

**STANDING COMMITTEE ON LAW AND JUSTICE  
INQUIRY INTO ADOPTION BY SAME-SEX COUPLES  
ANSWERS TO REMAINING QUESTIONS FROM HEARING**

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1. *On page 5 of your submission you quote Section 8 (1) (c) of the Adoption Act 2000, that "no adult has a right to adopt the child".*

- *Could you explain your view of the implications of this principle?*

In section 2.2 of our submission we address a change in the object of the Act which came into force on 1 January 2009 which could be used by some to argue for a 'right to adopt'. The retention of Section 8 (1) (c) makes it clear that any such argument would be ill-founded.

Any change to the eligibility requirements for applying to adopt – such as allowing same-sex couples to apply – would need to meet the "best interest" of the child test and cannot be founded on some alleged right to equality or freedom from discrimination.

- *Some inquiry participants would argue that same-sex parents, like other parents, are motivated by altruism and love. What is your view of this suggestion?*

We have not made any adverse comments on the motivation of same-sex couples who would like to adopt a child. Altruism and love – understood as a sentiment – are not enough. The inherent, objective differences between men and women mean that fathers and mothers parent in a complementary way that provides the best environment for a child's wellbeing.

2. *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?*

Children who are living in a same-sex parent family because they are the biological child of one of the same-sex partners are legally recognised as the child of that parent. We opposed the recent changes that allow a same-sex partner to be recorded as the parent of a child born to her partner because this falsifies the child's origins and creates a permanent legal relationship between a child and a biological stranger based solely on the sexual relationship between a parent of the child and that person. Same-sex relationships break up more frequently than male-female marriage and are of shorter duration.<sup>1</sup> It is unjust to children to impose a permanent parent-child relationship on them based on what may be a very fragile and short-lived sexual relationship of the child's parent.

Children who have been acquired by means of surrogacy or overseas adoption by male same-sex couples have been wrongly treated. No legal recognition should be given to these arrangements. To do so would only encourage more recourse to such practices which are not in the best interest of the child.

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1. Andersson, G., "Divorce-Risk Patterns in Same-Sex Marriages in Norway and Sweden", *PAA 2004 Annual Meeting*, Boston, 1-3 April 2004.

## ADDITIONAL QUESTION FROM HON GREG DONNELLY

1. *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?*

The decision by the Equal Opportunity Division of the Administrative Decisions Tribunal (NSW) against Wesley Mission in a case dealing with the application of two homosexual men to act as foster parents raises grave concerns about the interpretation of the religious exception in the NSW Anti-Discrimination Act 1977.<sup>2</sup>

The Tribunal's findings that (a) the "religion" of the Wesley Mission was "Christianity" and (b) that "Christianity" has no doctrine that "monogamous heterosexual partnership within marriage" is both the 'norm and ideal'" are extraordinary.<sup>3</sup>

Effectively the Tribunal is setting itself up as an authority on religious beliefs. There was no doubt that those persons engaged in the work of the Wesley Mission had a shared religious belief that precluded accepting a homosexual couple as foster carers. The Tribunal ruthlessly trampled on the religious freedom of these believers by purporting to know better than the persons themselves (a) what their religion is and (b) what its doctrines are.

Unless the Tribunal's decision is overturned by a higher court (the case is on appeal) the decision means that Wesley Mission has been denied freedom of religion.

This case has implications for religious-based adoption service providers if the law on adoption is changed to permit same-sex couples to apply to adopt. It is clear that the existing exemptions in the Anti-Discrimination Act 1997 would be inadequate.

To ensure that religious-based adoption service providers are able to continue to operate in accordance with their religious beliefs if the Adoption Act were to be amended to allow same-sex couples to apply to adopt it would be essential to:

- Amend the Anti-Discrimination Act 1997 by adding to Section 4 a definition of "services" that explicitly excluded adoption (and to remedy the bad outcome of the Wesley Mission case) and fostering:
  - "services" does not include the provision of services in relation to adoption or foster care.
- Amend the Adoption Act 2000 by inserting new section 14 (2A):
  - (2A) The Director-General must not take into account in determining an application a policy of the organisation to decline to provide services to same-sex couples.

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2. *Anti-Discrimination Act 1977 (NSW)*, s 56.

3. *OV and anor v QZ and anor (No.2) [2008] NSWADT 115*, at 119, 126-128.