

Agreement in Principle

Ms CLOVER MOORE (Sydney) [4.17 p.m.]: I move:

That this bill be now agreed to in principle.

Adoption law should be about protecting the best interests of a child, first and foremost. But existing adoption law puts discrimination ahead of what is best for children and excludes families headed by same-sex couples. Unlike heterosexual couples, same-sex couples cannot adopt a child together; one parent must adopt as an individual and the other partner has no legal standing as the co-parent, leaving the child in legal limbo. In other words, a child cannot be adopted by his or her parent's same-sex partner yet can be adopted by the parent's heterosexual partner.

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. 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.

My Adoption Amendment (Same Sex Couples) Bill will make same-sex couples legally eligible to adopt. It will provide for the introduction of a second-parent adoption provision similar to the existing step-parent adoption provision, and allow same-sex couples to be assessed for adoption as a couple. Importantly, under the bill, adoption laws would treat families headed by same-sex couples in the same way 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 or opposite sex".

Provisions under this bill reflect the recommendations of the Legislative Council Standing Committee on Law and Justice in its July 2009 report entitled "Adoption by same-sex couples". In her foreword the committee Chair, the Hon. Christine Robertson, MLC, expressed that it is in children's best interests to make same-sex couples eligible to adopt. 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. The then Government accepted the Law Reform Commission recommendations in its Adoption Bill 2000 but excluded same-sex adoption. During debate, I moved amendments that would have included same-sex couples, but all members voted down those changes.

I believe Parliament has moved on from the depressing level of homophobia shown 10 years ago. Since then relationship registers now help protect same-sex couples' rights as partners—as my bill 13 years ago would have done. The State Government now funds the Gay and Lesbian Mardi Gras, in response to my question in Parliament. Both lesbian parents who conceive through donor fertilisation can be listed on the birth certificates of their child, and almost 60 Acts, regulations and by-laws have been amended to remove discrimination against gay men and lesbians. Similar legislation at Commonwealth level has amended nearly 100 laws to remove similar discrimination.

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. It is estimated that more than 4,300 children live in same-sex couple families in Australia. In most cases, one parent has come to a relationship with children from a previous relationship. The Gay and Lesbian Rights Lobby "Judging on Merit: Community Support for Adoption Equality" report, provides statements of support for same-sex adoption from community members.

Clint is a 30-year-old gay man living in Blacktown with his partner of eight years, Troy, and 10-year-old son, Lachlan. Clint has had custody of Lachlan since birth and their family situation demonstrates the hypocrisy of banning same-sex adoptions and how this leaves children with gay or lesbian parents vulnerable. Clint and his son are financially dependent on Troy and both tax and Centrelink provisions count them as a family, but Troy has no legal rights as one of Lachlan's primary care-givers and Lachlan is vulnerable if his parents separate, or one gets seriously ill or dies. This would not be the case if both parents were of the opposite sex.

My office spoke to Vicki Harding, who has been raising her 14-year-old daughter, Brenna, together with her partner, Jackie Braw, for nine years, and they have been doing that for most of Brenna's life. Jackie is Brenna's parent, she takes her to soccer training and watches matches, and as Brenna says "is there all the time". Brenna recognises Jackie as her mum and Jackie recognises Brenna as her daughter. The three of them are a family. But Brenna and Jackie's relationship has no legal recognition, and I understand Brenna is very angry about this. As Jackie told the Standing Committee on Law and Justice last year, her daughter deserves "to feel secure emotionally, socially, legally and financially". Jackie also raised the important issue of symbolic recognition that

goes with legal recognition. I agree that discrimination would be much less likely if our laws recognised the relationships between children and parents in families headed by same-sex couples.

The current provisions present a double standard. Same-sex couples are deemed suitable to foster children, and there is support from foster agencies and the Department of Community Services for this to continue, but these couples are ineligible to provide permanent homes via adoption. Many adoptions in New South Wales involve foster parents adopting their foster children. Barnardos, which finds permanent foster homes for children in distressed circumstances, places children in the care of same-sex couples and facilitates adoptions between foster parents and children regardless of sexuality. The Barnardos submission to the Standing Committee on Law and Justice inquiry points out that the law discriminates against children with two parents of the same sex by giving them less "legal and psychological permanence and security" than children adopted by two people in a heterosexual relationship.

Some adoption agencies do not wish to work with same-sex couples and some will express concern about this bill. Same-sex couples will choose the adoption agencies that have already expressed an interest in working with them to find homes for children in need. In the vast majority of cases, same-sex adoptions will involve known adoptions and step-parenting situations. The reality of adoption in twenty-first century Australia is that there are very few adoptions where the child does not already know and have a relationship with the parent. The stereotypical image of couples adopting babies is not the norm, and legislation should recognise the current situation where most adoptions are known. I stress that providing eligibility to adopt is only a first step. Like heterosexual couples, same-sex couples applying to adopt will need to undergo a rigorous assessment about their suitability to adopt by an accredited adoption agency, and will then have to satisfy the courts that the adoption is in the best interests of the child.

There is no evidence to suggest that a person's sexual orientation has any bearing on their suitability to be an adoptive parent, therefore there is no reason to legislate to exclude someone from being able to adopt on the grounds of their homosexual orientation or family arrangements. In its report the Standing Committee on Law and Justice concluded that there is no evidence to suggest that same-sex couples should not be parents and 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. We are talking about a small number of potential adoptive parents.

The Standing Committee on Law and Justice report identified that from July 2007 to June 2008 there were 125 adoptions in New South Wales, 73 of which were intercountry adoptions, 15 were unknown and 37 known. Of the 37 known adoptions, 22 were foster parents, 10 were step-parents, three were other relatives and two were special cases. 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 a family that is best able to meet those needs, regardless of its composition. Parliament should put the best interests of a child ahead of discrimination based on fear and prejudice. This bill is necessary to make adoption law consistent with aims of this Parliament to remove discrimination. I call upon the House to support this important bill.