Research Director
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane QLD 4000

A submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee with regard to the Adoption and Other Legislation Amendment Bill 2016

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About Griffith University

Griffith University is deeply connected to our community and value our place in it. Our research excellence, innovative teaching and learning practices, along with our strong ties to industry, make us one of the leading providers of higher education in the Asia–Pacific.

The 2015 Excellence in Research for Australia results highlight Griffith's performance at world standard or above across more than 50 different disciplines. Griffith ranked in the top 200 in the QS World University Subject Rankings 2016 for a range of subjects. Griffith also ranks highly as a young university, ranking 37th in the 2015–2016 QS University Rankings: Top 50 Under 50 and 48th in the 2015 Times Higher Education Top 150 under 50.

Foreword to this submission

With over 1,700 experts conducting research across all major academic disciplines, Griffith is focused on understanding the world we live in and improving people's lives. Engaging with the policy and legislative development process is a vital aspect of this goal. While this submission represents the views of individual Griffith University subject matter experts, and should not be seen as reflecting any organisational view or policy, Griffith University is nevertheless pleased to facilitate this submission to the Committee, and stands ready to offer further expertise and knowledge as required.

Overview and recommendations

The overall policy objective of the **Adoption and Other Legislation Amendment Bill 2016** is commendable. While the Bill is, in general, well considered and far-reaching, implementing the following minor suggestions may further support the objectives of the Bill:

1. To close a potential loophole arising from section 76(1)(e) of the *Adoption Act 2009* (QLD), it should be made clear that the requirement for individuals or couples undergoing fertility treatments to have completed treatments before having their name entered into the expression of interest register applies at *all* stages of the adoption process.

2. Surrogacy arrangements should be treated in the same manner as fertility treatments, and not occur concurrently with pursuing adoption.

3. Surrogacy and donor information should be kept and also be available to the adopted person where it applies to them.

4. There should be provision made for the collection and maintenance of statistical data relating to the adoption of children of surrogacy.

Further context and detail concerning these recommendations is provided below.

Specific considerations

Overarching framework for successful adoption

This submission takes the overarching perspective that adoption is primarily a service for children and that in all instances, the needs and best interests of adopted children should be the main focus of any adoption legislation. Noting the outcomes of the *Review of the operation of the Adoption Act 2009 Final Report*, this submission endorses the principle that each adopted child has unique needs, and prospective adoptive parents need to be emotionally as well as physically present to meet the needs and best interests of an adopted child.

Prospective parents must be well placed to deal with anticipated and unanticipated circumstances related to adoptive parenting. It is important to recognise the risk that prospective parents and professionals may underestimate the demands of parenting adoptive children, particularly during the assessment and approval phase of the adoptive process. This especially applies to adoption of multiple children of similar ages, older children, sibling groups, and children who have come from traumatic backgrounds, and children with disabilities (noting, also, that future disabilities or illness cannot be anticipated) – for example, in the United States, 10-15% of adoptions of children with disabilities end in dissolution within five years.

The provision of the best family environment for an adopted child, a willingness to place a child's needs before one's own and an understanding of the demands and issues peculiar to adoption are essential to building functional and successful adoptive families and preventing adoption disruptions and breakdowns.

Factors associated with poor adoption outcomes

Aside from parental unpreparedness, there are a range of other known risk factors that may elevate the risk of adoption disruptions, breakdowns and child deaths. These include:

- parenting multiple, young children;
- parental mental health and other health issues;
- inability to manage challenging behaviours;
- failure to seek help;
- social isolation.

Infertility and adoption

Section 76(1)(e) of the current *Adoption Act 2009* (QLD) stipulates that a person may not have his or her name entered into the expression of interest register if they are undergoing fertility treatment or have undergone fertility treatment within the previous 6 months. This provision recognises that undergoing fertility treatment while concurrently pursuing adoption may not place the needs of the child first and foremost, as legislation requires.

Fertility treatments are disruptive life events, and are physically and emotionally taxing. They may come with a range of unpleasant physical side effects. It may not be in the best interests of adopted children for parents to pursue adoption at a time when their goal is to create a biological family, and energies are heavily focused on fertility treatments. In addition, a selection of risk factors for poor adoption outcomes - such as depression and grieving - are known to be associated with fertility treatments.

A crucial consideration is the documented possibility of people changing their minds about adoption after the birth of a biological child. The best family environment for an adopted child can only be assessed after fertility treatments have ceased and full parenting attention is on meeting the needs of an adopted child.

It is important to recognise that prospective parents often come to adoption after experiencing a series of losses such as the loss of a child, a child with a disability, miscarriage, infertility, or failed medical interventions (fertility treatment). In future, this list is likely to include people with involuntary childlessness (such as those in same sex relationship, or who are single). Research suggests that many people invest considerable emotional energy, finances and time into fertility treatments, and cannot properly contemplate adoption until they cease fertility treatments and pass through acute grieving[1]. Acute grief about the loss or lack of a pregnancy, child, or fertility can be debilitating, and is incompatible with giving full attention to adoptive parenting.

It is crucial that legislation recognises these risks and overcomes potential loopholes into adoption law – for example, by clearly stipulating that the provisions of section 76(1)(e) of the *Adoption Act 2009* (QLD) apply at *all* stages of the adoption process, not just at the stage of entering into (and being on) the expression of interest register.

[1] Some studies suggest that the transition from failed fertility treatments to adoption is different and less disruptive for lesbians, however there is still a transition period.

Surrogacy and donor issues

It should be noted that pursuing surrogacy arrangements while proceeding with adoption may be incompatible with the interests of the adopted child, for very similar reasons to those already outlined in relation to fertility treatment.

There is a close relationship between adoption and altruistic or commercial transnational surrogacy practices, as children created by surrogacy are often subsequently adopted by a parent or parents. It is therefore important to include considerations of surrogacy in the Bill. This particularly applies in relation to access to information regarding birth circumstances, and about the surrogate mother and her family, and donor genetic parents, if adoption is subsequent to surrogacy arrangements.

Provision should also be made for collection and maintenance of statistical data relating to the adoption of children of surrogacy, to facilitate appropriate monitoring of this practice.

Exceptional circumstances

Subsection (8) is inserted to provide that consent is not required under subsections (1)(b) or (2) if the chief executive considers that, because of exceptional circumstances, consent is not required. However, exceptional circumstances should also include medical reasons such as genetic information or donor needs, especially in the case of inherited disease or life-threatening conditions.

Expert contacts

Should any issues raised in this submission require clarification or further consideration, please contact:

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