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Hon Christine Robertson, Chair
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Adoption Inquiry Responses to Questions on Notice

Questions in writing from hearing

- 1. In the context of this inquiry, how do you interpret the Act's principle that the best interests of the child must be paramount?**

I address this question on page 3 of my original submission.

- 2. Few adoptions by same sex couples have occurred to date in those Australian jurisdictions where it is legal. Are you able to comment on why this might be the case?**

This may reflect a small number of applications being made by same sex couples, or it may be that there are a large number made with only a small proportion succeeding, it is not possible to determine without gathering figures from the relevant government departments in those states.

Western Australia is the largest jurisdiction to open eligibility and has done so for the longest time, so it would be the best place to seek this information. The ACT has a small population. Tasmania has eligibility only for step-child adoption and only for registered couples who have been registered for a set number of years – such that even couples who registered immediately upon being able to do so in 2004 would only recently have become eligible to adopt a related child.

- 3. In your view does legislation and policy influence societal attitudes towards legal and social issues such as adoption by same sex couples?**

While the relationship between legislation and social attitudes may be diffuse or indirect, I do believe that it is harmful to embody unjustified discrimination in legislation, including in legislation that is only 'on the books' and/or which appears to have little practical effect.

- 4. What Commonwealth laws interact with the Adoption Act 2000? Explain provisions within the Family Law Act (FLA) regarding parenting orders and how this relates to NSW adoptions?**



Adoption is the most portable form of parental status in that an adoption in one state in Australia will be recognised in any other and will also flow through to all federal laws (compared to the recent NSW provisions for female partners with children born through assisted conception, which may not be recognised in states that have not yet made these changes.)

Adoption and parenting orders traditionally have very different functions as well as different effects. When children have no parent who is willing or able to care for them (including if they are at risk or abuse or neglect and are removed from their families of origin), their placement is likely to be under NSW care and protection legislation, often entailing a long term care order in favour of foster parents, and sometimes ultimately adoption.

Family court orders are more likely to be sought when there is contest between competent family members as to where a child lives or spends time with. Family court orders can also be made on the basis of consent for parents and for parties who would otherwise have no form of legal relationship with a child. Parenting orders under the FLA do not grant parental status – only certain responsibilities that cease when the child turn 18. This is a far less comprehensive and less permanent form of legal relationship.

Once adopted a child is a child of the parties under the FLA and all other federal law. If the parents separated, parenting orders would apply in the same way as to biological parents.

5. International adoptions. Describe nature of agreements and what implications would change to NSW law to allow adoption by same sex couples have in respect of those agreements?

My understanding is that same-sex couples would only be eligible if the sending country also rendered them eligible. DOCS would be better placed to give detailed advice on the nature of the agreements in place currently.

6. Further changes to Births, Deaths and Marriages Registration Act.

This would be a simple matter of ensuring that the birth register could include gender-neutral options, such as 'parent' and 'parent' or 'father' and 'parent'. I see no reason why either or both parent one and parent two could elect be named by gender or not (mother & father, mother & mother, father and parent etc), as they wish.

Further questions for Hon Greg Donnelly

1. Do you believe that children (persons less than 18 years of age), living in a same-sex parental arrangement, should have a legal right to be informed about their biological heritage?

It is widely accepted that children should have access to information regarding their biological heritage should they request it. The sociological evidence (see eg recent studies by Golombok) strongly suggest that only a minority of heterosexual families having children through donor sperm tell their children that they were donor conceived. Even parents who have been counselled on the importance of this disclosure and intended to tell at conception often had not done so by the time the child was 5, and many had changed their minds about doing so at all. Heterosexual families with children conceived

through donor eggs were more likely to tell their children, but there was still a sizable minority who did not tell their children of their origins. While donor registries provide records of donor information and new laws in NSW will make these records both centralised and mandatory in the near future, children are deprived of the opportunity to access this information if their parents conceal the circumstances of their conception. In lesbian-led families through ART this concealment is not possible, and indeed the evidence is that lesbian families tend to explain these issues to their children very early in life.

2. Do you believe that children (persons less than 18 years of age), living in a same-sex parental arrangement, should have a legal right to spend time with the biological parent who does not reside with the same-sex couple?

Gamete donors are not, and should not be, regarded as parents in family law. Even among known donors who have involvement with children, they rarely exercise a parental role or are seen by the child or others as a parent figure.

If a genetic parent has a significant social relationship with a child, that person is able to seek orders to live with, seek time with, or gain parental responsibility over the child under current provisions of the Family Law Act. In the handful of cases to date in Australia where a known involved sperm donor has sought contact from the court the claim has been granted.

3. Do you believe that the current exemption provision in the *Anti-Discrimination Act* that may afford protection to church/faith based organisations and their agencies should be deleted from the Act?

I do not have a view on the likely interpretation of the current provision. I do, however reiterate that adoption is a vital social service to children and families provided by government and its contractees using public funds. Adoption placement is not a religious function even if the bodies undertaking this social service happen to have a religious feeling about how they undertake it. The best analogy would be the provision of services to families through the federal government's Family Relationship Centres (FRC). All FRCs are provided by non-government organisations under tender and contract arrangements. Although around half of FRCs are operated by religious bodies they are not at liberty to exclude same-sex couples and families from such a vital family dispute resolution service.

I suggest that any concern about ambiguity can be resolved through any of the following measures:

1. Clarifying in the amended Adoption Act, either in the text of the statute or in the Second Reading Speech, that adoption is a social service provided to children and families, not a religious function.
2. Noting in a schedule to the amended Adoption Act that it overrides the ADA exemption to the extent of any inconsistency.
3. Providing in tender and contract documents that adoption service providers must act without discrimination.

This last option is less desirable than the first two as it is not as transparent, and it could be removed by later governments.

4. Given the variety of parenting arrangements that exist, why not amend the *Adoption Act* to provide for the adoption of children by one, two or more than two adults, subject to meeting the "paramountcy principle"?

I have addressed this question on oral testimony. Any such move would first require:

1. a demonstrated need for such reform
2. exploration of how it would work in practice and
3. consideration of what effect it would have on other state and federal laws that regulate families.

Additional questions highlighted from transcript: Hon Christine Robertson

1. Benefits or otherwise of qualitative/quantitative research.

Much family studies research include both quantitative and qualitative components.

Quantitative research can give overviews of populations or events, measured against a standard – eg X% of people did something, or achieved a set level of something. So for example we can use quantitative measures of children's education success or peer confidence to compare outcomes for children in different target populations and examine whether there are statistically significant difference. Or it may be used to see how many separated parents are sharing care of their children, or how often contact is occurring with non-resident parents. However this kind of data may not help us to understand *why* this is happening, or to explore the reasons behind the behaviour of groups that would otherwise only be represented as statistical differences.

Qualitative data is directed to exploring perspectives, reasons and experiences; it gives texture and context to other forms of data. So for eg a qualitative study exploring reasons why parents do not have contact with their children may ultimately be more valuable in developing policy options than quantitative data which simply lists the existing pattern.

2. Use of poverty variable in family studies.

All reputable research in family studies should carefully control for the effects of poverty. As I note in my submission, this is not always the case in US research on 'father-absence'. In my view such literature should be regarded with caution, as there are a multitude of 'marriage promotion' bodies in the US actively and wilfully misconstruing research showing poor results for children (that arise both directly and indirectly from poverty and parental conflict) as evidence that marriage is 'the best', or only, environment for children to be raised without harm. The Silverstein and Auerbach article referenced on the last page of my original submission is a very useful piece on this topic.

Yours sincerely,



Jenni Millbank