

Submission
No 151

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

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**SUBMISSION TO THE
ADOPTION BY SAME SEX COUPLES INQUIRY**

Submitted by ANGLICARE Diocese of Sydney

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1. Summary of ANGLICARE Sydney's submission

1. ANGLICARE Sydney is one of only three accredited agencies which provide domestic adoption services in NSW.¹ ANGLICARE Sydney has been a provider of high quality adoption services and related services for over 45 years.
2. All people are deserving of ANGLICARE Sydney's respect, love and care. ANGLICARE Sydney does not generally exclude clients from its services based on their sexual preferences or sexual practices. In the case of adoption, however, ANGLICARE Sydney considers that its primary responsibility lies with the child. The adoptive parents are not the client: the child is the client.
3. The *Adoption Act 2000 (NSW)* describes adoption as a service for the child - there will always be children who cannot be cared for by their families. ANGLICARE Sydney's Adoption Service is a child-focussed service. ANGLICARE Sydney seeks to place children with adoptive parents whose care and parenting is optimal, since adoption is about raising someone else's child. Any review of the current law must retain the best interests of children (rather than the interests of any adult) as the paramount consideration in its deliberations.
4. ANGLICARE Sydney's well-known Christian beliefs place a significant emphasis on the family unit as a committed partnership between a man and a woman. This is a reflection of the traditional family values upheld and followed by ANGLICARE Sydney.
5. The *Adoption Act 2000 (NSW)* supports ANGLICARE Sydney's position in relation to the relevant matters to be taken into account in the adoption process. ANGLICARE Sydney argues that existing definitions in the *Adoption Act 2000 (NSW)*, where adoptive couples are specified as being of both genders, should be retained.
6. In ANGLICARE Sydney's view the interests of children in ANGLICARE Sydney's care are best served by finding a mother and a father to adopt or foster them in a traditional family unit. This is an authentic and fundamental issue of religious belief and is not a view based on a 'conservative' view of social mores. The experiences of being mothered and fathered remain among the important environmental factors that constitute optimal conditions for child development.

¹ Children's Guardian (NSW) 2007-8 Annual Report, p 99; The Children's Guardian, 'Accredited Agencies' at www.kidsguardian.nsw.gov.au/adoption/accredited-agencies, accessed 13 November 2008.

7. Ideological conflict over research into outcomes for children under same-sex care, and gaps in this research, mean that legislators do not have any warrant to effect radical change to adoption law in NSW. A cautious and caring legislature should never place itself at the 'vanguard' of promoting unnecessary, and potentially adverse, legislative change in the area of adoption law.
8. Legislatures govern a delicate social ecology that is potentially as fragile as any other natural ecology. Collective human wisdom has generally held that the contribution of a loving female mother and a loving male father is important for the optimal care for a child and is a key ingredient in the best-case scenario for human development. To remove this contribution by a male and a female to the life of a child as a matter of principle for all adopted children, is an unnecessary and insupportable departure from that longstanding wisdom.
9. ANGLICARE Sydney recommends as follows:
10. No amendment is required to the definitions or operation of the NSW Adoption Act in relation to same-sex adoptions.
11. Should the Act be amended to permit adoptions by same-sex couples that legislation also be enacted to make clear that a decision made in good faith by a religious institution providing adoption services to reject such applicants be protected from a claim of unlawful discrimination.

2. Introduction

12. ANGLICARE Diocese of Sydney (ANGLICARE Sydney) thanks the NSW Parliament's Standing Committee on Law and Justice for the opportunity to make a submission to the Inquiry into adoption by same sex couples. ANGLICARE Sydney is one of only three accredited agencies which provide domestic adoption services in NSW and has been a provider of high quality adoption services and related services for over 45 years.
13. ANGLICARE Sydney's submission deals with the terms of reference of the Inquiry, particularly (a), (c) and (d) outlined below:
14. "That the Standing Committee on Law and Justice inquire into and report on law reform issues regarding whether NSW adoption laws should be amended to allow same sex couples to adopt, with particular reference to:
 - (a) ascertaining whether adoption by same sex couples would further the objectives of the Adoption Act 2000
 - (b) the experience in other Australian and overseas jurisdictions that allow the adoption of children by same sex couples
 - (c) whether there is scope within the existing programs (local and international) for same sex couples to be able to adopt
 - (d) examining the implications of adoption by same sex couples for children, and
 - (e) if adoption by same sex couples will promote the welfare of children, then examining what legislative changes are required."

2.1 ABOUT ANGLICARE SYDNEY

15. ANGLICARE Sydney is the welfare arm of the Anglican Diocese of Sydney and is one of the largest Christian community organisations in Australia. As such it embodies the Christian commitment to care for all people in need.
16. ANGLICARE Sydney has been providing a wide range of professional services to the community since 1856 and serves many thousands of people every year. Its services include: counselling; community education for families; family support services; youth services; emergency relief for people in crisis; foster care and adoption for children including those with special needs; migrant services including humanitarian entrants and new emerging communities; English as a second

language classes; aged care both through nursing homes and community services; opportunity shops providing low-cost clothing; emergency management services in times of disaster; disability case management and respite and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions.

17. ANGLICARE Sydney has been a provider of high quality adoption services and related services for over 45 years. Consistent with current adoption practice and thinking, these services include:

- counselling and support to individuals and families who cannot continue to care for their children long term; to children whose parents cannot care for them; and to adoptees, birth parents, and adoptive parents who require post placement and support;
- placement for adoption of both healthy children and children with a disability;
- training and assessment of families who are considering adoption or permanent care;
- pre-adoptive foster care; and
- provision of information about past adoptions, counselling and mediation as requested.

3. Culture of 'optimal care'

18. In NSW adoption is governed by the *Adoption Act 2000 (NSW)* (**Adoption Act**).

19. Section 8 of the Adoption Act states:

'(1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:

- (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,*
- (b) adoption is to be regarded as a service for the child,*
- (c) no adult has a right to adopt the child.'*

20. Adoption law and practice must provide optimal care for children. Section 7(a) of the Adoption Act states that the first object of this legislation is 'that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice'.

21. ANGLICARE Sydney is pleased that a culture of children's best interests is both promoted and upheld in NSW. ANGLICARE Sydney wishes to strongly argue that every change to adoption law and practice must demonstrably be in the best interests of children.
22. ANGLICARE Sydney maintains a firm belief that, as required by s7(a) of the Adoption Act 2000 (NSW), adoption has to be regarded 'as a service for the child concerned' and this focus must never be compromised so that it becomes purely about the rights or desires of adults. Children's best interests must always be of ultimate priority and be the State's sole concern in adoption law and practice, which should be framed in terms of what we know, for certain, to constitute a child's optimal care.
23. Since adoption should provide optimal care for children, responsible legislators will:
 - consider what certainly constitutes optimal care for children;
 - make the judgment of 'optimal care' very cautiously; and
 - concern themselves first and foremost with the best interests of children, eclipsing adults' interests and concerns.
24. What constitutes 'optimal care for children'? All parties agree that optimal care includes:
 - carers who have a lifelong commitment to care; and
 - a healthy and stable relationship between these carers.

3.1 MEN, WOMEN AND 'OPTIMAL CARE'

25. Section 26 of the Adoption Act states:

'An application for an adoption order may be made in accordance with this Act solely by or on behalf of one person or jointly by or on behalf a couple.'
26. The term '*couple*' is defined in the Dictionary to the Adoption Act as a man and a woman who:
 - are married, or
 - have a de facto relationship.
27. A point of controversy is whether optimal care also includes the contribution of a male and a female carer. On this point the Standing Committee should it propose

to encourage amendment to the law and practice in relation to adoption, would be forced to consider a large body of sociological and psychological literature. Some of this literature claims that no deleterious outcomes appear in children raised by lesbian carers. ANGLICARE Sydney has several concerns with this conclusion:

- Political and ideological considerations make the design of the research upon which such conclusions are based, and its subsequent interpretation, impossible to pursue with any assurance of objectivity.
- Such a fraught situation among adults is never good for children. The State must therefore act cautiously, even when such caution will be unpopular.
- The relevant datasets are probably not extensive enough to act as a basis for public policy. This does not mean that suspicion should somehow attach to existing same-sex carers. It simply means that, if optimal care does *not* in fact include the experience of being mothered and fathered, the evidence to-date is very far from conclusively proving that claim to be the case.
- All parties agree that little research has been conducted with children who are cared for by male same-sex carers.

4. Problem of evidence

28. It has been observed that research conducted into the care of children by same-sex carers has been affected by both methodological flaws and the highly politicised debates surrounding this issue.² It has become an evidentiary quagmire. The UK researcher, Stephen Hicks, sums up the issue as follows:

29. *'I do not believe that the topic of lesbian and gay parenting can or should be assessed on the basis of 'the evidence alone'. That evidence is too thin, too equivocal and, more importantly, does not represent the facts of the matter, for these are moral as well as epistemological questions.'*³

² For an account of deficiencies in pro-gay research, cf. George Rekers and Mark Kilgus 'Studies of Homosexual Parenting: A Critical Review' *Regent University Law Review* 14 no. 2 (2002); online: http://www.regent.edu/acad/schlaw/academics/lawreview/articles/14_2Rekers.PDF (accessed 21/2/2006). For an account of deficiencies in conservative research, see Louise B. Silverstein and Carl F. Auerbach, 'Deconstructing the Essential Father' *American Psychologist* 54 no. 6 (1999).

³ Stephen Hicks, 'The Christian Right and Homophobic Discourse: a Response to 'Evidence' that Lesbian and Gay Parenting Damages Children' *Sociological Research Online* 8 no. 4; online: www.socresonline.org.uk/8/4/hicks.html

30. Hicks reflects a growing awareness that none of us can see the 'evidence' in a straightforward way.⁴ Likewise, U.S. researchers Judith Stacey and Timothy Biblarz, who are sympathetic to same-sex carers, agree with their opponents that 'ideological pressures constrain intellectual development in this field.'⁵
31. ANGLICARE Sydney acknowledges that the political stakes of this body of research are so high that the ideological 'family values' of scholars play a greater part than usual in how they design, conduct, and interpret their studies. Of course, ANGLICARE Sydney recognises that this is equally true for those who criticise such studies.
32. The inescapably ideological and emotional nature of this subject makes it incumbent on scholars to acknowledge the personal convictions they bring to the discussion.⁶ Stacey and Biblarz go on to argue that although differences between lesbian-parented children *can* be found—e.g. that they are more likely to be engaged in homosexual activity⁷—the wider question is whether these differences really matter.
33. Likewise US researchers Silverstein and Auerbach, who are open about their reading of scientific literature to support their political agenda (against '*policy that privileges the two-parent, heterosexual, married family*'), also know the difficulties involved:

*'From our perspective, science is always structured by values, both in the research questions that are generated, and in the interpretation of data. For example, if one considers the heterosexual nuclear family to be the optimal family structure for child development, then one is likely to design research that looks for negative consequences associated with growing up in a gay or lesbian parented family. If, in contrast, one assumes that gay and lesbian parents can create a positive family context, then one is likely to initiate research that investigates the strengths of children raised in these families.'*⁸

34. ANGLICARE Sydney's point here is to show that even the scholars concerned are very aware of the difficulties in gathering and handling the evidence. It follows that no member of the wider community will easily assess the evidence with any kind of

⁴ Hicks thinks the 'sexuality' of carers is not relevant to child development, but that 'homophobic Christian discourses' do damage children. We oppose all stigma and persecution directed to any child. We also point out that to disagree with gay and lesbian claims is not necessarily an instance of 'phobia'.

⁵ Judith Stacey and Timothy J. Biblarz, '(How) Does the Sexual Orientation of Parents Matter?' *American Sociological Review* 66 No. 2 (2001), 160.

⁶ *Ibid.*, 160-161.

⁷ *Ibid.*, 177-79.

⁸ Silverstein L B and Auerbach C F (1999), 'Deconstructing the essential father' *American Psychologist* 54(6): 398 & 399.

objectivity. Such a fraught situation among adults is never good for children, in view of this very great difficulty.

35. ANGLICARE Sydney therefore contends:

- That, in the best interests of children, the state must err on the side of caution for children in its care or who have been placed through adoption services;
- That the evidence as it stands does not warrant radical change to the law;
- That NSW adoption law and practice must not become a 'laboratory' to settle these vexed matters, particularly given that adoption involves raising someone else's child;
- That the best judgment to-date, as reflected in existing law, is that a certain kind of male-female couple (usually married) offers the best prospect for the optimal care of children;
- That the State has no warrant to change that law if to do so would not certainly be in a child's best interests.

4.1 EXAMINING THE 'MAN-AND-WOMAN' CLAIM

36. Of course those who contend that optimal care probably requires the contribution of a male and a female carer do need to offer some account of this view. It presumes that men and women differ in various subtle ways; that the delicate structures and processes of a child's brain and ongoing development are acutely sensitive to a variety of environmental factors; and that the differing contributions of male and female carers may be among the important environmental factors that constitute optimal conditions for child development.

37. The nature and extent of these claims are, admittedly, also hard to describe and measure, partly because the extent and importance of male-female difference is another politically vexed issue in our community. However attempts have been made to describe and measure the contribution of men and women to parenting, and useful surveys of such research can be found.⁹ Some aspects of this kind of work can be criticised; nevertheless, the possible importance of both genders for the optimal care of children may only be discarded when we are certain that it is irrelevant. No such certainty is even close.

⁹ For example in the U.S. context, A. Dean Byrd 'Gender Complementarity and Child-rearing: Where Tradition and Science Agree' *Journal of Law and Family Studies* 6 no. 2 (2004).

38. Consider, for example, Silverstein and Auerbach's influential critique of the 'neoconservative' and 'essentialist' view of fatherhood. They do not think that fathers uniquely contribute to child development. Yet they candidly observe persistent findings of poor outcomes for boys post-divorce and the persistent correlation of 'father-presence' and better developmental outcomes for boys. Since only small differences can be found between the way mothers and father treat girls and boys, Silverstein and Auerbach prefer to speculate that some intervening economic or social variable, rather than something specific to the relationship between an older and a younger male, may explain 'these persistent but unclear findings.'¹⁰
39. But equally plausibly, some aspect of male care that is as yet unmeasured or ultimately immeasurable may be at work. The unresolved nature of this issue highlights the need for cautious public policy. Until such time as we may certainly say what aspect of father-presence is protective for boys, legislators and policymakers should prefer the simpler inference: that boys, in particular, need a father.
40. ANGLICARE Sydney is not attempting to impugn the capacity of gay and lesbian persons to care for a child. ANGLICARE Sydney simply submits that the State must ensure *optimal* parenting and care for children and that it is not unreasonable to think that optimal parenting includes both the experience of being mothered and the experience of being fathered.
41. A cautious estimate of optimal care conditions would therefore retain this dual contribution but, in removing it, ANGLICARE Sydney foresees the following problems,
- the State at least risks adopted children asking, in several years' time, 'why was I denied the experience of a mother/a father when I could have been cared for by a person of that gender?'
 - the State at most risks adopted children suffering in as-yet-unknown ways as a result of being denied the experience of a mother or a father, when the State could have provided such an experience
 - Adoptees often report that they feel 'different' because of their adoption. Being raised in households that are generally not considered normative may further undermine their sense of belonging. This sense of being 'different'

¹⁰ Silverstein and Auerbach 'Deconstructing the essential father' 403.

would be compounded as a child adjusts to both being adopted and having same-sex parents

- The sense of being different can have a potentially negative impact for the child's acceptance and integration into social peer groups.
42. In ANGLICARE Sydney's view, the experience of both a mother's and a father's care is, in a sense, the child's first 'cross-cultural' experience. People can and do function adequately without this experience, and many are denied it due to a parent's death or departure. But these are less than optimal conditions for care, which the State has no right or warrant to impose when the optimal alternative is so readily achievable.
43. Gay and lesbian rights organisations also acknowledge that *'[t]here is relatively little information on gay father-led families with resident children.'*¹¹ In a recent article Brown and Cocker note that 'there are no studies tracking outcomes for children who are placed with lesbian and gay adopters and foster carers' and that there is 'limited knowledge about outcomes for children in relation to gay fathers'¹². Without wishing to offend gay men, ANGLICARE Sydney respectfully submits that, in the absence of evidentiary support regarding the effects of their care, any legal change in this direction would be without proper evidentiary support. The argument against ANGLICARE Sydney's position on this point appears to pivot on an ideological assertion that care by gay men is as harmless for children as care by lesbians. But children without an experience of mothering may miss out on something very important. It is simply unknown to what extent, if any, such effects will be adverse.

5. Potential objections

44. ANGLICARE Sydney realises that there will be some other objections to the view it espouses. The following objections are likely:
45. **'Heterosexuality is no guarantee of a functional relationship.'**
46. Anglicare Sydney of course accepts that unstable and unhealthy heterosexual relationships certainly exist. But no one seriously proposes that children be committed to such care. Even if some same sex relationships may seem healthier

¹¹ Jenni Millbank *'Meet the Parents: A Review of the Research on Lesbian and Gay Families'* (Darlinghurst, NSW: Gay and Lesbian Rights Lobby Inc (NSW), 2002), 12 & 33.

¹² Brown, H C and Cocker C (2008) 'Lesbian and gay fostering and adoption. Out of the closet and into the mainstream?' *Adoption & Fostering* 32(4): 24.

and stable than some heterosexual relationships, the point at issue is whether children's development is best and optimally served by the contribution of a male and a female carer.

47. **'Children can thrive, whatever the family form.'**
48. Our response is that some children may indeed thrive under the care of single carers or same sex carers. We can be very glad for them, but their existence is not a safe basis for responsible public policy and no child should be used to advance the cause of any adult-centred ideology. Until the State knows incontrovertibly that it can remove mothering or fathering from a child with no negative outcomes, it has no business to do so.
49. **'Some children are desperate, and should be placed with whoever can care for them well.'**
50. With the exception of children possessing disabilities, the situation faced by Anglicare Sydney is generally not an emergency, where more children are in need of care than there are available couples to care for them. However when such situations arise, they are *not* best addressed by legislating for less-than-optimal care. Rather, community leaders need to strategise for, and then encourage, a more hospitable and generous culture, where all needy children, particularly those with disabilities, find many men and women willing to welcome them.
51. **'Your conclusion is motivated by ongoing discrimination against gays.'**
52. In response ANGLICARE Sydney states this is simply untrue.
53. In the absence of clear and unequivocal evidence, the State must act to encourage the right of children to be cared for by a male and a female. Given the large area of doubt in this area, society must plan for children to have a mother and a father.
54. A cautious, caring State will not be at the vanguard of unnecessary and potentially adverse change. It will only act on the basis of an overwhelming and longstanding consensus about what is in a child's best interest. We are very far from such a consensus, except to say that optimal care and parenting can certainly be given by a man and a woman 'of good repute [who] are fit and proper persons to fulfil the responsibilities of parents' (s28 Adoption Act 2000 (NSW)).
55. The State governs a delicate social ecology that is potentially as fragile as any other natural ecology. Collective human wisdom has generally held that the contribution of a loving female mother *and* a loving male father is important for optimal care and development. To remove this dual-gender contribution as a

matter of principle for all adopted children is an unnecessary and insupportable departure from that longstanding wisdom.

6. Implications for Adoption Services

56. ANGLICARE Sydney strongly supports retention of the current definition in the Adoption Act of a couple as meaning a man and a woman. Our experience shows that the overwhelming expectation of birth parents is that prospective adoptive parents will be in a heterosexual relationship. This would seem to reflect what are contemporary standards among Australians when it comes to the issue of adoption; recent survey research among Australians shows that only a third (37%) would consider adoption by homosexual partners to be acceptable.¹³
57. The current definition of a couple as meaning a man and woman coincides with the stance of the Anglican Diocese of Sydney, of which ANGLICARE Sydney is an agency. We are concerned whether changes to this or to other definitions could affect both the independence and ability of ANGLICARE Sydney to provide high quality adoption services within the framework of a Christian ethos. We would be concerned about changes to the legislation that may compel ANGLICARE to act against its ethos or which may adversely affect future funding or regulatory arrangements. ANGLICARE Sydney does not want to be forced to decide between obeying the laws of Australia and obeying its religious principles in deciding what is in the best interests of a child in its care.
58. ANGLICARE Sydney does not believe it is being unreasonable. These beliefs are foundational and fundamental to its operations. In this regard it is to be noted that, in the United Kingdom, religious organisations have sought exemptions from complying with legal requirements to assess and approve suitable lesbian and gay adopters because such regulations require them to act contrary to their religious beliefs regarding the parenting of children. ANGLICARE Sydney does not consider it reasonable for it, or other religious charities, to be placed in a similar position in Australia.

¹³ Flood, M and Hamilton, C, 2005, *Homophobia in Australia*, The Australia Institute, p5

7. Recommendations

59. ANGLICARE Sydney recommends as follows:
60. No amendment is required to the definitions or operation of the NSW Adoption Act in relation to same-sex adoptions.
61. Should the Act be amended to permit adoptions by same-sex couples that legislation also be enacted to make clear that a decision made in good faith by a religious institution providing adoption services to reject such applicants be protected from a claim of unlawful discrimination.

8. Closing statement

62. ANGLICARE Sydney appreciates the opportunity to make a submission on these issues and looks forward to the outcomes of the Inquiry.

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