

## Inquiry into Adoption by Same Sex Couples

### - Remaining questions from hearing.

1. In your view would adoption by same sex couples further the objectives of the *Adoption Act 2000*?
  - In the context of this inquiry, how do you interpret the Act's principle that the best interests of the child must be the paramount consideration in law and practice?

*This principle reminds us that adoption is not primarily about the satisfaction of adult wants and desires to parent a child. Neither heterosexual or same-sex couples possess a 'right to adopt' or indeed, a 'right to a child.'*

*Adoption is about the happiness and welfare of children, in both the immediate and long term. It is not about providing adults with children, but about providing children with the best homes and families that we can.*

*Adoption is not a strictly 'private affair', but a serious concern of the state, and therefore, the law.*

- Your submission (pp 9-10) notes the special challenges that adopted children face in terms of their identity as they mature. Can you elaborate on this point further, explaining how it relates to the best interests of the child?
  - (a) *An adopted child already feels different given its special situation; to place him or her in an unusual family situation would further add to the struggle of that child in dealing with their sense of 'being different'.*
  - (b) *There is increasing evidence re the crucial quality of presence of the biological mother in the early months/first year in terms of brain formation; ie mother-child dyad.<sup>1</sup>*
  - (c) *There is an almost equally important understanding of the father's role as a complementary presence (differently biologically and*

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<sup>1</sup> See, e.g., Margarita Forcada-Guex et al, "Early dyadic patterns of mother-infant interactions and outcomes of prematurity at 18 months" *Pediatrics*, 2006 July; 118(1): pp e107-e114. Jose Luis Diaz-Rossello and Annabel Ferreira-Castro, "Maternology: When a Baby is Born, a Mother is Born", *Neoreviews* 2008; 9:326-331.

*physically endowed from mother) in aspects such as socialization, intellectual development, and especially male identification; and (d) the ongoing complementary nature of parenting styles and role modeling as they impinge on the growing children*

*Parental modeling of sexual difference and complementarity is important for the development of sexual identity. Married heterosexual parents are able to give children the distinctive experiences of being mothered and fathered, and to witness to them, on a daily basis, that men and women, though different, are of equal dignity, worth, beauty and value.*

3. In your opinion are there any circumstances where adoption by same sex couples would be more acceptable, such as where the couple are related to the child or have fostered the child over a lengthy period and/or where the child wishes to be adopted by the couple?

*There is no compelling reason why the law should be changed to accommodate to allow the adoption of a small group of children whose needs can be properly addressed on a case-by-case basis.*

*Limited forms of guardianship might be necessary and sufficient to deal with those select cases.*

*The risk involved in changing the law is that it would provide general endorsement and facilitation of adoption by same-sex couples, despite the lack of sufficient empirical sociological evidence to show equivalence between homosexual and heterosexual parenting. This would not be in the best interests of children.*

*The challenge is to find ways of protecting the interests of this small group of children without providing general legal sanction to adoptive arrangements which depart from best practice.*

4. What is your understanding of the most important factors in a family environment that promote the wellbeing of children, both in the short and longer term?

*We have addressed this in our submission:*

- *Relationships that model the difference and complementarity of persons allow children the immediate experience of the natural complementarity of men and women. This is important for gender identity.*
  - *Relationships that model fidelity and exclusivity and minimize family disruption.*
  - *An environment where children benefit from the unique contributions that a mother and a father make to child development. e.g. fathers are very important for reducing both antisocial behaviour and delinquency in boys and early sexual activity in girls; mothers are vital for providing children, particularly infants, with emotional security and for giving daughters the trusted counsel they need during puberty and adolescence.*
  - *The sense of love and security that children have in the knowledge that their mother and father love each other and have committed to each other for life.*
5. Participants on both sides of the debate have criticised the available research evidence on the outcomes for children of same sex parents, as you do on pages 7-8 of your submission. Would you like to comment on the evidence as you understand it?

*The studies to date have generally been undertaken by same-sex advocates and they all suffer from serious methodological problems. In a review of 14 studies of homosexual parenting, Belcastro et al reported in the *Journal of Divorce and Remarriage* that:*

*“All of the studies lacked external validity. The conclusion that there are no significant differences in children raised by lesbian mothers versus heterosexual mothers is not supported by the published research data base”.<sup>2</sup>*

*In a further thorough review of homosexual parenting studies, Drs Lerner and Nagai, who are professionals in the field of quantitative analysis, evaluated 49 empirical studies on same-sex parenting. They found little evidence to support the position that homosexual households are the same as traditional families:*

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<sup>2</sup> P. Belcastro et al, “A Review of Data Based Studies Addressing the Effects of Homosexual Parenting on Children’s sexual and Social Functioning”, *Journal of Divorce and Remarriage* 20, 105, 106 (1993).

*“We conclude that the methods used in these studies are so flawed that these studies prove nothing. Therefore, they should not be used in legal cases to make any argument about ‘homosexual’ vs. ‘heterosexual’ parenting. Their claims have no basis.”<sup>3</sup>*

*... a review of several hundred such studies by sociology professor Steven Nock, undertaken as an expert witness for the Attorney General of Canada. “Through this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of those studies was conducted according to general accepted standards of scientific research.”*

6. Other inquiry participants have referred to extensive research evidence concluding that it is family processes (such as the quality of parenting and relationships within the family) rather than family form that determines children’s well being and long term outcomes. Are you able to comment on this evidence?

*I cannot specifically comment on the research referred to by other inquiry participants here. I can draw the Committee’s attention to a significant study reported in the journal *Children Australia* which compared 174 children living in either heterosexual married, heterosexual cohabiting or homosexual co-habiting homes. The study, which collected information primarily from teachers and only secondarily from parents and teachers, found that the children of married couples did the best in nine out of thirteen measures including language, mathematics, sport, sociability and attitudes to school and to learning. The author concluded: “Overall, the study has shown that children of married couples are more likely to do well at school, in academic and social terms, than children of co-habiting heterosexual and homosexual couples...In this study, married couples seem to offer the best environment for a child’s social and educational development”.*

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<sup>3</sup> Dr R. Lerner and Dr A. Nagai, *No Basis: What the studies Don’t Tell us About Same-sex Parenting*, Washington Ethics and Public policy Centre, (2001): 6.

7. Some inquiry participants have argued that the current law is discriminatory against gay and lesbian couples. Do you wish to comment on this suggestion?

*The current law works to ensure that in any adoption decision “the best interests of the child in both childhood and later life must be paramount” (The Objects of the Adoption Act 2000).*

*To this end, it does not unjustly discriminate against same sex couples. It justly discriminates between heterosexual couples and same sex couples on the basis of their ability to provide the full range of emotional, psychological and behavioural supports necessary for the integral human development and well being of children.*

*This is not because same-sex couples are necessarily any less loving or committed to each other and any children in their care, but because of the inherent inability of same-sex couples to provide the unique contributions of both motherhood and fatherhood (and to model sexual complementarity).*

*Sociological and cultural evidence across cultures, societies and religions supports placement with a married heterosexual couple as the option which best caters for a(n) (adopted) child’s physical, emotional and intellectual needs.*

8. In your submission (pp 12-13) you mention the potential impact a change to adoption law allowing same sex couples to adopt may have upon religious-based organisations such as CatholicCare and recommend that the *Anti-Discrimination Act* be amended to protect the interests of religious agencies. Can you elaborate on your concerns and further explain the reasons for your recommendation?

*We do not believe that there is any certainty that the law as it currently exists, provides sufficient protection for the rights of faith based agencies to act in accordance with their beliefs and to only place children with committed heterosexual couples if homosexual couples were in the future, legally available to adopt.*

9. Some submissions to this inquiry have suggested that current adoption laws adversely affect children living in same sex parent families by denying them legal and social recognition. Can you comment on this view?

*I believe that this has been covered previously. The rights of children to know and be raised by their biological mother and father is always the optimal situation for the children concerned. Where this is not possible, arrangements which best mirror that situation should be put in place. This is in the best interests of the child.*

*We should not deny children access to the truth about their circumstances. We should be endeavoring to ensure that a child's right to know their biological heritage is protected by having the details of the biological parentage retained on any birth and/ or adoption certificate. We should also do whatever we can to avoid creating any further legal and social momentum towards encouraging adults to deliberately contrive to create children who will then be intentionally deprived of the presence of either a mother or a father.*

10. In light of the recent Wesley Mission case, do you believe that the exemption provision in the *Anti-Discrimination Act* provides guaranteed protection for the Catholic Archdiocese of Sydney and its adoption agency CatholicCare if the *Adoption Act* was amended to provide for same-sex adoption?

*We maintain that there is definitely sufficient doubt about the exemption given to religious bodies under the Act with reference to the provision of goods and services. As such, there should be no recommendation from the Committee to amend the Adoption Act as proposed. The Archdiocese of Sydney could not be assured that it would be able to continue to be involved in the provision of adoption given the current lack of clarity from a legal perspective.*