



17 March 2009

Ms Merrin Thompson  
Acting Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Thompson

**Inquiry into adoption by same-sex couples**

I refer to your letter of 26 February 2009 requesting that we provide a response to an additional question asked by the Hon Greg Donnelly MLC. The question was –

*In light of the recent Wesley Mission case, do you believe that the exemption provision in the Anti-Discrimination Act provides guaranteed protection for church and faith-based organisations and their agencies if the Adoption Act was amended to provide for same-sex adoption?*

In response to this question we would like to affirm our fundamental position that the *Adoption Act 2000* should not be amended to permit adoption by same-sex couples. However if the Act was to be amended in this way, then we would generally endorse the position articulated by Anglicare in its response to the almost identical question asked by Mr Donnelly of Anglicare.

However we do have two additional comments.

Firstly we think it would be highly desirable to include in the explanatory memorandum for any bill which amended the Adoption Act a note that, in view of section 8 of the Act, such amendment –

- (a) would not have the effect of preventing an adoption service provider declining to adopt a child to a same-sex couple if they did not consider this was in the best interests of the child to do so, and
- (b) would not thereby give rise to a complaint under section 49ZP of the *Anti-Discrimination Act 1977* since adoption is expressed to be regarded as a service for the child and by direct implication not a service provided to a potential adopting couple.

We consider the inclusion of a clarifying statement along these lines in any explanatory memorandum would go a long way to managing expectations as to the effect of such an amendment.

However if those responsible for preparing any amending bill were unable to include a clarifying statement along these lines then, in view of the unsettled state created by the Wesley decision in OV and OW, we would encourage the Inquiry to recommend that the religious bodies exemption in section 56 of the Anti-Discrimination Act 1977 be amended along the lines suggested in the Anglicare response. Such an amendment would, in our view, better reflect the liberality given to religious freedoms under international rights instruments.

Thank you for providing the opportunity to respond to this question.

Yours faithfully

*Lisa Watts*

MS LISA WATTS  
**For and on behalf of the Social Issues Executive**