

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

Organisation: FamilyVoice Australia

Name: Dr David Phillips

Position: National President

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Submission

on

Adoption by Same-sex Couples

to the

Standing Committee on Law and Justice

Legislative Council

Parliament House, Macquarie Street

SYDNEY NSW 2000

Telephone: (02) 9230 2976

Facsimile: (02) 9230 3416

Email: lawandjustice@parliament.nsw.gov.au

Website: <http://www.parliament.nsw.gov.au/lawandjustice>

by

FamilyVoice Australia

GPO Box 9894

Sydney NSW 2000

Phone: 1300 365 965

Fax: 08 8223 5850

Email: office@fava.org.au

Website: www.fava.org.au

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1. Introduction

On 2 December 2008 the Minister for Community Services, the Hon Linda Burney MP, asked the NSW Parliament's Standing Committee on Law and Justice to conduct an inquiry into whether NSW adoption laws should be amended to allow same-sex couples to adopt. The terms of reference for the inquiry are available on the committee's website: <http://www.parliament.nsw.gov.au/lawandjustice>.

The committee has called for public submissions which are due by 13 February 2009.

2. The objects of the Adoption Act 2000

Section 7 of the Adoption Act 2000 sets out the objects of the Act.

"The objects of this Act are as follows:

- (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."

Objects (a), (b), (e) and (f) are the objects most clearly engaged by consideration of adoption by same-sex couples.

2.1 The best interest of the child concerned

Object (a) focuses adoption law and practice firmly on the "best interests of the child concerned, both in childhood and later life" as "the paramount consideration".

A large body of social science research confirms the near universal belief, across times and cultures, that marriage is the best environment for raising children. Children flourish best on a range of indicators (including educational outcomes, school misbehaviour, smoking, illegal drugs, and alcohol consumption, sexual activity and teen pregnancy, illegal activities and psychological outcomes) when they are raised by a mother and a father in a publicly committed, lifelong relationship.¹

Children's well-being is adversely affected by being deprived of either a mother or a father. Fathers and mothers make different contributions to a child's upbringing. Neither can adequately substitute for the other.²

2.1.1 *The child's need for a mother*

Allowing male same-sex couples to adopt a child would deprive a child of the care and love of a mother.

"Mothers have a distinctive ability to understand infants and children. Mothers also excel in interpreting their children's physical and linguistic cues. Mothers are more responsive to the distinctive cries of infants. They are better able than fathers, for instance, to distinguish between a cry of hunger and a cry of pain from their baby, and better than fathers at detecting the emotions of their children by looking at their faces, postures, and gestures ... adolescents report that their mothers know them better than their fathers do.

"In sum, mothers are better able than fathers to read their children's words, deeds, and appearance to determine their emotional and physical state. This maternal sensitivity to children helps explain why mothers are superior when it comes to nurturing the young, especially infants and toddlers. Because they excel in reading their children, they are better able to provide their children with what they need—from a snack to a hug—when they are in some type of distress."³

"The critical contributions of mothers to the healthy development of children have been long recognized. No reputable psychological theory or empirical study that denies the critical importance of mothers in the normal development of children could be found."⁴

2.1.2 *The child's need for a father*

Allowing female same-sex couples to adopt a child would deprive a child of the care and love of a father.

"Fathers excel when it comes to discipline, play, and challenging their children to embrace life's challenges... Typically, fathers engender more fear than mothers in their children because their comparatively greater physical strength and size, along with the pitch and inflection of their voice, telegraph toughness to their children... Engaging in rough physical play with dad teaches children how to deal with aggressive impulses and physical contact without losing control of their emotions... Compared to mothers, fathers are more likely to encourage their children to take up difficult tasks, to seek out novel experiences, and to endure pain and hardship without yielding. Fathers are more likely than mothers to encourage toddlers to engage in novel activities, to interact with strangers, and to be independent; and as children enter adolescence, fathers are more likely to introduce children to the worlds of work, sport, and civil society."⁵

Girls whose fathers left the family early (before age 5) were five times more likely in the U.S. and three times more likely in New Zealand to become pregnant as a teenager compared to girls from traditional families.⁶

Male adolescents in all types of families without a biological father (mother only, mother and step-father, and other) were more likely to be incarcerated than teens from two-parent homes, even when demographic information was included in analyses. Youths who had never lived with their father had the highest odds of being arrested.⁷

2.1.3 Same-sex couples as parents?

In addition to depriving a child of either a father or a mother allowing same-sex couples to adopt a child would not be in the best interests of the child.

A key Australian study has shown significant detrimental outcomes from homosexual parenting. Dr Sotirios Sarantakos, when Associate Professor of Sociology at Charles Sturt University, Wagga Wagga, NSW, undertook a number of studies on heterosexual and homosexual couples. In 1996 he published a paper, *Children in three contexts*, where he explored the relationship between family environment and behaviour of primary school children living in three family contexts - married heterosexual couples, cohabiting heterosexual couples and homosexual partners.⁸

The major finding of the study was that family type did make a significant difference to the children's school achievements. Children in families where their biological parents were married to each other scored best of the three groups in language ability (7.7), mathematics (7.9) and sport (8.9). Children of cohabiting heterosexual couple families generally did next best in these areas (6.8, 7.0 and 8.3), while children of homosexual partners scored lowest (5.5, 5.5, 5.9). In class behaviour more children of homosexual partners were reported to be timid and reserved, unwilling to work in a team or talk about family life and holidays. In general they felt "uncomfortable when having to work with students of a sex different from the parent they lived with". Sex identity was reported by teachers to be a problem area for some children of homosexual families. Sarantakos cautiously concludes that "married couples seem to offer the best environment for a child's social and educational development".

Advocates of parenting by homosexual partners frequently claim that about 50 studies have been done "proving" no difference in outcome between children raised by married couples or by homosexual partners. Any social science study depends for its validity on following rigorous statistical and research procedures. Dr Robert Lerner and Dr Althea Nagai, experts in quantitative analysis, after dissecting each of 49 of such studies found at least one fatal research flaw in each study.⁹ These studies are therefore no basis for good science or good public policy.

In her book *Children as Trophies?*¹⁰ British sociologist Patricia Morgan reviews 144 published studies on same-sex parenting and concludes that it fosters homosexual behaviour, confused gender roles, and increased likelihood of serious psychological problems later in life.

Professor Lynn D Wardle shows even from those studies which conclude in favour of homosexual parenting that there is data showing that homosexual parenting may be harmful.¹¹ There is a greater incidence of homosexual orientation in the children raised by homosexual partners with resulting problems including suicidal behaviour, promiscuity, etc. There is also a greater incidence of anxiety, sadness, hostility, defensiveness and inhibitions (some of these especially among boys of lesbian mothers).

A recent meta-analysis by two gay activists failed to support the "just like other children" myth. In 2001, Judith Stacey and Timothy J. Biblarz, both supporters of gay parenting, published a study entitled, "(How) Does the Sexual Orientation of Parents Matter?" In it they re-examined twenty studies of same-sex parenting that had supposedly shown no difference, and charged their authors with ignoring the differences they had indeed found. There were differences: children raised by parents with SSA showed empathy for "social diversity", were less confined by gender stereotypes, more likely to have confusion about gender identity, more likely to engage in sexual experimentation and promiscuity, and more likely to explore homosexual behaviour.¹²

Professor George Rekers' evidence as an expert witness has been instrumental in the success of several US court actions defending State laws excluding homosexual adoption or fostering as having a "rational basis". Rekers is Professor of Neuropsychiatry & Behavioral Science at the University of South Carolina School of Medicine.

Professor Rekers states that “in a household with a homosexually-behaving adult, the foster child would be exposed to additional stress with the impact of the significantly higher rates of psychological disorder (particularly affective disorders such as depression), suicidal ideation, suicide attempt, suicide completion, conduct disorder, and substance abuse in homosexually-behaving adult.”¹³

“Homosexual partner relationships are significantly and substantially less stable and more short-lived on the average compared to a marriage of a man and a woman, thereby inevitably contributing to a substantially higher rate of household transitions in foster homes with a homosexually-behaving adult.”¹⁴

“Homosexual foster-parent households lack a daily resident model of either a mother or a father, lack the unique contributions of either a mother or a father to childrearing, and lack a model of a husband/wife relationship which is significantly healthier, substantially more stable socially and psychologically, and is more widely approved compared to homosexual lifestyles. The best child adjustment results from living with a married man and woman compared to other family structures. It is clearly in the best interests of foster children to be placed with exclusively heterosexual married-couple foster families because this natural family structure inherently provides unique needed benefits and produces better child adjustment than is generally the case in households with a homosexually-behaving adult.”¹⁵

Dale O’Leary in his book *One Man, One Woman* discusses “science, myths and same-sex parenting” He concludes: “As more persons with SSA [same-sex attraction] acquire children, society will increasingly be pressured to ignore the problems caused by same-sex parenting – just as it ignores the problems caused by divorce – and join in the pretence that that having two mommies is just the same as having a mommy and a daddy. But no matter how many people praise “family diversity,” children being raised by parents with SSA will always know that it’s not the same, and someday they will resent how their needs have been sacrificed for the sake of a social experiment. In a sad irony, the more that cultural elites insist that there is nothing wrong with their situation, the more these children will feel guilty about resenting it, and this guilt will lead them to conclude that there must be something wrong with them.”¹⁶

A 30 member multi-party commission of the French National Assembly on the Family and the Rights of Children commented in its 2006 report on “research on children raised by same-sex couples” which concluded that there was an “absence of any ill effects on the children.” The commission stated that the “scientific nature and the representation of the samples of the populations studied were broadly criticized and contested during the hearings... the lack of objectivity in this area was flagrant.” The commission endorsed the statement of an expert witness on adoption: “inasmuch as there is absolutely no reason to doubt the educative and emotional qualities of homosexual parents, we do not yet know all the effects on the construction of the adopted child’s psychological identity. As long as there is uncertainty, however small, is it not in the best interest of the child to apply the precautionary principle, as is done in other domains?”¹⁷

In the light of this evidence it would be unconscionable to legislate to allow the adoption of children by same-sex couples. The best interest of the child who is to be placed for adoption cannot be served in this way.

2.2 Adoption as a service for the child

Section 7 (b) of the Adoption Act 2001 states as the second object of the Act is “to make it clear that adoption is to be regarded as a service for the child concerned”.

Prior to 1 January 2009 Section 8 (1) (b) read as follows:

- (b) adoption is to be regarded as a service for the child, not for adults wishing to acquire the care of the child,

However, the Adoption Amendment Act 2008, amended this provision by deleting the phrase “not for adults wishing to acquire the care of the child”.

In the second reading speech on the Bill the Minister observed that “The bill also updates the objectives and principles of the Act to recognise the detrimental effect on children of undue delay in the adoption process and the legitimate parental aspirations of prospective adoptive parents.” The explanatory notes state “Schedule 1 [1] amends an existing principle that adoption is to be regarded as a service for a child to recognise the contribution of adoptive parents.” It seems to have been a concern that the phrase “not for adults wishing to acquire the care of the child” could have been perceived as somehow dismissing or trivialising the valuable contribution made by adoptive parents. Nonetheless neither recognising the “legitimate parental aspirations of prospective adoptive parents” nor “the contribution of adoptive parents” is positively stated as an object of the Act.

The requirement to treat the “best interest of the child” as “the paramount consideration” remains in full force. Section 8 (1) (c) of the Act continues to state categorically the principle that “no adult has a right to adopt the child”.

These provisions are sufficient to conclude that any attempt to make a case for same-sex couples to adopt that is based on the aspirations of such couples, or on any claim to equal treatment with married couples, is wrong-headed and cannot be used to detract from the case against allowing same-sex couples to adopt based on treating the best interest of the child as the paramount consideration.

2.3 International adoption

Section 7 (e) of the Act states that an object of the Act is “to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas”.

Currently no country allows international adoption by same-sex couples or openly gay singles.¹⁸

2.4 Treaty obligations

Section 7 (f) of the Act states that an object of the Act is “to ensure that adoption law and practice complies with Australia’s obligations under treaties and other international agreements”.

Principle 6 of the *Declaration on the Rights of the Child* states that:

“The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother.”¹⁹

The reference in the *Declaration* to the particular need of a “a child of tender years” for the care of his or her mother is a reflection in international law of the commonsense view, confirmed by the research cited above, that mothers and fathers parent in different, complementary ways, each of which is beneficial for the child.

Any change to New South Wales law to allow adoption of a young child by a male same-sex couple would be in clear breach of Australia’s expressed support for the *Declaration on the Rights of the Child*.

3. Experience in other jurisdictions

Same-sex couples are permitted to adopt in the Australian Capital Territory and in Western Australia.

The first adoption by a same-sex couple in Australia, and apparently the only to date, took place in Western Australia in mid-2007. The male same-sex couple had been approved for adoption just three years earlier.²⁰ The law permitting same-sex couples to apply to adopt only came into effect in 2002. The departmental website states that “Currently it takes about four years from making the first inquiry to being approved as suitable to adopt. There is a waiting list of people interested in applying to adopt because there are many more people interested in adopting a child than there are children who require legal adoption.”²¹ There has been no explanation given as to how this couple was approved as suitable to adopt in apparently just two years.

It is also clear that there is no shortage of married couples willing to adopt children in Western Australia.

4. Can same-sex couples adopt now?

The Adoption Act 2001 provides for both one person (Section 27) and couples (Section 28) to adopt.

The Act defines in its dictionary “couple” in such a way as to exclude same-sex couples so it is clear under current law that a same-sex couple cannot jointly apply to adopt a child.

The Act provides, in Section 27 (3), that “the Court must not make an adoption order in favour of one person who is living with a spouse unless the person’s spouse consents in writing to the application for the adoption order.” “Spouse” is defined in the dictionary of the Act in such a way as not to include the other party to a same-sex relationship. This means that either one of the two parties to a same-sex relationship could apply to adopt a child.

For reasons given above it seems that children’s best interests would normally be best served by limiting adoption to married couples. However, there may be particular circumstances where adoption by a single person who already has a relationship with a child is warranted. However, this provision should not be used to circumvent public policy by allowing de facto adoption by a same-sex couple by one party to the relationship applying to adopt a child.

This is a particular concern in relation to international adoptions. New South Wales law and practice should not connive in deceiving adoption authorities in countries which oppose same-sex adoption by facilitating adoption by one person who is a party to a same-sex relationship. As noted above no country which allows foreigners to adopt children currently allows same-sex couples to adopt.

Further if a person is married then there is no evident reason for only requiring the consent of the spouse rather than a joint application.

This section should be amended so that applications by one person to adopt cannot be made by any person who is married or in a de facto relationship, whether with a person of the opposite sex or of the same-sex.

5. Amending the law?

Any decision to allow same-sex couples to adopt would be inconsistent with the best interest of the child continuing to be the paramount consideration.

Such a decision would:

- ignore the weight of evidence in favour of the child's need for a mother and a father;
- abandon any caution about allowing a social experiment with the lives of vulnerable children;
- wilfully place adult desires for children ahead of a child's best interest; or
- indulge a wrong-headed notion of "equality" that pretended two men or two women could provide a child with the full parenting provided by the complementary nature of a mum and a dad.

6. Conclusion

There is no case for amending the law to allow same-sex couples to adopt children.

Recommendation 1: That no change be made to the law of adoption that would allow adoption by same-sex couples.

Recommendation 2: That the provisions of the Adoption Act 2000 dealing with adoption by one person be amended to preclude adoption by one person if that person is married or in a de facto relationship, including a same-sex relationship.

7. Endnotes

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