

SECOND READING SPEECH

Adoption Amendment Bill 2013

Mr Speaker

The purpose of this Bill is to amend the *Adoption Act 1988* to ensure that couples with a significant relationship registered under the *Relationships Act 2003* are eligible to be assessed for their suitability to adopt an unknown child.

The Government is committed to the elimination of discrimination in all its forms. Discrimination on the grounds of sexual orientation and relationship status is prohibited by Tasmania's *Anti-Discrimination Act 1998*.

The Bill will ensure couples with a significant relationship registered under the *Relationships Act 2003* become eligible to be assessed for their suitability to adopt an unknown child.

At 27 February this year, there were 329 significant relationships registered in Tasmania. Of these, 163 were couples of opposite sex and 166 were same-sex couples.

The amendments extend the changes made in 2003, when couples with a registered significant relationship first became eligible to adopt a known child. Two children have been adopted by same sex couples since that time.

In Tasmania, there are only a small number of adoptions of 'unknown' children each year. 'Unknown' adoptions occur where children have been relinquished by their birth parents, and are not known to their potential adoptive parents.

We are not talking about large numbers here. I am advised that in 2011-2012 the Department of Health and Human Services finalised two 'unknown' local adoptions. There were none in 2010-11, and two in 2009-10.

I would like to state quite clearly at the outset that no person has an automatic right or entitlement to adopt a child. If an individual or couple is seeking to adopt a child, they must undergo rigorous tests and meet stringent criteria.

Throughout the adoption application process, the welfare and interests of the child are regarded at all times as the paramount consideration. This principle is enshrined within the *Adoption Act* itself.

I would now like to take a moment to explain how the Bill will make the required changes to the *Adoption Act*.

This will be achieved by amending provisions within Section 20 of the *Act*. Section 20 identifies people who may have an adoption order made in their favour.

Section 20(2A) currently stipulates that the Court may not make an adoption order in favour of a person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, unless –

- (a) the other party to the relationship is the natural or adoptive parent of the child proposed to be adopted or**
- (b) either party is a relative of the child proposed to be adopted.**

The Bill removes this restriction by omitting Section 20(2A) of the *Act*.

The Bill also amends Section 20(3), which currently stipulates that *the Court shall not make an adoption order in favour of a person who is, or persons either of whom is the mother of the child or a man who under Section 29(3) is an appropriate person to give consent to the adoption of the child.*

Section 20(3) is intended to provide that adoption orders should not be made in favour of people in existing parental relationship to a child, but does not currently provide for the circumstances of same-sex female partners. This amendment rectifies that oversight.

The Department of Health and Human Services consulted with a number of individuals and organisations about the planned changes during February and March 2012.

On behalf of the Government, I would like to take this opportunity to acknowledge the contribution of all of those individuals and organisations.

Many Tasmanians have strongly held views on the issue of same-sex adoptions. For some community members, this issue is closely tied to other so-called gay rights issues, such as same-sex marriage and surrogacy.

Many of the arguments against same-sex adoption seem to stem from a belief that children have a right to, or are best served by, a mother and a father, and this argument was once again put by a number of individuals during the consultations undertaken by the Department of Health and Human Services.

At first look, it seems a reasonable enough position. But it fails to acknowledge the great diversity of family units within our Tasmanian community.

In fact, many children grow up with single parents or grandparents, in joint custody situations, or with gay and lesbian parents. Children thrive in these situations.

The key is to have a loving, nurturing and supportive family environment. The Government is strongly of the view that neither the sexual preference nor the relationship status of the parents is a factor in determining whether the family environment has these positive characteristics.

The Government acknowledges that much of the research that has examined whether growing up with same-sex parents is in the best interests of children is controversial. There seem to have been difficulties with studies on both sides of this debate.

But in finalising its position, the Government has been fortunate to have the benefit of exhaustive studies undertaken by several Australian law reform commissions, including the Tasmania Law Reform Institute. These enquiries have examined the relevant literature in great depth.

In her foreword to the NSW Standing Committee on Law and Justice's Report *Adoption by Same Sex Couples*, Committee Chair the Hon Christine Robertson MLC, expressed that it is in children's best interests to make same-sex couples eligible to adopt.

Examining the UN *Convention on the Rights of the Child* in the context of the rights and best interests of children conceived through assisted reproduction, the Victorian Law Reform Commission expressed the view that: “*there is simply no credible evidence that (same-sex) relationships cause harm to the intellectual, emotional, psychological or sexual development of children by virtue of the sexuality of their parents.*”

In developing the Bill, the Government has particularly been guided by the recommendations of the Tasmania Law Reform Institute, which examined the merits of changes to allow same-sex adoptions in 2003.

The Institute recommended that the *Adoption Act* “be amended to permit a couple to apply for adoption regardless of the gender or marital status of the partners making up the couple”.

The Institute concluded that the best interests of children required that same-sex couples be eligible to adopt children. In particular, the reviewers criticised arguments regarding sexual identity on the basis that they reflected prejudices about homosexuality as an undesirable, wrong or a pathological condition.

While acknowledging some difficulties with much of the research in the field, they found:

The problem appears to be that anti-gay scholars either have a tendency to view any evidence of difference as evidence of harm or alternatively they employ double standards by attacking the studies, not so much because their research methods are inferior to most studies of family relationships, but because these critics oppose equal family rights for lesbians and gays.

Further information about the Tasmania Law Reform Institute's report can be found in the Government's *Position Paper on Adoption Law Reform*, which I am releasing today as part of an information package to support the tabling of the Bill.

The Victorian Law Reform Commission (VLRC) made similar findings to the Tasmania Law Reform Institute as part of its enquiry into appropriate eligibility criteria for assisted reproductive technology and adoption. In its report the VLRC said “there is sound evidence that children born into families with non-biological parents or same-sex parents do at least as well as other children.”

And in 2004, the VLRC noted an overwhelming and growing body of evidence to suggest that people living in same-sex relationships are equally as capable of fulfilling their duties and responsibilities towards children in their care as parents living in heterosexual relationships.

I note with interest that in 2012 Melbourne University's School of Population Health commenced the *Australian Study of Child Health in Same-Sex Families*, which is investigating the physical, mental and social well-being of 750 children growing up in families headed by same sex parents.

In short, the Government believes no credible evidence exists to suggest that children raised in same-sex families are disadvantaged. Not all same-sex couples make good parents, just as not all heterosexuals make good parents.

It is the quality of the family environment that makes all the difference.

I would stress again that these amendments to the Adoption Act will allow same-sex and heterosexual couples to become *eligible* to adopt, and subject to the same eligibility criteria as other couples. As with all other prospective adoptive parents, couples with a registered significant relationship will be carefully evaluated by reference to their ability to parent.

It is also worth remembering that these amendments will remove discrimination against heterosexual couples who have a registered significant relationship. And that the Bill is not about same-sex marriage, or about surrogacy.

As part of the consultations on the Bill conducted by the Department of Health and Human Services, many Tasmanians expressed strong support for the reforms. These community members made clear their view that it is high time we ended the discrimination against both same-sex and heterosexual couples; couples who have shown their commitment to one another by registering their significant relationship, and who would like to be considered for their suitability to adopt.

One of the Government's primary motivations for these reforms is to ensure that our adoptions system better reflects broader Tasmanian law, particularly the Anti-Discrimination Act. That legislation embodies our obligations under a number of relevant international conventions.

These changes to the Adoption Act will also better position Tasmania to respond to some of our most pressing social policy challenges.

The number of children who are unable to live with their family continues to increase each year, and the demand for Out-of-Home Care placements increases with it.

The Government continues to facilitate the transfer of guardianship of children in state care to their carers. As at 4 March, 132 court orders had been granted giving guardianship powers to carers for particular children in their care, since 2010.

Once the transfer occurs the new guardians have the right to make all decisions relating to the care and welfare of the child. The Department of Health and Human Services conducts an annual review of the circumstances of each of these children.

By allowing couples with a registered significant relationship to be assessed for their suitability to adopt an unknown child, this Bill will increase the pool of potential adoptive parents over time. This is clearly in the best interests of Tasmania's children.

Throughout the adoption application process, the welfare and interests of the child are regarded at all times as the paramount consideration.

Any recommendation to proceed with an adoption always considers the adoptive child's best interests, the capacity of the prospective parents to meet the child's best interests and the relinquishing parents' preferences.

Ultimately, the Court must be satisfied that the proposed arrangements serve the best interests of the child. All prospective parents are subject to a rigorous assessment process to determine their suitability to adopt.

As I have already explained, no person has an automatic right or entitlement to adopt a child.

Eligibility to apply for an assessment of suitability to adopt does not mean that the couple will be assessed as suitable, and assessment as suitable does not always ensure that applicants will be selected as parents.

The United Nations *Convention on the Rights of the Child* enshrines basic social and legal rights for children living in same-sex families. In particular, Article 21 of the Convention requires that the 'best interests of the child' be the paramount consideration in adoption.

That principle is enshrined in Tasmania's Adoption Act.

As the Australian Human Rights Commission has made clear, excluding same-sex adoptions on the basis of sexuality is a breach of Article 21 of the *Convention on the Rights of the Child*.

Tasmanian children live and thrive in their families, including same-sex families. It is in the best interests of children for the law to recognise and cater for this reality.

The focus must be on the needs of the child and the selection of a family that is best able to meet those needs, regardless of its composition.

This Bill will ensure that our adoption law is consistent with the broader aim of this Parliament to remove discrimination.

I commend the Bill to the House.