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12 March 2009

The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000

***Re: Legislative Council Standing Committee on Law and Justice  
Inquiry into adoption by same sex couples***

ACL thanks the Committee for the opportunity to make this supplementary submission to the Inquiry into adoption by same sex couples. The submission addresses three questions raised by members of the committee.

***Discrimination***

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

Where a child is raised by one of its biological parents and the same sex partner of that parent, ACL argues that discrimination against the couple and the child it is raising is no longer an issue of any legal significance. The Rudd Government last year amended numerous Commonwealth acts to remove discrimination against the parties to these alternative family arrangements. Amongst the significant changes were amendments to the *Family Law Act*, which gave same sex couples access to the Family Court.

ACL was largely supportive of those legislative changes, recognising that unjustified discrimination against people who choose to live in alternative partnership arrangements should be removed, in the areas of government welfare and financial benefits. It is especially important that children, who often do not have a say in the relationship choices of their carers, are not unfairly burdened in law.

ACL, however, is not in favour of eliminating provisions in adoption law that discriminate in favour of the best interests of the child. It is legitimate to rule out classes of potential adoptive parents who do not meet the strict criterion of the child's best interests. The desire, no matter heartfelt, of adults in alternative lifestyles to become parents, is clearly a lesser consideration when balanced against the best interests of the child.

It is therefore beholden upon government to ensure that an adoptive child is placed into a family situation that most closely approximates the family structure that will provide it with the best chance of lifelong social and emotional success. The natural family, with a mother and a father who are in a committed relationship is a time-proven family structure. As a same sex couple is unable to provide the necessary and complementary love and role models of a mother and a father, allowing them to adopt denies human rights to children.

The *Adoption Act* is discriminatory against same sex couples who wish to adopt, but this appropriate discrimination places the welfare of children above the lifestyle desires of adults. The Act also rightly discriminates against potential parents aged under 21 years, and couples who have not been living together continuously for a period of 2 years. By preventing such people from adopting children, the state is discriminating in favour of the child's best interests. The principle applies equally to preventing same sex couples from adopting children. If the child's best interests really are paramount, then discriminating in favour of particular adoptive parents, and against other parents, is both necessary and right.

### ***Legal recognition of children***

*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?*

As indicated above, ACL understands this concern to have been largely addressed through the Federal Government's same sex law reform last year. Children who find themselves under the guardianship of a same sex couple are already granted sufficient recognition and protection under the law. Clearly there is no justification for extending adoption rights to same sex couples on this basis.

On the contrary, ACL understands the argument that current adoption laws adversely affect children living in the care of same couples to be an emotive, wedge assertion used by minority groups to extract from governments full parenting 'rights' for same sex couples. The example of unfair treatment of such children muddies the debate in an attempt to extend to same sex couples the right to both known and placement child adoption.

Whilst ACL was supportive of measures at the federal level which granted legal recognition to children under the care of same sex parents, it is not supportive of measures to normalise same sex parenting through adoption or artificial reproductive technology. The societal and legal presumption remains that a child has one father and one mother. Same sex parenting is an exception to this rule and should be treated as such. The Government should treat exceptional family types in an exceptional way, not change the rule itself.

The same sex law reform at the federal level was sufficiently comprehensive to address the problems of legal recognition of children raised by same sex couples. Although somewhat flawed, that legislation at least attempted to treat same sex parenting as the exception it clearly is. Granting same sex couples adoption rights, however, unequivocally undermines the biological reality and societal presumption that a child has one mother and one father, to the detriment of the child's best interests.

## **Adoption and anti-discrimination**

*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 Wesley Mission<sup>1</sup> case clearly indicates that section 56 of the New South Wales *Anti-Discrimination Act* does not guarantee the right of religious organisations to provide social services in accordance with the teachings and doctrines of the relevant faith. The Mission was forced to compensate a same sex couple after they were denied the placement of a foster child due to the moral convictions of the faith-based organisation.

Not only has the seriously underqualified New South Wales Administrative Decisions Tribunal determined itself to be the authority on important theological controversies, it has deemed freedom of religion a right to be trampled upon.

The case has serious implications for faith-based adoption service providers should the *Adoption Act* be amended to allow same sex couples to adopt. If the Government is to properly respect the right of all citizens to freedom of religion, conscience and belief, as established in international instruments, it must not force religious individuals and bodies to act against their strongly-held convictions in the provision of adoption services.

## **Concluding remarks**

In conclusion, ACL notes that:

- The *Adoption Act* rightly discriminates against same sex couples in favour of the best interests of the child;
- The children of same sex parents are already afforded sufficient legal and social recognition through recent federal same sex law reform; and,
- In light of the Wesley Mission case, any extension of adoption rights to same sex couples will affect the ability of religious adoption agencies to provide adoption services in accordance with the doctrines and tenets of their faith, diminishing freedom of religion.

I hope this information is useful to the Committee.

Yours sincerely,

**Lyle Shelton**  
**National Chief of Staff**  
**Australian Christian Lobby**

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<sup>1</sup> *OV and anor v QZ and anor (No.2) [2008] NSWADT 115*