recognised for not less than 2 years. (Section 13)

Queensland (Adoption of Children Act 1964)

An adoption order may only be made in favour of a husband and wife jointly. (Section 12 (1)).

Section 67A of this Act specifically provides that the definition of spouse in the Interpretation Act (which includes a domestic partner of the same or opposite sex) does not apply to this Act.

COMMENTS ON THESE REQUIREMENTS

Three jurisdictions allow for adoptions by same sex couples. Western Australia and the ACT do so without any further limitations as to which children a same sex couple may adopt while Tasmania limits adoptions by same sex couples to those where the child to be adopted is a relative of one party to the same sex relationship.

All jurisdictions except for Queensland and the Northern Territory allow for adoptions by a man and a woman in a de facto relationship. (In Tasmania, a man and a woman in a registered significant relationship may only apply to adopt a child who is relative of one of them.)

The Northern Territory limits couple adoptions to married couples or couples in a recognised traditional Aboriginal marriage.

Queensland limits couple adoptions to married couples only.

Adoption by same sex couples

Children need the care and nurture provided by both a father and a mother. It is contrary to the best interest of a child to allow or facilitate adoption by a same sex couple.

Reviews by Dr Robert Lerner¹ and by Lynn Wardle² of all studies conducted to date on the effects of homosexual parenting have demonstrated that many of those studies claiming that homosexual parenting has no adverse affect on children have fatal methodological flaws and their conclusions cannot be maintained as scientifically valid.

Wardle shows **even from those studies which conclude in favour of homosexual parenting** that there is data showing that homosexual parenting may be harmful in the following ways:

- * greater incidence of homosexual orientation in the children raised by homosexual couples with resulting problems including suicidal behaviour, promiscuity, etc.

- * greater incidence of anxiety, sadness, hostility, defensiveness and inhibitions (some of these especially among boys of lesbian mothers)

Wardle also demonstrates the harm done to children raised by homosexual couples from **not having both a father and a mother.**

¹ Lerner, Robert, and Nagai, Althea. No Basis: What the Studies Don't Tell Us about Same-Sex Parenting. Marriage Law Project, 2001.

² Lynn Wardle "The Potential Impact on Homosexual Parenting on Children" University of Illinois Law Review 1997: 3: 833-920

* fathers have a different pattern of nurturing than mothers that contributes to well- rounded child development

* **fatherlessness is linked to youth violence and declining child well-being** (including school performance, teen pregnancy, etc.)

* fatherless daughters have more trouble relating to men in adult life

Wardle rebuts the simplistic claim that having two loving parents is more important than their sexual orientation.

Adoption by de facto couples

Children need a father and a mother who remain in a stable, committed relationship together for at least the whole of the child's upbringing to adulthood.

De facto relationships break up at a far higher rate than marriages.

In Australia, de facto relationships encounter more problems than marriage. Twenty-five percent lasted 12 months, 50% lasted two years and 75% ended before four years.³

Worldwide evidence is that existing cohabitations *with children* tend to break up at four-to-five-fold the rate of marriages⁴. An Office for National Statistics study (UK) found that 52% of cohabiting couples had split up 5 years after the birth of the child, but 92% of married parents are still together. This makes cohabiting couples **six and a half times more likely to split up** after the birth of a child than a married couple⁵

In the Christchurch Child Development Study, cohabitation is a foremost risk factor for breakdown of the child's family in its first five years. 43.9% of *de facto* couples separated compared to 10.9% of the *married*.⁶

³ Sarantakos, S. (1984), *Living together in Australia*, Longman Cheshire, Melbourne

⁴ British Household Panel Study. Buck, N. and Ermisch, J., *Cohabitation in Britain*, Changing Britain, issue 3, ESRC, October 1995; McKay, *New Data on Life Events: the Family and Working Lives Survey*, 1997; Fergusson, D. *Family Formation, Dissolution and Reformation*, in Proceedings of the SSRFC Symposium: New Zealand Families in the Eighties and Nineties, NZ: Canterbury University, No. 20, November 1987, pp15-30

⁵ Kiernan K. Childbearing outside marriage in Western Europe. *Population Trends*, 1999;98:19

⁶ Fergusson, D. *Family Formation, Dissolution and Reformation*, in Proceedings of the SSRFC Symposium: New Zealand Families in the Eighties and Nineties, NZ: Canterbury University, No. 20, November 1987, pp15-30

WHAT ROLE FOR THE COMMONWEALTH?

Amend the Family Law Act 1974

In 2004 the Marriage Legislation Amendment Bill 2004 was passed by the House of Representatives but lapsed in the Senate. The second part of that bill provided for an amendment to the Family Law Act 1974 as follows:

111CA Certain international adoptions not allowed

A person (including an officer of a State or Territory) must not, for the purposes of:

- (a) the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993; or*
- (b) a bilateral agreement or arrangement on the adoption of children made between a State or Territory and an overseas jurisdiction;*

facilitate, or provide for, the adoption of a child by 2 persons of the same sex who live together as a couple.

We submit that it would be timely for this provision to be reintroduced in an expanded form that would also prohibit the facilitation of adoption by 2 persons of the opposite sex who are not married to one another.

Amend the Sex Discrimination Act 1984

The judicial reasoning in the McBain and Pearce cases found that access to reproductive technology could not be limited on the grounds of marital status because discrimination in the provision of services was prohibited under the Sex Discrimination Act 1984.

This reasoning could easily be applied also to access to adoption.

Therefore the Commonwealth should enact an amendment to the Sex Discrimination Act 1984 to secure the right for all jurisdictions to limit access to adoption on the grounds of marital status.

Section 22 (1A)

Nothing in this section makes it unlawful to refuse a person access to, or restrict a person's access to, assisted reproductive technology services, adoption services or surrogacy services if that refusal is on the ground of the person's marital status.