

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

Organisation: Barnardos
Name: Ms Louise Voigt
Position: Chief Executive Officer & Director of Welfare
Date received: 13/02/2009

12 February 2009

The Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Robertson,

RE: INQUIRY INTO ADOPTION BY SAME SEX COUPLES

Thank you for your invitation to contribute to this Inquiry.

Barnardos wishes to acknowledge the importance and relevance of this Inquiry, particularly given the changing attitudes to the formation of families by many different means. Adoption is a complex and sensitive issue, which can raise very powerful and deep-seated emotions and responses, both for those who have been personally involved as well as for professionals and the broader community. Likewise, debate and discussion about same sex relationships and adoption is of similar complexity and sensitivity. There are many in the community who still hold strong opinions about gay and lesbian individuals and couples, particularly with regard to adoption.

Barnardos' Find-a-Family Centre, New South Wales, offers an integrated service of permanent family care and adoption to children requiring long-term placement in out-of-home-care. The children and young people are those who have been permanently removed from their birth families by the Courts and who are under the Parental Responsibility of the Minister until 18 years, or whose parents have signed consent for their adoption. In July 2007, the Minister for Community Services delegated this Parental Responsibility to Barnardos for non-Indigenous children in the program. It should be noted that the greater majority of children who come into the program are those with Children's Court orders, and that only a small number of children enter the program because of their parent's adoption decision.

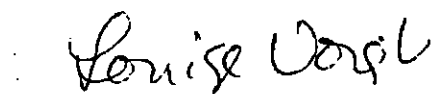
Barnardos is not accredited to provide inter-country adoption services, therefore we have confined our submission to the adoption services for local children, focusing on the needs of children in out-of-home care.

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Please contact me if you require any further information.

Yours sincerely,

A handwritten signature in black ink that reads "Louise Voigt". The signature is written in a cursive style with a large initial 'L'.

LOUISE VOIGT
CEO and Director of Welfare

Cc: Barnardos Australia's Submission for Standing Committee on Law and Justice
Inquiry into Adoption by Same Sex Couples

STANDING COMMITTEE ON LAW AND JUSTICE
INQUIRY INTO ADOPTION BY SAME SEX COUPLES
SUBMISSION FROM BARNARDOS AUSTRALIA
FEBRUARY 2009

TERMS OF REFERENCE

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 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.

Barnardos Find-a-Family specialises in the permanent placement of children between 0 - 12 years of age, who have long-term Children's Court orders placing them under the Parental Responsibility of the Minister for the Department of Community Services. Since 1985, Find-a-Family has placed over 400 children in permanent care, with the average age at placement being approximately 7 years. At January 2009, 147 children in the program had been adopted, with the average age at adoption being approximately 9.5 years.

The children referred to Barnardos have experienced sexual, physical and/or emotional abuse and neglect and consequently usually have challenging behaviours and emotional and behavioural difficulties. The children often have experienced disrupted attachment, frequently have a lack of trust in adults, poor self-esteem and a disrupted care history, with multiple moves within the care system. Many also have learning and educational difficulties, and/or health or disability issues.

Find-a-Family accepts referrals of large sibling groups and children from culturally and linguistically divergent backgrounds. We have a philosophy of “matched” placements and involve the child, potential carers and, where appropriate, the child’s parents in this process.

Given the complex needs of the children referred to the program, we regularly experience difficulty in recruiting carers and adoptive parents who have the skills required to parent children with such high needs. We therefore have always been open to considering applications from many different types of “families”, whether these are single persons or heterosexual or same sex couples, with or without children. It is our experience that a carer’s capacity to parent a child with specific needs is based on a number of factors, as discussed later in this submission, which are related to the individual’s skills and capabilities, not their sexual orientation.

Barnardos has always focused on the recruitment of a family that best meets the needs of a particular child or sibling group and has decided that the best match for some children is with a single person or same sex couple. This decision has been based on the specific needs of each child and the capacity of the applicants to meet that child’s needs.

Barnardos currently has seven children placed with 2 gay and 2 lesbian couples, all of whom have a care plan of adoption. The carers have provided excellent parenting for these children, all of whom have made pleasing and significant progress in areas of their physical, social and emotional development and who have developed a secure and positive attachment to each of their carers.

Barnardos therefore recommends an amendment to the *Adoption Act 2000*, enabling same sex couples to adopt a child, as is the case with heterosexual couples. This recommendation is based on our experience of children currently being parented by same sex couples within the Find-a-Family program and is supported by a large body of research about parenting by same sex couples. This submission does not detail each individual research undertaken, but does refer to particular articles that have reviewed the literature, namely

- Brown, H.C. and Cocker, C. (2008)
- McNair, R. (2007)
- Mallon, G.P. and Betts, B. (2005)
- Millbank, J. (2003)
- Short, E., Riggs, D.W., Perlesz, A., Brown, R., Kane, G.(2007)

In summary, all the relevant research examining the impact on children of having a lesbian or gay parent shows parental sexual orientation to have no measurable effect on the quality of parent-child relationships, or on children’s social adjustment or mental health (Mallon and Betts, p24)

1. Ascertaining whether adoption by same sex couples would further the objectives of the *Adoption Act 2000*

The *Adoption Act 2000* (“the Act”) establishes the objectives of the Act in Chapter 2, Objects and Adoption Principles. Section 7 sets out the objects of the Act:

(a) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,

(b) to make it clear that adoption is to be regarded as a service for the child concerned,

(c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,

(d) to recognise the changing nature of practices of adoption,

(e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,

(f) to ensure that adoption law and practice complies with Australia’s obligations under treaties and other international agreements,

(g) to encourage openness in adoption,

(h) to allow access to certain information relating to adoptions,

(i) to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

The objects very clearly establish that adoption is a service for the child and that the paramount consideration must be the child’s best interests. Thus, in considering the issue of adoption by same sex couples, Barnardos believes that it is critical that the focus is on enabling legislation and practice that will ensure that children’s needs are best met, rather than focusing on the “rights” or otherwise of any adult or couple to adopt.

As discussed below under “**Examining the implications of adoption by same sex couples for children**”, there is now a large body of research that shows that it is family processes (for example, quality of parenting, ability to nurture, relationships within the family), rather than structure, that are important for a child’s well being (see references below). Such family processes and qualities will assist adoptive parents to achieve the objects of the Act and are not gender-specific.

When considering the “best interests of the child”, it is often argued that children “need” or “do better with” a mother and father. This premise is not borne out by research, with studies showing that children with same sex parents do at least as well as children raised in heterosexual families. The traditional definition of a “family” has changed from “mother, father, child/ren” and now encompasses a wide

variety of family combinations, established in a variety of ways. The focus must not be on the “absent” mother or father, rather it must be on the capacity of the “parent” to meet the child’s needs.

It is also often argued that children raised by same sex parents are more likely to be homosexual and not conform to normative gender and sexual behaviour as an adult. Research has also found that there is no foundation for this argument (Mallon and Betts, 2005, p21; Millbank, 2003, pp564-565). The Australian Psychological Society’s literature review on *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families* (2007) noted that:

Many findings of no differences between groups of children on various measures in some way related to gender and gendered-behaviour have been reported....Some differences have been found between children parented by same-sex parents and those parented by heterosexual parents that indicate potentially favourable or advantageous differences for the former. In general, the theme of these differences is to be less rigidly sex-typed than children who live with heterosexual parents. Researchers have found the sons of lesbian women in their samples to be more self-aware, more adept at communicating their feelings, more sensitive to others, more thoughtful and measured, less physically aggressive, less ‘sex-typed’ in their choice of toys and games, and to exhibit more empathy for people than the comparative group of sons of heterosexual parents (Short et al, p21)

What is known is that for adults, whether single or in a relationship, who seek to form a family through Assisted Reproduction Technology (“A.R.T.”) and adoption, the challenges and demands are stressful, both emotionally and physically. Same sex couples face the additional challenges of discrimination, stereotyping and legal inequities which, in turn, impact on a child placed in their care for either fostering or adoption. This however must not be seen as an argument for the exclusion of same sex couples from applying to adopt. Adopted people face a number of issues related to their adoption, particularly their sense of grief, loss and rejection. These issues are further compounded for some groups of children: those adopted from overseas (mainly trans-rationally), older children and children who have been physically, sexually or emotionally abused. Children placed with same sex couples may also face additional issues; however, as with other adopted children, they and their adoptive parents will develop a range of strategies and skills to deal with this in a constructive way. In addition, it is the responsibility of law-makers, governments and public social and welfare organisations and policy-makers to foster a respect for all individuals and an acceptance of the value of people’s differences, so that we can work towards a society where there is no discrimination.

In considering whether adoption by same sex couples would further the objectives of the Act, we also have to consider whether continuing to exclude same sex couples furthers the objectives. The current exclusion of same sex couples, purely on the basis of their sexuality, is clearly discriminatory and fails to meet the human rights of both the adoptive parents and children. It also fails to meet Australia’s obligations under the Declaration of Human Rights and the Convention on the Rights of the Child. Recent state and federal review of legislation has to a great degree amended the discrimination of

previous legislation towards those in same sex relationships and their children; adoption legislation now needs to do the same.

The Act allows for a single gay or lesbian person to adopt a child. When this person is in a relationship, the Act allows for the adoption of the child only by one parent, thus clearly discriminating against the child, as it does not afford the same legal and psychological permanence and security as provided to children adopted by two people in a heterosexual relationship, whether married or not. While the child is parented by two people of the same sex and considers both as his/her adoptive parents, the law allows for only one of those parents to be given this status. Adoption by both parents will ensure the child's rights to a relationship with each parent, providing emotional, financial and legal security, both in childhood and adult life.

Therefore, when considering this issue, the "best interests of the child" is the focus, rather than the rights of adults, whether they are gay, lesbian or heterosexual. The sexuality of a potential adoptive parent for a child should not be a factor, particularly since such discrimination is frequently based on unsubstantiated myths and stereotypes; rather there should be an emphasis on assessing each individual's capacity to parent a child who was not born to them. All applicants should be regarded equally and undertake the same rigorous assessment process, which needs to identify the applicant's strengths, experiences, attributes and competencies in order to make the most appropriate match for every child. Assessment needs to consider the applicant's ability to nurture and protect the child, to provide a safe and loving home environment, to genuinely believe in the importance of openness in adoption, to assist the adoptee to know their origins and maintain links with their birth family, to understand the child's trauma and loss that results from their adoption, to be aware of the issues of attachment and childhood development.

Adoptive parenting is very different from parenting a child born into a family. Adopted children have unique issues to deal with at different stages in their lives; children in Barnardos' program also often have disrupted attachment and emotional, behavioural, social and cognitive issues resulting from their experiences of abuse and neglect. Adoptive parents must face the usual demands of parenting, as well as requiring skills to manage the additional tasks that result from adoption. Barnardos believes that these capabilities are not dependent on the applicant's sexuality, gender or marital status and that the inclusion of same sex couples will further promote the objectives of the Act.

This view is also supported by other major Inquiries.

- In its submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008, the Human Rights and Equal Opportunity Commission ("HREOC") recommended that *Gay and lesbian couples should have equal rights as opposite-sex couples to apply to adopt an unrelated child* (Recommendation 6, p3).

- In May 2003, the Tasmania Law Reform Institute issued a Media Release about its Final Report No 2 regarding adoption by same sex couples. It stated:

...it is the Institute's view that to continue to deny same sex couples eligibility to adopt is not in the best interests of children and unjustifiably and unfairly discriminates against gay and lesbian couples and their children.....It is no longer a majority view that homosexuality is wrong and unnatural and the suggestion that same sex parenting poses a social threat is implausible.....gay and lesbian couples should be evaluated individually as suitable parents for a particular child rather than being denied eligibility because of their sexual orientation (Tasmania Law Reform Institute, pp1, 2).

- In their Final Report Summary into Assisted Reproduction Technology and Adoption, released in June 2007, the Victorian Law Reform Commission concluded that:

Based on the available research on outcomes for children in a range of diverse families, the commission is unable to conclude that prohibiting same-sex couples from adopting children is justified according to the principle of the best interests of the child. The commission therefore recommends that the eligibility criteria in the Adoption Act be expanded to permit same-sex couples to adopt children in all circumstances in which heterosexual couples can (Victorian Law Reform Commission, p107).

- The Australian Psychological Society (Short et al, 2007) and the American Academy of Pediatrics (Pediatrics, Vol 109 No 2, 2002), both support legislation that allows for same sex couples to adopt.
- In April 2008, the Administrative Decisions Tribunal made a decision with regard to a complaint of discrimination on the grounds of homosexuality and marital status. The Tribunal dismissed the complaint of discrimination on the ground of marital status, but substantiated the complaint of discrimination on the ground of homosexuality and ordered the first respondent to review its policy on homosexual foster carers and take all necessary steps to eliminate unlawful discrimination on the ground of homosexuality in the facilitation and provision of its foster care services. (OV and anor V QZ and anor (No 2) [2008] NSWADT 115 at caselaw.lawlink.nsw.gov.au).

2. The experience in other Australian and overseas jurisdictions that allow the adoption of children by same sex couples

2.1 Australia

Adoption by same sex couples is allowed by legislation in three Australian States: Tasmania, Western Australia and the Australian Capital Territory. South Australia's legislation prohibits adoption by gay or lesbian individuals or couples; the other states do not allow applications from same sex couples and

allow applications from individuals only in exceptional circumstances. Legislation to allow adoption by same sex couples is currently under review in most states.

2.1.1 Tasmania

In Tasmania, adoption by a same sex couple is allowed only in specific circumstances (step-parent), where one partner is the biological parent of the child, either through, for example, A.R.T. or a previous relationship. The couple's relationship must have been registered for three years; Tasmania's *Relationship Act 2003* allows same sex couples to register. Tasmania has now had two adoption orders made in relation to same sex couples. Amended birth certificates issued after the adoption order is made refer to "Parent" and "Parent", original birth certificates currently issued in Tasmania refer to "Mother" and "Father".

2.1.2 The Australian Capital Territory

The ACT's *Adoption Act 1993*, amended in 2004, allows adoption of children by single applicants or two people who, whether married or not, have lived in a *domestic partnership* for a period of not less than three years. To date, the ACT Government has not received any applications for adoption from same sex couples; however there are a significant number of same sex couples who are long-term foster carers. The principle of "best interests of children" guides the Government's practice and the wishes of the child's parent about single or same sex adoptive parents are respected when making an adoption plan. This practice is also a feature with New South Wales' adoption service providers, as parents who make an adoption decision for their child are fully involved in the selection of a family.

2.1.3 Western Australia

Legislation in Western Australia changed in 2002, as a result of a Parliamentary Inquiry into the rights in law of same sex couples. Subsequently, changes were made to the *Interpretations Act*, which amended the definition of "de facto relationship" to include same sex couples. Amendments were then made in all other legislation, including adoption legislation, to insert "or de facto relationship" after references to a marriage or married couple.

Around the same time as changes to the adoption legislation, there were changes to A.R.T. legislation, allowing the co-parent in a same sex relationship to be entered on the child's birth certificate as a parent. Birth certificates in Western Australia identify the parents of a child as "Parent 1" and "Parent 2".

Since the change to legislation only one same sex couple (male) has applied and been approved to adopt. A child was subsequently placed with the couple, with the biological parents and extended family being fully involved in the selection process, and the adoption order was finalised in 2008. The Department for Child Protection has not received any other adoption applications from same sex couples.

2.1.4 Victoria

In June 2007, the Victorian Law Reform Commission released its final report into A.R.T. and adoption. The Commission recommended that the laws be amended to allow same sex couple to adopt and to access A.R.T.

2.2 Overseas

2.2.1 General

Adoption by same sex couples is legal in Andorra, Belgium, France, Guam, Iceland, the Netherlands, Spain, South Africa, Sweden and the United Kingdom, as well as some parts of Canada and the United States (Wikipedia, January 2009).

2.2.2 United States

The legislation in the United States differs from state to state, with ten states allowing adoption by single lesbian, gay, bisexual and transgender (“LGBT”) people and same sex couples. Most other states permit adoption by single LGBT people but are unclear or do not have an explicit prohibition on couple applications. There is no state that currently prohibits adoption by single LGBT people and only 4 states that prohibit adoption by LGBT couples (Wikipedia, January 2009). Florida did prohibit adoption by same sex couples; however in November 2008, Judge Lederman went against this legislation, stating that the law:

...violates equal protection rights for the children and their prospective gay parents, rejecting the state’s arguments that there is “a supposed dark cloud hovering over homes of homosexuals and their children.” She said that there was no rational basis to prohibit gay parents from adopting, particularly since the state allowed them to act as foster parents (Wikipedia, January 2009).

2.2.3 United Kingdom

Australia has close links with the United Kingdom, both socially and through the Parliamentary and Justice systems. The *Adoption and Children Act 2002* and the *Adoption and Children Act (Scotland) 2007* both allow for lesbian and gay couples to adopt, giving them equality with heterosexual married couples. In 2006/07, there were 90 same sex couples in England who adopted (BAAF Press Release, 11 August 2008). It is too early for any evaluation to be undertaken of these adoption placements.

3 Whether there is scope within existing programs (local and international) for same sex couples to be able to adopt

While Barnardos is not involved in overseas adoption, it is our understanding that Australia currently has no agreements with countries that allow same sex couples to adopt. Therefore, initially at least, this issue would only apply to local adoption programs.

We are aware that service providers who are part of a religious organisation will not be in a position to support changes to the Act to include same sex couples. However, given the experience of the ACT and Western Australia, it would appear that applications from same sex couples will not be overwhelming. There is certainly scope within Barnardos’ program for applications from same sex couples and we

believe that legislation allowing for adoption by same sex couples will hopefully increase the pool of potential carers for children in our program, thus enabling the best possible match for a child.

4 Examining the implications of adoption by same sex couples for children

There is much evidence from research that shows that children with gay or lesbian parents fare as well as those raised in families with a mother and a father.

4.1 Professor Jenni Millbank was a Senior Lecturer and Associate Professor in Law at Sydney University and is currently Professor in Law at University of Technology Sydney. Professor Millbank has undertaken extensive research over many years into lesbian and gay family law and relationship recognition in Australia. In her article (2003) Professor Millbank reviews current British, American and Australian research on lesbian and gay families and considers the implications of these findings for future legal and social policy. Professor Millbank presents the findings of various researchers and concludes:

There is now a wealth of credible data that demonstrates lesbian and gay families are "like" heterosexual parents in that their children do not demonstrate any important differences in development, happiness, peer relations or adjustment. It is family processes and not family structures that are determinative of children's well being. The number of adults and the sex of the adults in a household has no significant bearing on children's well being – one adult or two, female or male, heterosexual or homosexual – whereas the happiness of the relationship between adults in the household, and the openness of warmth and communication between the adults and the children do have a major impact on the child. Children are not harmed, or disadvantaged, through being raised by lesbian mothers or gay fathers (Millbank, p 571, author's emphasis)

4.2 The British Association of Adoption and Fostering ("BAAF") has recently published an article by **Helen Cosis Brown and Christine Cocker**, (2008) which examines the history of legislation and practice relating to adoption and fostering by gay and lesbian carers. Brown and Cocker summarise a number of research studies in the UK that have explored the outcomes for children growing up in lesbian households, including longitudinal studies that considered child development, as well as longer-term outcomes, family relationships, mental health, peer relationships and psychosexual development. They concluded that:

What appears to be significant in terms of child development outcomes is the quality of the relationship between young person/child and his or her parent.....The implication of this is that the sexuality of parents is not the main or significant variable determining outcomes for children; the strongest influence is the quality of the relationships between children and their primary carers (Brown and Cocker, p23).

Brown and Cocker conclude that recruitment, assessment and support of potential adoptive parents, regardless of their sexuality, is the critical factor in the placement of children and note that focus of the assessment process should always be on the applicants' potential to meet the needs of the child. While

they conclude that an applicant's sexuality should have little bearing on assessment of adoptive applicants, they realistically note that gay and lesbian couples face additional challenges because of the stereotyping and ambivalence that still exists in society.

4.3 In 2005, **Gerald Mallon and Bridget Betts** published a practice guide for social workers (through BAAF) to assist in the recruitment, assessment and support of lesbian and gay carers and adopters. They review the legal context of discrimination against lesbian and gay people in the United Kingdom and of legislative changes made to address such discrimination. They also review the research, noting that:

researchers looking at gay and lesbian adoptive and foster parenting have reached the same, unequivocal conclusions. That is, the children of lesbian and gay parents grow up as successfully as the children of heterosexual parents (Mallon and Betts, p 22).

Mallon and Betts explore the research that has looked at the fears expressed by those opposed to gay and lesbian carers or parents, namely that the child would be bullied or ostracized, that the child might become gay or lesbian, that the child's moral well-being might be harmed, that the child might be abused. Again, the authors note that none of these fears are borne out by research (p21).

4.4 **Dr Ruth McNair's** Paper for the Victorian Law Reform Commission's work on Assisted Reproduction Technology and Adoption (2007) noted that:

A range of vigorous studies has shown that children in lesbian families do at least as well as children in heterosexual families. Recent studies have identified some differences in child outcomes, most of which are positive (McNair, p7) and

There is good evidence of equal or more positive outcomes for children with non-biological parents, same-sex parents and surrogate arrangements, both in child emotional, social and psychological development; and in parenting styles and family functioning (Mc Nair, p67).

4.5 In their Final Report Summary into Assisted Reproduction Technology and Adoption, released in June 2007, the **Victorian Law Reform Commission** concluded that:

Research shows that having single, lesbian or gay parents does not pose a risk to children's well being...Research shows that a parent's sexuality is not a predictor of harm to children. The commission recommends that same-sex couples should be allowed to apply to adopt children. All applicants for adoption should continue to be subject to the full range of assessment criteria, including the need to be approved as fit and proper people to adopt a child(Victorian law Reform Commission, p6).

4.6 In August 2007, the **Australian Psychological Society** published a Literature Review on *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families*. The paper comments on the very large body of

research in this area and notes the critique that has been made of comparative family research. The authors conclude that:

The research indicates that parenting practices and children's outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents, despite the reality that considerable legal discrimination and inequity remain significant challenges for these families (p25).

and

As noted by Professor Judith Stacey, of New York University: "Rarely is there as much consensus in any area of social science as in the case of gay parenting, which is why the American Academy of Pediatrics and all of the major professional organizations with expertise in child welfare have issued reports and resolutions in support of gay and lesbian parental rights" (cited in Cooper & Cates, 2006, p. 36) (Short et al, p7)

4.6 Unfortunately, there is very little literature that gives the views on same sex adoption of those most directly affected, adopted people. One article that can be found is that by the Inter-Country Adoptee Support Network ("ICASN").

ICASN members who contributed to this article emphasised the importance of focusing on the best interests of the child, rather than the rights of adults to adopt, and noted that policies and laws are frequently made without consultation with adopted people. Contributors noted the complexities associated with adoption generally, and with same sex adoption specifically. There was a range of opinions, as would be expected, with some opposing same sex adoption. Others, however, had a more accepting approach, noting the importance of the assessment process and the adoptive parent's capacity to recognise the child's family, culture, religion and sense of grief. Contributors also noted their concern about the additional stigma of having same sex parents, but that this was not an overriding reason for not having an open approach to the issue.

5 If adoption by same sex couples will promote the welfare of children, then examining what legislative changes are required.

Recent legislation, both federal and state, have put into effect a number of changes that would address many of the issues arising from the introduction of adoption by same sex couples.

5.1 Commonwealth

5.1.1 Legislation to remove inequalities in 100 areas of the law including social security, veterans' affairs, aged care, workers' compensation, employment and superannuation entitlements was introduced in 2008 with the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Reform) Act 2008* and the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008*.

5.1.2 The *Family Law Amendment (De Facto Financial and Other Measures) Bill* will also allow same sex de facto couples access to the federal Family Court on property and maintenance matters, rather than the more expensive Supreme Court.

5.2 New South Wales

5.2.1 In June 2008 the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* was passed. This recognises co-mothers as legal parents of children born through donor insemination, provides birth certificates allowing both parents to be recognised, creates amendments to 50 pieces of state legislation to ensure de facto couples, including same sex couples are treated equally with married couples. It also creates amendments to the NSW Anti-Discrimination Act to ensure same sex couples are protected from discrimination on the basis of their relationship status in employment, accommodation and access to goods and services. The Act makes consequential amendments to the *Births, Deaths and Marriages Registration Act 1995*, to ensure that both parents in a lesbian de facto relationship can be noted on the child's birth certificate. However, male couples were excluded from most of the parenting related legislation; this exclusion would therefore need to be corrected.

5.2.2 In adoption legislation, changes would need to be made to the Act's definition of

- *Couple*, which means a man and a woman who:
 - (a) are married, or
 - (b) have a de facto relationship.

- *De facto relationship*, which means the relationship between a man and a woman who live together as husband and wife on a bona fide domestic basis although not married to one another.

The definition of "de facto relationship" could be amended to something similar to the ACT's definition of "two people who, whether married or not, have lived in a *domestic partnership* for a period of not less than three years", or could be replaced by the definition used in the *Property (Relationships) Act 1984*. Section 4 of this Act states

- (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:
 - (a) who live together as a couple, and
 - (b) who are not married to one another or related by family.

- (2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:
 - (a) the duration of the relationship,
 - (b) the nature and extent of common residence,
 - (c) whether or not a sexual relationship exists,
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,
 - (e) the ownership, use and acquisition of property,

- (f) the degree of mutual commitment to a shared life,
- (g) the care and support of children,
- (h) the performance of household duties,
- (i) the reputation and public aspects of the relationship.

5.2.3 The *Births, Deaths and Marriages Regulation 2006* would also need to be amended, changing “mother, father, adoptive mother, adoptive father” with “parent, adoptive parent”.

Conclusion

Barnardos Australia supports an amendment to the *Adoption Act 2000*, enabling same sex couples to adopt a child, as is the case with heterosexual couples.

Our recommendation is based on the need for all adopted children to have equal rights with regard to their parents, ensuring their maximum legal and psychological security, and on the overwhelming research that shows that children with gay or lesbian parents fare as well as those raised in families with a mother and a father.

It is also based on our own positive experiences with children in our program who are successfully being cared for by two parents of the same sex. Children who are referred to Barnardos have very specific needs and can present challenges to new carers; they also have an overwhelming need for the permanence and security that is afforded by adoption. Because of the difficulty in recruitment of potential adoptive parents for these children, we believe that legislation needs to be amended to allow same sex couples to apply for adoption, thus ensuring that all potential families can be considered for children awaiting placement.

In current social climate, the traditional definition of family has undertaken significant change. Families are no longer defined only as mother, father and child/ren. Families consist of married and defacto partners with or without children, single parent households, kinship care where children are raised by grandparents, aunts/uncles or other relatives, step-parent families as well as same sex parent families. It is timely that legislation considers this change and makes necessary amendments in order to respond to social norms.

References

American Academy of Pediatrics *Coparent or Second-Parent Adoption by Same-Sex Parents Policy Statement* in Pediatrics Vol. 109 No 2 February 2002, pp339-340

BAAF Press Release *Local authority raises the bar in gay adoption*. Issued: 11 August 2008

Brown, H. C. and Cocker, C. *Lesbian and gay fostering and adoption: Out of the closet into the mainstream?* In "Adoption & Fostering Volume 32 Number 4 2008

Human Rights and Equal Opportunities Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008* 30 July 2008

Inter-Country Adoption Support Network (ICASN), *Inter-Country Adoptee Perspectives on Gay Adoption*, ICASN Website, Perspectives, June 2007

McNair, R. *Outcomes for Children Born of A.R.T. in a Diverse Range of Families* Victorian Law Reform Commission

Mallon, G. P. and Betts, B. *Recruiting, assessing and supporting lesbian and gay carers and adopters. A good practice guide for social workers*. BAAF Adoption and Fostering, London, 2005

Millbank, J. *From here to maternity: a review of the research on lesbian and gay families* in Australian Journal of Social Issues Vol 38 No. 4 Nov 2003, pp541-600

Short, E., Riggs, D. W., Perlesz, A., Brown, R., Kane, G., *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families, A Literature Review prepared for The Australian Psychological Society* in The Australian Psychological Society Ltd. Melbourne, Victoria. August 2007

University of Tasmania Media Release, 28 May 2003, *Tasmania Law Reform Institute*

Victorian Law Reform Commission *Assisted Reproductive Technology & Adoption Final Report Summary*, Published by Victorian Law Reform Commission, June 2007

Wikipedia, *LGBT adoption* (accessed January 2009)