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LAW & JUSTICE

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Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie St
Sydney NSW 2000

Dear Sir/Madam,

RE: Inquiry into Adoption by Same Sex Couples

Thank you for the opportunity to provide further submissions to the Committee following our appearance on 25 February 2009. There are no changes that we can suggest to the transcript.

We provide the following in response to the questions on notice:

Q1. What potential legal issues arise for couples in NSW after having adopted a child in other countries or Australian States and Territories where adoption by same sex couples is permitted.

The effect of an Adoption Order whether in NSW, or in another Australian State or Territory or overseas jurisdiction, is to confer the status of legal parent upon the couple who have adopted a child.

Section 111C of the *Family Law Act 1975* provides, by subsection 4, that the Family Law Regulations may:

- (a) provide for the recognition of adoptions made under a law of a prescribed overseas jurisdiction; and
- (b) provide that the regulations do not effect with the operation of laws of a State or Territory that relate to adoptions.

Regulation 16 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* provides that where:

- (a) an adoption by a person who is habitually resident in Australia of a child who is habitually resident from a country is granted in that country; and
- (b) an Adoption Compliance Certificate issued in that country is in force for that adoption;

The adoption is recognised as effective for laws of the Commonwealth and of each state.

The *Family Law Act 1975* otherwise provides in Section 61E(2) that a person's parental responsibility for a child ends on the adoption of the child. Otherwise, Section 60F with respect to marriages, and Section 60HA with respect to de facto relationships, provides that a child adopted by either a married or de facto couple becomes a child of either the married or de facto couple as the case may be.

The conclusion to be drawn from all of this is that if a child were adopted by a couple in a jurisdiction outside of NSW and then moved to NSW, the couple would be recognised under Commonwealth Law as being the legal parents of the child and have parental responsibility. None of the legislation quoted above makes any reference to or distinction between children adopted by either a same sex or opposite sex couple. Therefore, provided the adoption occurred in accordance with the local law where it took place, the adopting couple will be recognised as the legal parents of the child, and have parental responsibility, regardless of where the origins of the adoption order, and regardless of whether the couple is same sex or opposite sex. It is therefore submitted that no legal issues detrimental to the couple would arise.

Q2. The Gay and Lesbian Rights Lobby has argued that the current law is discriminatory, while other submissions have suggested that adoption by same sex couples places the rights of the adults above the rights of a child, noting that the paramount objective of the Adoption Act 2000 is the best interest of the child. Would you like to comment on these opposing views?

The *Family Law Act 1975* and the *Adoption Act 2000* both dictate the paramount principal as the best interests of the child.

In our view, in every case involving a child, the so-called 'rights of the adults' (which we note does not exist in either the *Family Law Act* or *Adoption Act*) are irrelevant and fictitious. Accordingly, we consider any argument based on the current law being discriminatory as against adults not to be compelling.

Whether a child is being adopted by a same sex couple or an opposite sex couple, the adopting couple will be subject to intense scrutiny by the relevant adoption agency to determine their suitability as adopting parents, amongst other considerations when applying the best interests of the child principle.

During the Inquiry Hearing, we have given a summary of a case of where a step-parent adoption by a lesbian couple (where the child's father had passed away) is an example of a situation where the child could be placed at disadvantage if the step-parent were not permitted to adopt in that case. It could be argued that in such a case, where the child has formed an attachment to her mother's partner who has undertaken a parenting role, the child would be at a disadvantage if the couple later separated as her birth mother would not be able to seek child support from her partner under the current state of the law. The ability to adopt in such a case would cure that problem. Perhaps it could be argued that the current law places children of same sex couples at a disadvantage and treats them differently to children of opposite sex couples.

Q3. Are there any other practical or legal issues that have arisen in relation to current law that you consider would be desirable to address?

The Child Support issue is the significant issue.

In a same sex couple, if the non-biological parent of the child were not permitted to adopt, and the couple subsequently separated, the biological parent would not be able to claim child support from the other party. However, if the non-biological parent were able to adopt the child, that parent would acquire the status of legal parent. Then for the purposes of the *Child Support (Assessment) Act*, upon separation either party who retains the primary care of the child would be able to claim child support as against the other.

This is not an issue at State level. It is an issue at a Commonwealth Law level. However, as adoption is State law, if same sex adoption were possible then child support liabilities would flow in those cases.

Q4. Question on Notice from the Transcript

We believe this question is outside the parameters of this Inquiry.

While we acknowledge that parenting arrangements exist in three and four parent families, the current law does not provide for any recognition of that. The *Births Deaths and Marriages Registration Act* specifically allows for only two parents to be recognised on a child's birth certificate, and the *Family Law Act* discusses parentage by using the term 'both parents'. If adoption were allowed by three and four parent families, then this would be contrary to the existing law around parenting.

Any change of NSW and Commonwealth law to recognise three and four parent families would need to be carefully considered in line with the best interests of the child.

Please contact Yasmin Hunter on 9332 1966 if there is anything else you would like to discuss.

Thank you for your assistance.

Yours faithfully,



Yasmin Hunter
Solicitor
Inner City Legal Centre