

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.01 p.m.]: I move:

That this bill be now read a second time.

I introduce this bill as a private member on behalf of Independent member Clover Moore, member for Sydney. The Adoption Amendment (Same Sex Couples) Bill 2010 (No. 2) amends the bill introduced on 24 June 2010 by exempting faith-based adoption agencies from provisions in the Anti-Discrimination Act 1977 when providing adoption services. This will make it not unlawful for faith-based adoption agencies to refuse adoption services to same-sex couples. When this bill was debated in the other place a further amendment was moved that removed the Anti-Discrimination Act from the adoption process, except with regard to the rights of children. The amendment aimed to prevent the Anti-Discrimination Act from affecting the decision of birth parents giving their children up for adoption who may request that their child not be raised by same-sex couples or make any request about the raising of their children that could be considered discriminatory. The amendment had qualified support, with some concerns about unintended consequences. It was, however, passed unanimously. As there are no other changes to the agreement in principal speech in the other place, I seek leave to incorporate the remainder of the second reading speech into *Hansard*.

Leave granted.

Adoption law should be about protecting the best interests of a child—first and foremost!

But existing adoption law continues to exclude the families of same-sex couples, putting discrimination ahead of what is best for children.

Currently a child cannot be adopted by their parent's same-sex partner yet can be adopted by their parent's heterosexual partner; and unlike heterosexual couples, same-sex couples can't adopt a child together.

Gay men and lesbians are no more or less able to love a child or to carry on stable, long-term relationships than their heterosexual counterparts.

The law should support all loving families and protect children's rights.

The Adoption Amendment (Same Sex Couples) Bill will make same-sex couples legally eligible to adopt, including by extending the existing step-parent adoption provisions to the same-sex partner of a birth or adoptive parent and allowing same-sex couples to be assessed for adoption as a couple. Under the bill, adoption laws would treat families headed by same-sex couples the same as families headed by heterosexual couples.

Same-sex couples in Western Australia and the Australian Capital Territory already have these rights.

Specifically the bill changes the definitions for couple and spouse provided in the Adoption Act from a man and a woman who are married or who have a de facto relationship to persons who are de facto partners, whether they are of the same sex or a different sex.

Under legislation as it currently stands, gay men and lesbians can apply to adopt only if they present as single people.

The Legislative Council Standing Committee on Law and Justice recommended these changes in its July 2009 "Adoption by same-sex couples" report.

In her foreword the committee chair, the Hon. Christine Robertson, MLC, stated that allowing same-sex couples to adopt is in children's best interests.

In 1997 the New South Wales Law Reform Commission recommended that legislation permit adoption by either a couple— whether married or de facto, heterosexual or same-sex or by a single person.

In 2000 the then Carr Government accepted the Law Reform Commission recommendations in its Adoption Bill but excluded same-sex adoption. During debate, I moved amendments that would have included same-sex couples, which all other members voted against.

I believe Parliament has moved on from the appalling level of homophobia shown 10 years ago. Since then relationship registers have been supported to help protect same-sex couples' rights as partners, the State Government now contributes funding to the Gay and Lesbian Mardi Gras, both lesbian parents who conceive through donor fertilisation can be listed on the birth certificates of their child and in 2008 57 Acts, regulations and by-laws were amended to remove discrimination against gay men and lesbians.

There is a great deal of support in the community for same-sex adoption and removal of discrimination of same-sex couples. The Adoption Amendment (Same Sex Couples) Bill will give members of Parliament the opportunity to support their communities.

This is particularly important for "known adoptions" where one parent comes to a relationship with children, but the new

partner cannot be legally recognised if they are of the same gender.

The Gay and Lesbian Rights Lobby "Judging on Merit: Community Support for Adoption Equality" report provides statements of support for same-sex adoption from members of the community. The statement by Clint, a 30-year-old gay man living in Blacktown with his partner of eight years, Troy, and 10-year-old son Lachlan, whom he has had custody of since birth, demonstrates the hypocrisy of banning same-sex adoptions and how this leaves children with gay or lesbian parents vulnerable.

As full-time students, Clint and his son do not have incomes, but Clint cannot receive full Centrelink payments because these are reduced by his partner Troy's income, which essentially makes both Clint and his son financially dependent on Troy. Clint says that Troy does not mind because the three of them are a family and they both raise and make important decisions about Lachlan together. But despite the family's wishes and Troy's financial support to Lachlan, Troy has no legal rights as one of Lachlan's primary caregivers and Lachlan is vulnerable if his parents break up. This would not be the case if both parents were of the opposite sex.

The Law and Justice committee report identifies the double standard of laws that deem same-sex couples suitable to foster children but ineligible to provide permanent homes via adoption. Most local adoptions in New South Wales involve foster parents adopting their foster children.

The committee also recognised that merely providing eligibility to adopt is only a first step. Like heterosexual couples, same-sex couples applying to adopt will undergo a rigorous assessment by an accredited adoption agency and then have to satisfy the courts that the adoption is in the best interests of the child.

The Australian Human Rights Commission 2007 "Same-Sex: Same Entitlement" report points out that excluding same-sex adoptions on the basis of sexuality is a breach of article 21 of the Convention on the Rights of the Child, which requires that the best interests of a child be the paramount consideration in adoption. Parliament should support putting the best interests of a child ahead of discrimination.

Some adoption agencies will not wish to work with same-sex couples and some will express concern about this bill. But same-sex couples will choose the adoption agencies that have expressed an interest with working with them. In the vast majority of cases, same-sex adoptions will involve known adoptions and step parenting situations.

The authorised adoption agency Barnardos, which works to find permanent foster homes for children in distressed circumstances, places children in the care of same-sex couples.

In its submission to the Law and Justice inquiry, it states that the inconsistency of allowing gay men and lesbians to adopt as a single person but not as a couple discriminates against children who are parented by two people of the same sex, denying them the rights to a relationship with each parent that provides, giving them less "legal and psychological permanence and security as provided to children adopted by two people in a heterosexual relationship".

The Law and Justice committee report cites the Gay and Lesbian Rights Lobby reference to unpublished 2006 census data that estimates over 4,300 children lived in same-sex couple families in Australia.

Our laws should permit an adoption order in favour of either a couple whether married or living in a de facto heterosexual or homosexual relationship.

There is no evidence to suggest that a person's sexual orientation has any bearing on their suitability to be an adoptive parent, thus there is no reason to legislate to exclude people from being able to adopt on the grounds of their homosexual orientation or family arrangements.

The most important criterion is whether the applicants can meet the child's needs and can provide the child with the support of a permanent and nurturing environment.

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

I urge members to keep this issue in perspective. We are talking about a small number of potential adoptive parents. The Law and Justice committee report identified that in the 2007-08 financial year there were 125 adoptions in New South Wales, 73 were inter-country adoptions, 15 unknown and 37 known. Of the 37 known adoptions 22 were foster parents, 10 step-parents, three other relatives and two special cases.

These amendments are necessary to make adoption law consistent with aims of this Parliament to remove discrimination.

Protecting a loving relationship between a child and his/her parent regardless of the parent's sexuality should be paramount, and I am very disappointed that some faith-based welfare organisations oppose the bill, even though it reflects those Christian values of love and inclusion and has as a basis recognising the rights of children to a loving and secure home environment.

While the amendments do not reflect my strong belief that there should be no exemptions in the Anti-Discrimination Act, the bill is so important to the security of families headed by same-sex couples that I am amending my bill in the hope that the majority of members will support it.

Same-sex couples will continue to have access to services from other adoption organisations and assessors such as Barnardos and the Department of Community Services, and the amendment is a clarification of exemptions that faith-

based organisations already have.

The Adoption Amendment (Same Sex Couples) Bill 2010 (No. 2) is about removing discrimination experienced by families headed by same-sex couples. It is about giving legal recognition to the vital relationship that children have with their parents, regardless of their parent's sexuality.

The law needs to catch up with the social reality that some children are already parented by same-sex couples, and the law should provide legal protection for those children.

In New South Wales it is estimated that around 1,300 children have same-sex parents. Same-sex couples look after the birth or adoptive child of one parent, they care for foster children, and gay men and lesbians can adopt as individuals.

Most organisations that match foster parents with vulnerable and neglected children work with same-sex couples, recognising that a larger pool of capable and loving parents is vital for children in need.

Unlike children in families headed by heterosexual couples, children in families headed by same-sex couples can only have their relationship with one parent legally recognised, leaving them vulnerable if one parent dies or becomes seriously ill. The current situation also affects everyday matters like school permissions.

My bill would put the rights and security of these children first.

The Association of Children's Welfare Agencies, the Benevolent Society, Uniting Care, Barnardos, Women's Legal Services NSW, Inner City Legal Service, the NSW Council of Social Services, ACON and the Central Coast Community Women's Health Centre are amongst the many bodies that support a change to adoption law that bases eligibility for adoption on the quality of parenting and the provision of a stable home, regardless of sexual orientation. They support this bill.

Members would have received a letter co-signed by Gillian Calvert inaugural Commissioner for Children and Young People, Associate Professor Judy Cashmore Adjunct Professor at Southern Cross University's Centre for Children and Young People, and Emeritus Professor Dorothy Scott inaugural Director of the Australian Child Protection Centre, expressing the absolute importance of this bill for the welfare of children. Their letter touchingly points out that:

Children think about who will care for them if their "parent" dies, they notice when one "parent" is unable to sign permission notes at school or can't consent to medical treatment ... Importantly for children already disadvantaged, being given inheritance rights sends a clear and strong message to the child that they are wanted and they are part of this family just as their friends are in their families.

The letter points out that this bill will give children who can no longer live with their birth family because of neglect or abuse, the gift of a permanent secure, loving substitute family.

Research evidence shows that gay men and lesbians are able to provide a loving, caring, nurturing and stable homes.

The Legislative Council Committee on Law and Justice inquiry into same-sex adoptions concluded that up-to-date social science research suggests that "same-sex parenting is as likely to result in positive developmental outcomes for children as opposite-sex parenting".

It concluded that research shows children benefit from "positive relationships, and the provision of a supportive, nurturing and loving environment" regardless of their parents' sexuality.

The New South Wales Law Reform Commission and the Australian Human Rights Commission both support same-sex adoptions. Many in the community also support this reform.

The bill would not give same-sex couples the right to adopt children, it would make them eligible to adopt. There is a thorough process of assessment for all adoptions including for "known" adoptions, with the Supreme Court determining what is in the best interest of the child, based on individual circumstances.

The great majority of adoptions in New South Wales are of "known" children, such as when one parent is already legally recognised and the other parent adopts the child, or where carers adopt their long-term foster children.

In the few cases when infants are given up for adoption, adoption agencies choose the best match for the infant from a pool of eligible applicants, and birth parents wishes about who should adopt the child are part of this decision.

Families headed by same-sex couples who have contacted me tell me this bill will give their children more security. These are families looking after the birth child of one partner, families with children born through surrogacy, and families looking after foster children.

In the case of one lesbian couple who fostered two siblings together for six years, each parent adopted one child because they could not adopt as a couple. An opposite-sex couple could have adopted both children together.

Another parent in a same-sex couple who has cared for foster children for over ten years, told me:

I believe this bill is about the children's rights. I believe that children have the right to legally own their parents; the one that loves and nurtures them, who tucks them in bed at night, changes their nappy, toilet trains them, hugs them good bye on their first day at school.

Children who are put in the foster care of a same-sex couple deserve the same right to permanency as children put in to the foster care of an opposite-sex couple. A number of foster parents contacted me in support of this bill, but do not wish to be identified, in order to protect their children. It inspires me to hear of their efforts to provide loving care despite the lack of legal recognition.

When vulnerable and disadvantaged children need foster care and a safe home, it is in their best interest if the pool of loving, nurturing and permanent homes is as large as possible.

While many claim to support families and children, Australia has a poor history of determining who can and can't be parents. We have discriminated because of race, ethnicity, religion, sexuality, age and marital status. It is time to take irrelevant considerations off the statute books.

I welcome the Premier and Opposition Leader's decision to allow a conscience vote on this legislation. The bill is about protecting real children in real families, and recognising their relationship with both their parents, regardless of sexuality.

Parliament should acknowledge that same-sex couples are providing loving, nurturing and stable homes for children and take this opportunity to give those families the same legal protection that other families have under the law.

I ask members to think about the impact discrimination has on children and use their conscience to support children in all families.