

Attachment D – Explanatory Statement

Adoption of Children Legislation Amendment (Equality) Bill 2017

SERIAL NO. 39

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR TERRITORY FAMILIES

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of the Adoption of Children Legislation Amendment (Equality) Bill 2017 is to amend the *Adoption of Children Act* and *Adoption of Children Regulations* to ensure these laws are consistent with Commonwealth anti-discrimination legislation and enable de facto couples, which includes same sex-couples to apply to adopt children in the Northern Territory. The Bill removes biological sex and gender references and replaces them with gender neutral terms.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Adoption of Children Legislation Amendment (Equality) Act 2017*.

Clause 2. Commencement.

This clause sets out how the amendment Act will be commenced. In this case this will commence on the day after the day on which the Administrator's assent to the Bill is declared.

Part 2 Amendment of Adoption of Children Act

Clause 3. Act amended

This Part amends the *Adoption of Children Act*

Clause 4. Section 3 amended

This clause amends the definitions in the *Adoption of Children Act*.

Subclause (1) removes the definition of 'spouse' which is replaced with a new definition in Subclause (2) that refers to a person to whom the person is married or an Aboriginal person married to a person in a traditional Aboriginal marriage. It also introduces a new sub section to recognise a spouse of a person in a de facto relationship with the person.

These subclauses do not make any change to the definition of traditional Aboriginal marriage.

Subclause (4) adds a note that the *Interpretation Act* contains definitions and other provisions that may be relevant to the definitions in section 3(1) of the *Adoption of Children Act*. The most relevant term is de facto relationship, which is referred to in the *Interpretation Act* as being defined under the *De Facto Relationships Act* to ensure consistency across the legislation. That definition states that two persons are in a de facto relationship if they are not married but have a marriage like relationship and lists relevant matters to consider in determining those relationships. Section 3A (3) states that the marital status and whether they are different sexes or the same sex are irrelevant.

This expanded definition of spouse will enable a de facto or same sex partner of a parent of a child to apply to adopt their de facto or same sex partner's child under current section 15 of the *Adoption of Children Act*.

'Register of Adoptions' is a new term inserted at subclause (2) for the process of orders of adoption being registered under section 54(1)(b) of the *Adoption of Children Act*.

Subclauses (3), (5) – (8) introduces the term "office holder" and other minor amendments to comply with current drafting practice and removes gender terms.

Subclause (9) replaces sub sections 3(4)(a) and (b) by removing references to "man and woman" and replacing them with "2 persons". It also adds a new category to the meaning of 2 persons or a couple to include 2 persons in a de facto relationship, which as explained

above has the effect of also including same sex persons who are determined to be in a de facto relationship.

Clause 5. Section 13 amended

Subclause (1) amends section 13 so that any 2 persons or a couple as defined in accordance with the amendments to section 3(4), can apply to adopt a child. It does this by removing references to man and woman and adding the category of de facto relationship, and the category of persons living in any combination of the relationships described in the subsection for not less than two years. This will include same sex partners who are determined to be in a de facto relationship.

Subclauses (2)-(3) are minor amendments to comply with drafting practice and remove gender terms.

Clause 6. Section 18 amended

This clause replaces section 18(1) with minor drafting amendments to modernise and neutralise the language and makes minor amendments to subsections 18(2) to (4).

Clause 7. Section 56 replaced

This clause replaces section 56. The section has been redrafted in a modern drafting style to remove archaic language.

Clause 8. Part 11 inserted

This clause inserts the transitional provisions. New section 92 includes definitions of “amending Act” and “commencement.” New section 93 clarifies that if a person or couple applies to the Minister to adopt a child but the Minister had not made a decision on the application, that the Minister must make a decision in accordance with the amended Act.

New section 94 provides that offences committed before commencement are dealt with under the offence provisions in force before commencement, and that the amended offence provisions apply only to offences committed after commencement.

Clause 10. Act further amended

This clause provides that Schedule 1 amends other sections contained in it. Schedule 1 sets out all other amendments to the *Adoption of Children Act* which are required to remove

gender and biological sex references. Schedule 1 also contains minor amendments to comply with current drafting practice.

Part 3 Amendment of Adoption of Children Regulations

Clause 11. Regulations amended

This Part amends the *Adoption of Children Regulations*.

Clause 12. Amendment of Adoption of Children Regulations

This clause provides that Schedule 2 amends regulations contained in it. These amendments are required to remove gender and biological sex references. Schedule 2 also contains minor amendments to comply with current drafting practice, corrects the references to the Minister, dates and address for the Adoptions Unit.

Part 4 Repeal of Act

Clause 13. Repeal of Act

This is a standard clause which provides that the *Adoption of Children Legislation Amendment (Equality) Act* is repealed on the day after it commences.