

Submission
No 207

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

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

Dear Ms Robertson,

Submission to the inquiry into adoption by same sex couples

From the Australian Family Association

I am writing on behalf of the Australian Family Association. We acknowledge and commend the NSW Government's desire to address the issue of same sex adoption, and we thank you for the invitation to make a submission to this inquiry.

Summary

In recent decades, legislatures around the world have been working towards the elimination of all forms of discrimination against same-sex oriented persons. The AFA recognises that this objective is of paramount importance. However we submit that in seeking to eliminate discrimination against same-sex oriented persons, governments and judicatures must adjudicate between competing rights and interests. This is particularly so where the apparent advancement of same-sex rights competes with the protection and advancements of children's rights and interests.

The issue of adoption represents one such area of conflict. Calls to allow the adoption of children by same-sex couples often overlook the rights and best interests of the child in such circumstances.

In considering the issue of adoption by same sex couples, the AFA submits that there are two key questions which the committee must face. The first pertains to children's rights: do children have the right to be raised by a mother and a father? The AFA submits that children *do* have such a right, and that the state should uphold and protect that right. Since adoption by same-sex couples is inconsistent with this fundamental children's right, the state should not permit adoption by same-sex couples.

The second question pertains to children's welfare and best interests: is it in a child's best interests to be raised by a mother and a father? The AFA submits evidence suggesting that it *is* in a child's best interest to be raised by a mother and a father. We acknowledge that there is also evidence suggesting that children raised by same-sex couples suffer no

detrimental effects in terms of their developmental wellbeing. However the impartiality of such evidence has been called into question. At best, we suggest that the evidence regarding the impact of same-sex parenting on children's developmental welfare is inconclusive, and that negative effects which stem from being denied the opportunity of being raised by a mother and a father may yet manifest themselves in children so raised in the coming decades.

In light of these considerations, the AFA submits that allowing same sex couples to adopt runs contrary to the objects and principles of the *Adoption Act 2000*, which seek, among other things, to ensure that the best interests of the child are the paramount concern in adoption law and practice; and to emphasise that adoption is a service for the child, and that no adult has the *right* to adopt a child.

For these reasons we respectfully submit NSW adoption laws should not be amended to allow same-sex couples to adopt.

Do children have the right to be raised by a mother and a father?

The AFA poses this question to the committee – and indeed to the NSW parliament and the broader public – cognizant that it is a question which, to date, has not demanded significant attention. A 2005 background paper entitled “Children’s Rights In NSW”,¹ prepared by the NSW Parliamentary Library Research Service makes no reference to any rights prospective adoptees may have regarding the makeup of their adoptive families. Indeed, prior to recent developments in artificial reproductive technologies (ARTs), the natural limitations of procreation had largely confined parenthood to opposite-sex pairings, and adoption policy has historically presumed to place children in the care of opposite-sex couples – usually married couples.

As an increasing number of commentators suggest, developments in ARTs, and the continued pursuit of more equitable treatment of same-sex couples under the law, have brought the question of fundamental children’s rights to the fore.² Rights which have, to this point, been overlooked or gone unrecognised must now be carefully considered. For NSW legislators, present calls for the legalisation of same-sex adoption require the state to address the question unequivocally: do children have the right to be raised by a mother and a father?

The AFA would answer this question in the affirmative. Providing prospective adoptees with both a mother and a father most closely resembles the natural circumstances into which most children are born. Ordinarily children enjoy the right to know and be raised

¹ Roth, L (2005) *Children's Rights in NSW*, Background Paper No 2/05.

² See, for example, Somerville, M (2007) “Children’s Human Rights and Unlinking Child-Parent Bonds With Adoption, Same-Sex Marriage, and New Reproductive Technologies”, *Journal of Family Studies*, 13 (2); Marquardt, E (2006) *The Revolution In Parenthood*, Institute For American Values, New York.

by their *biological* mother and father, under the protection of Article 7.1 of the United Nations Convention on the Rights of the Child. Appointing an adoptive mother and father in place of a child's biological parents would seem to best promote the child's right where there is no prospect of the child being raised by his or her biological parents.

The question may be posed from an alternative perspective: does the state have the right to deprive children of either a mother or a father? To this, the AFA suggests the answer must be a resounding *no*; the state simply cannot presume to deny any child the opportunity of being raised by both a mother and a father.

Since same-sex adoption necessarily prevents prospective adoptees from being raised by both a mother and a father, the AFA respectfully submits that the state should not permit adoption by same-sex couples.

It may be argued that such an approach does not pay sufficient regard to the rights and interests of same-sex couples. However the AFA notes that the objectives and principles set out in Chapter 2 of the *Adoption Act 2000* clearly and unequivocally make children's rights and interests paramount in the context of adoption. As such, the protection and promotion of a child's right to be raised by a mother and a father legitimises the abrogation of any purported right to equal access to adoption by same-sex couples. The breach of the same-sex right of access is incidental to – and justified by – the protection of the child's right.

In this regard, the AFA wishes to draw the Committee's attention to three sections contained in chapter 2 of the Act.

Section 7(a) emphasises that "the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice."

Section 7(b) makes it clear that "adoption is a service *for the child concerned*. (Emphasis added. This object is reiterated in s8(b) of the Act.)

Section 8(c) states, "...no adult has a right to adopt the child".

Adoption policy, therefore, concerns itself with finding parents for children who desperately need them. It is not in any way concerned with finding children for parents. Although it is inevitable that adoption will, in most cases, satisfy the adoptive parents' deep desire for children, such satisfaction is merely incidental to the satisfaction of the child's need for parental care, and the child's right to be raised by a mother and a father. Allowing same-sex adoption would preclude the enjoyment of the right to be raised by a mother and father, and would therefore fail to satisfy ss7(a) and (b) of the Act.

Is it in a child's best interests to be raised by a mother and a father?

Significant research suggests that a child's developmental wellbeing is best promoted where that child is raised by both a mother and a father. The complementarity of motherhood and fatherhood in promoting the developmental welfare of young children has received particular attention as researchers have begun to reassert the inherent differences between men and women. Assistant professor of sociology at the University of Virginia, W. Bradford Wilcox, has highlighted the unique talents possessed by mothers and fathers in childrearing, and the important impact that the differences in maternal and paternal care have on children in their physical, social and psychological development.³ Citing a wealth of research from the USA, Wilcox demonstrates that sex-differentiated parenting has been linked with the reduction of psychological, academic and social problems in children and young adults, as well as reducing propensity for criminal behaviour, particularly in boys.⁴ Wilcox concludes:

The best psychological, sociological, and biological research to date now suggests that – on average – men and women bring different gifts to the parenting enterprise, [and] that children benefit from having parents with distinct parenting styles...

Through adoption, the state has an opportunity to provide prospective adoptees with both a mother and a father, and to thereby confer on such children the benefits which flow from sex-differentiated parenting. The AFA submits that, if the state is to fulfil its obligations under ss7 and 8 of the *Adoption Act 2000*, it must not deprive a child of such opportunities by permitting the adoption of children by same-sex couples.

Wilcox's findings support the research of Lynn D. Wardle, Professor of Law at Brigham Young University in the USA.⁵ Wardle also presents significant evidence demonstrating that a majority of studies purporting to show that the children of same-sex couples do not suffer any detriment as a result of the sexual orientation of their parents, are hampered by methodological flaws and ideological bias.⁶ Such studies, Wardle argues, seek to mask identifiable impacts which same-sex parenting may have on children. Interestingly, Wardle's conclusions correspond with those presented in the *American Sociological Review* by Judith Stacey and Timothy J Biblarz, who, in spite of their open support for the advancement of same-sex parenting rights, conclude that research claiming that same-sex parenting has no discernable impact on children is permeated by ideological bias and is generally defensive in nature.⁷ Both reviews conclude that current research is

³ Wilcox, W B (2001) "Reconcilable Differences: What Social Sciences Show About the Complementarity of the Sexes & Parenting", *Touchstone* (18) 9.

⁴ *Ibid.*

⁵ Wardle, L D (1997) "The Potential Impact of Homosexual Parenting on Children", *Journal of Law & Family Studies* (3) 833.

⁶ *Ibid.*, 838.

⁷ Stacey, J and Biblarz T J (2001) "(How) Does the Sexual Orientation of Parents Matter?" *American Sociological Review* (66) 2, 159-183.

insufficient to draw authoritative conclusions with regard to the impact of same-sex parenting on children.

Given the benefits of sex-differentiated parenting, and the uncertainty regarding the impact of same-sex parenting, we submit that the state cannot justify denying adoptees the benefits of having both a mother and a father, and that permitting adoption by same-sex couples exposes adoptees to unknown potential impacts.

Children's needs and the state's responsibilities to children

It is likely that the committee has heard, or will hear, evidence suggesting that, in fact, children do not need both a mother and a father; rather, it is argued, children simply need a stable, loving and nurturing environment. Such an environment might be provided by a multiplicity of family arrangements, including families headed by sole-parents and same-sex couples.

There is a measure of truth in this. Children can and do grow up healthy and well-adjusted in such families. But it is also true to say that children don't even really need a stable, loving and nurturing environment; many children develop into perfectly healthy, well-adjusted adults, despite having been raised in unstable, unloving, un-nurturing environments.

The truth is, the question of what children *need* is fraught with uncertainty. Research is inconclusive at best. This is why it is paramount that the committee consider the issue of same-sex adoption from the perspective of society's obligations to children who require parental care: what are prospective adoptees entitled to expect from the state? Again, we submit that the state has a responsibility, at the very least, to provide prospective adoptees with both a mother and a father. Reaching such a conclusion may strike the committee as being somehow "conservative". However when the rights and interests of children are at stake – and in this instance, an especially *vulnerable* group of children – we submit that legislators would do well to proceed with caution to ensure that the rights and interests of adoptees are not compromised, and that children are not subjected to a social experiment in which the outcomes remain uncertain.

The AFA recommends that the NSW adoption laws should not be amended to allow same-sex couples to adopt.

Sincerely,

Tim Cannon
Research Officer
Australian Family Association