

**Submission
No 216**

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

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**SUBMISSION TO THE
ADOPTION BY SAME SEX COUPLES INQUIRY
NSW Standing Committee on Law and Justice**

**from the Social Issues Executive
of the Anglican Church, Diocese of Sydney - February 2009**

We thank the Committee for the opportunity to make a submission to this Inquiry. The Social Issues Executive is an advisory group to the Sydney Diocese of the Anglican Church on social issues, bioethics and matters of public policy. We wish to acknowledge the expertise and experience of ANGLICARE as one of the major non-government providers of domestic adoption services in NSW, in its operation as the welfare arm of the Anglican Church in Sydney. As a complement to their comprehensive submission we wish to make several comments which lead to two **recommendations** as follows,

1. No amendment is required to definitions or operation of the *Adoption Act 2000 (NSW)*, in relation to same sex couples seeking adoption.
2. Should the parliament choose to amend the Act so as to permit adoptions by same sex couples, that legislation also be enacted that a decision made in good faith by a religious institution providing adoption services to reject such applications, be protected from any claim of unlawful discrimination.

Introduction

Over recent decades there have been a number of welcome changes to the nature and practice of adoption, particularly in the area of openness and access to information. Many of these developments have come about because practitioners and policy makers have come to a deeper understanding of the needs of adopted children not only in infancy and childhood, but also as they grow into adulthood. Underpinning current thinking and practice in the area of adoption, is a right and proper concern for the best interests of the child. This is expressed in a number of the objects of the Adoption Act 2000, but most clearly in the following:

- a) *To emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration.*

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

We affirm this principle and congratulate legislators and practitioners for a commitment to ensuring that the child's needs are central in the provision of adoption services, which sadly is not the case in all jurisdictions around the world. There seems to be little dispute about this principle from anyone with an interest in adoption, in our context. Difficulties arise however in the different meanings placed on what actually is the 'best interests of the child'.

The best interest of the adopted child- an alignment of Christian and secular rationales.

In Christian thinking children are best cared for by a mother and a father. Access to new reproductive technologies has overshadowed the essential biological and historical truth that a child is conceived by a man and a woman. We believe this relationship is part of the created order and it is through the union of a man and a woman that children were intended to be welcomed into the world. When birth parents are unable to care for their child and an adoption placement is being considered, we believe the best outcome for that child is to be placed with a mother and a father. Indeed, we suggest that the expectation of most relinquishing parents would be that their child will be placed with a male and female couple who could provide the kind of upbringing that they could not.

Clearly not everyone shares the Christian view of the world, and yet on any account of human history, the basic building block of societies everywhere has been the mother/father/child relationship (albeit with some diversity in the outworking of these relationships). There have been many changes in the structure of the Australian family over the past few decades such as a growth in the number of single parent families, blended families and same sex relationships. And yet same sex parenting is still fairly uncommon. The proportion of couples living in same sex relationships, according to 2001 census figures was just under half of one percent. Of those couples, 17% of lesbian and 4% of gay male couples have a child living with them. While these may be underestimates, we nevertheless assert that Australians are still committed to the family unit, at its best, being based on a life-long relationship between a man and a woman.

We acknowledge that same sex couples have the capacity to love and care for children and that this good desire is a fundamental feature of our humanity. So while we remain supportive of children currently parented by gay and lesbian people, it however is our view that the 'capacity' to parent a child, is not the only factor in determining the best outcomes for children and indeed society. We suggest that in addition to requirement of being loving parents in a stable relationship, the 'interests of the child' in childhood and later life are best served by giving the child the opportunity to be mothered and fathered in the context of the primary domestic situation.

Other jurisdictions

It is our understanding that although same sex couples can now apply to adopt a child in the Australian Capital Territory and Western Australia, and in Tasmania registered couples can apply to adopt a related child, these are relatively recent developments and it is arguably too early to draw conclusions about the experiences in those jurisdictions. We note that Queensland has recently rejected proposals to allow same sex couples to adopt. In relation to overseas adoptions, many if not most of the sending countries do not allow same sex couples to adopt. As couples in most instances need to satisfy eligibility requirements in both the sending country and the jurisdiction where they reside, it is therefore difficult for same sex couples to adopt from overseas.

We note that "the legal recognition of same-sex relationships in NSW and elsewhere in Australia has increased dramatically in the last 20 years to a point where most jurisdictions generally provide same-sex couples with many of the same rights and obligations as heterosexual couples". And yet, "adoption remains one of the areas in which same-sex couples are frequently treated differently to those in a heterosexual relationship"¹ Indeed the issue of same sex adoption has been the subject of previous reviews in NSW and yet still did not result in changes to the current practice.

It seems that this is consistent with a European trend. While there are a small number of European countries where same sex marriage and adoption has been legalized there is a significant number of countries where although there has been a move towards legal recognition of same sex relationships, same sex adoption has either not been permitted or only in a limited way. Similarly, in terms of community attitudes, according to a survey conducted by the

¹ Anthony, K and Drabsch, T., *Legal Recognition of Same-Sex Relationships*. NSW Parliamentary Library Research Services, Briefing Paper No 9/06, 2006, p.34.

European Commission, attitudes in favour of authorizing same sex adoption lagged well behind attitudes in favour of same sex marriage.²

We simply observe that there seems to be an ambivalence or even reticence across many jurisdictions to allow same sex adoption, in the same way that legal recognition of same sex relationships has been embraced.³ We suggest that when the law concerns children, it is substantively different to laws that primarily concern couple relationships and their legal and financial entitlements. There is a community expectation that when the state acts on behalf of children, who have their own set of individual needs and are unable to advocate for their own interests, legislators need to exercise an appropriate caution.

An example of this is Australian secular ethicist Margaret Somerville, who supports the establishment of a civil unions register for lesbian and gay couples. Yet, she is against same sex marriage because it will infer that such couples have, 'the right to found a family'⁴. She says such a right in this situation simultaneously 'takes away the right of children to have a mother and a father, to know who their biological parents are, and to be reared by them'.⁵ Somerville elsewhere says, this weighing of 'rights' must in the end *reject* all the following:

'The idea that any type of family relationship, no matter how desirable for the adults involved, is as good as any other for their children; that family organization is no one else's business...'⁶

Adoption is one such area where the State has a legitimate interest in 'family organisation'. As the state is mandated to protect the best interests of the child we assert that there is no consensus that these new forms of family arrangements will further the interests of the child. Rather, collective human wisdom suggests that children are best cared for by a mother and a father.

² European Commission, Standard European Barometer 66
http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf

³ This is no less the case in NSW. In Anthony and Drabsch, 2006 (p.62), it was noted that "the community remains divided in what it believes is the best approach to same-sex couples and the issues of marriage, adoption and parenting".

⁴ 1948 Universal Declaration of Human Rights (Article 16).

⁵ Somerville, ABC TV, 7.30 Report transcript, 7 June 2007.

⁶ Somerville, M., 'Talking Ethics, doing ethics', pp.68-99 in Jonathon Mills (ed.) *Ethically Challenged: Big questions for science*, Miegunyah Press, Melbourne, 2007, p 94 quoted.

In addition to these underlying reasons there is no practical reason to make a change to the Act, given that:

- There is no shortage of opposite sex couples who would be willing and suitable adoptive parents;
- There are very few children offered for adoption;
- There is no strong case or evidence to say the current requirement of a male and female parent is ineffective;
- There is a lack of consensus in the community about same sex adoption;

The Committee should recommend that the Adoption Act 2000, should not be amended to allow same sex adoption.

Implications of any legislative changes

While not conceding that 'adoption by same sex couples will promote the welfare of children', we do urge the Committee to give serious consideration to the impact that any such a legislative change to allow same sex couples to adopt in NSW, would have on the non-government providers of adoption services.

The experience in the UK where adoption agencies are now obliged to place children with same sex couples even though it is inconsistent with the ethos of the organisation, causes great concern. Although this requirement has only recently come into effect, the Catholic Church has signaled it may pull out of adoption services, while other agencies are planning to continue with their current practice of not placing children with same sex couples, but are preparing for legal challenges.

Should the law change in NSW it would place non-government agencies who have been providing caring and professional adoption services for many years, in an unenviable and possibly untenable situation. Organisations such as ANGLICARE Sydney are motivated by a desire to do good and in the case of adoption this means to serve the best interests of the child. It would be unreasonable to expect those agencies to change their practice in a way that would be inconsistent with the ethos and doctrine on which they are based. In effect, a change to the Act would require those agencies to act in a way that is contrary to their best judgment about what is in the child's best interests.

Again we thank the committee for the opportunity to contribute to this important policy debate, and urge you to exercise caution as you carefully deliberate over this matter of concern for the people of NSW, and in particular for the children for whom adoption could and should be a great and ongoing blessing.