

Submission
No 228

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

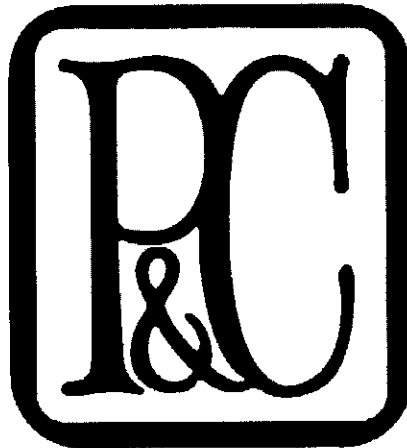
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SUBMISSION



**NSW LEGISLATIVE COUNCIL STANDING COMMITTEE OF
LAW AND JUSTICE**

Inquiry into adoption by same sex couples

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PREAMBLE¹

The Federation is committed to a free public education system which is open to all people, irrespective of culture, gender, academic ability and socio-economic class and empowers students to control their own lives and be contributing members of society.

This commitment is based on the belief that:

- All students have the capacity to learn;
- The Government has prime responsibility to provide an education system open to all, which is free and secular;
- Schools should be structured to meet the needs of individual students and should respect the knowledge those students bring to school and build on that knowledge to foster their understanding about the world.

Parents as partners in the education process, have a right and a responsibility to play an active role in the education of the children.

P&C Federation and its representatives share a responsibility of ensuring representative decision making for the benefit of all students.

INTRODUCTION

'that's not fair'

*'Everybody has a right to freedom from discrimination. Under NSW law it is illegal to discriminate against you because of your age, disability, homosexuality, marital status, race, sex, transgender status or carers' responsibilities.'*²

The Federation of Parents and Citizens' Associations of New South Wales is the peak representative body of NSW public school parents - a community group that most definitely has the best interests of our nations children at heart. As such the Federation welcomes this opportunity to convey its opinions, priorities and recommendations to the New South Wales Legislative Council's Standing Committee on Law and Justice in regard to the Inquiry into adoption by same sex couples.

The Federation believes that education should be free of all forms of sexual, religious and racial discrimination, as well as discrimination on the basis of disabilities or socio-economic circumstances. This lack of discrimination should be clearly reflected in school organisation, teaching programs and materials, and interpersonal relationships within the school community.³

¹ Preamble of Federation of Parents and Citizens' Associations of NSW. 2008 P&C Handbook (6)

² Anti Discrimination Board Poster, LawLink NSW.

³ Premise 2.1F Freedom from discrimination P&C Handbook 2008 (73)

RESPONSES TO TERMS OF REFERENCE

a. ascertaining whether adoption by same sex couples would further the objectives of the Adoption Act 2000

The Federation views that the best interest of the child concerned are paramount when making decisions about their immediate and distant future. The Adoption Act 2000 has the same objective as the factor to base all judgements by. Adoption by same sex couples could further meet the objectives of the Adoption Act 2000 especially in the following areas:

(d) to recognise the changing nature of practices of adoption⁴

Adoption procedures and law has changed in many countries around the world. Historically adoption was only possible for heterosexual couples. Gradually countries and governments have come to legally recognise same sex relationships and in turn many countries have opened adoption laws to include same sex couples as prospective parents. These countries include America, Europe and some states in Australia.⁵ The Federation views that the changing nature of the practices of adoption around the world and a broader more accepting definition of a family are factors that should be considered within the Adoption Act 2000. Federation views that this is necessary not only to achieve one of the objectives of the Adoption Act which is to recognise the changing practices of Adoption in society but also to ensure that there is no discrimination in regards to adoption in Australia. It is estimated that about 20,000 same-sex couples were living together in 2001. Approximately 20 per cent of homosexual female couples and five percent of homosexual male couples were living with children in Australia.⁶

Under Commonwealth Legislation, in Australia for example, a non-legally recognised parent who is not the subject of a parenting order under the Family Law Act 1975 (Cth) has no legal responsibility for the care of a child or any obligation to provide financial support to the legal parent in the event of a relationship breakdown under the Child Support (Assessment) Act 1989 (Cth).⁷

The Federation believes that the Adoption law should not be discriminatory and should be adapted to suit the changing nature of the practices of adoption and reflect the lifestyles of families in contemporary Australia.

f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements⁸

The Federation views that NSW Adoption laws should be amended to allow same sex couples to adopt as Australia has ratified and/or signed treaties and other international agreements. Some of these consist of the Universal Convention on the rights of the Child.⁹ International law does not harbour or justify a preference for opposite sex parented families.

International law reserves a special place for the family which is recognised as the fundamental unit of society. Children are not only entitled to demand that states respect their family life but are also entitled to

⁴ Adoption Act NSW 2000 http://www.austlii.edu.au/au/legis/nsw/consol_act/aa2000107/ Section 7d

⁵ Western Australia, Australian Capital Territory and Tasmania. Kendall C, Leishman B, Rogerson S, Walker S, 2000 Same-Sex Relationships In Western Australia, (213)

⁶ Boss P. 1992. Adoption Australia: A comparative study of Australian adoptions legislation and policy.(9)

⁷ Boss P. 1992. Adoption Australia: A comparative study of Australian adoptions legislation and policy.(9)

⁸ Adoption Act NSW 2000 http://www.austlii.edu.au/au/legis/nsw/consol_act/aa2000107/ Section 7f

⁹ United Nations Conventions of the Rights of the Child <http://www2.ohchr.org/english/law/crc.htm>

a right to know and be cared for by their parents, and for their parents to take primary responsibility for their care and upbringing.¹⁰ Sexuality by its very omission or absence seems an irrelevant consideration which is consistent with the Federation's view that the notion of family and by implication, parents is a flexible one that must respond to and accommodate the reality of changing social relationships. The family still remains the fundamental unit of society and the optimal place in which all children should be raised and provided with care.

*(g) to encourage openness in adoption*¹¹

This section generally refers to the openness in adoption although this generally refers to openness in options for adoption e.g. being flexible about the nationality of the child who will be adopted and age as well as gender. It also can be applied to encourage adoption amongst various partners and family types.

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

The American Academy of Pediatrics' research into same sex couples and the experience of their adopted children found that the upbringing behavioural, personality and parenting attitudes of heterosexual parents and same sex couples to be quite similar.

"Empirical evidence reveals in contrast that gay fathers have substantial evidence of nurturance and investment in their paternal role and no differences from heterosexual fathers in providing appropriate recreation, encouraging autonomy, or dealing with general problems of parenting. Compared with heterosexual fathers, gay fathers have been described to adhere to stricter disciplinary guidelines, to place greater emphasis on guidance and the development of cognitive skills, and to be more involved in their children's activities."¹²

Furthermore,

"Lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles and have been shown to be more concerned with providing male role models for their children than are divorced heterosexual mothers. Lesbian and heterosexual mothers describe themselves similarly in marital and maternal interests, current lifestyles, and child-rearing practices. They report similar role conflicts, social support networks, and coping strategies."¹³

Children's Gender Identity and Sexual Orientation

The gender identity and sexual orientation of children who have been raised by same sex couples has been found to be consistent to children raised in heterosexual families.

"None of the more than 300 children studied to date have shown evidence

¹⁰ Boss P. 1992. Adoption Australia: A comparative study of Australian adoptions legislation and policy.(10)

¹¹ Adoption Act NSW 2000 http://www.austlii.edu.au/au/legis/nsw/consol_act/aa2000107/ Section 7g

¹² Kendall C, Leishman B, Rogerson S, Walker S, 2000 Same-Sex Relationships In Western Australia, Children para 69

¹³ Perrin E. 2002. Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents (341)

of gender identity confusion, wished to be the other sex, or consistently engaged in cross-gender behavior. No differences have been found in the toy, game, activity, dress, or friendship preferences of boys or girls who had lesbian mothers, compared with those who had heterosexual mothers."¹⁴

Children of same sex relationships were more open to and were slightly more likely to consider the possibility of having a same sex partner. However, both children from heterosexual parents and same sex relationships had similar proportions that identified themselves as homosexual.

Children's Emotional and Social Development

The American Academy of Pediatrics has found that children of divorced lesbian mothers grow up in ways that are very similar to children of divorced heterosexual mothers.

'Several studies comparing children who have a lesbian mother with children who have a heterosexual mother have failed to document any differences between such groups on personality measures, measures of peer group relationships, self-esteem, behavioural difficulties, academic success, or warmth and quality of family relationships.'¹⁵

Adult children of divorced lesbian mothers have recalled more teasing by peers during childhood than have adult children of divorced heterosexual parents. Nevertheless, children seem to cope rather well with the challenge of understanding and describing their families to peers and teachers.¹⁶ Children born to and raised by lesbian couples have been described as more tolerant of diversity and more nurturing toward younger children than children whose parents are identified as heterosexual.

The study found that children in all family constellations have been described by parents and teachers to have more behavioural problems when parents report more personal distress and more dysfunctional parent-child interactions. In contrast, children are rated as better adjusted when their parents report greater relationship satisfaction, higher levels of love, and lower inter-parental conflict regardless of their parents' sexual orientation.¹⁷ Children apparently are more powerfully influenced by family processes and relationships than by family structure.

Overall, the experience in jurisdictions that allow the adoption of children by same sex couples shows that most heterosexual couples and same sex couples have more likenesses than differences in regards to nurturing and raising their children.

c. whether there is scope within the existing programs (local and international) for same sex couples to be able to adopt

¹⁴ Perrin E. 2002. Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents (341)

¹⁵ Perrin E. 2002. Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents (341)

¹⁶ Foord K, 2007 Imagine there are no Lesbians: Psychoanalysis, queer theory and the legal recognition of same-sex parenting.(12)

¹⁷ Kendall C, Leishman B, Rogerson S, Walker S, 2000 Same-Sex Relationships In Western Australia,(213)

Though not necessarily referred to as programs, there are different forms of adoption for heterosexual and same sex couples which have been implemented in other countries and also in some states in Australia.

- Parenting orders

A person with an interest in the 'care welfare or development' of a child can approach the Family Court and request a parenting order. A parenting order provides the potential for a co-mother or co-father in a same sex parented family to exercise various functions traditionally associated with parental authority such as living arrangements, education and medical care.¹⁸

- Co-parent adoption

Co-parent, second parent or Step parent adoption has been a mechanism available to partners in opposite-sex relationships to achieve legal recognition of their role as the social parent of a child from their partner's previous relationships. Within Australia three jurisdictions (WA, ACT and Tasmania) currently allow for co-parent adoption in same sex parented families.¹⁹

The current models of adoption for same sex couples can easily be adopted in New South Wales and are already exist in some states jurisdictions throughout Australia.²⁰ Adoptions that take place within Australia may easily be fitted to adopt the existing models. However, overseas adoption maybe more difficult as the current Australian Adoption program does not recognise same sex couples adoptions in their program as many of the countries with which Australia has adoption treaties with do not legally allow same sex adoption.

d. examining the implications of adoption by same sex couples for children

Implications of adoption by same sex couples for children like most things may have advantages and disadvantages for the children involved.

Bullying- Society is changing. However people don't always find change an easy thing to accept. Hence, families opening up to society as same sex couples may be victims of teasing and bullying in society.²¹ However, cycles in history show that changes in legislation can introduce changes to social discourses, and may also allow for a smoother transition of change.

Obstacle for overseas adoption –

"However, they are not allowed to use the Government's inter-country adoption program. None of the countries with which we have an agreement permit same-sex couples to adopt."²² This may be a major obstacle as many of the countries with which Australia has adoption treaties do not allow same sex couples to adopt.

¹⁸ Patterson. C, 2006 Children of Lesbian and Gay Parents; Association for Psychological Science para 73

¹⁹Western Australia, Australian Capital Territory and Tasmania. Kendall C, Leishman B, Rogerson S, Walker S, 2000 Same-Sex Relationships In Western Australia, (213)

²⁰ Kendall C, Leishman B, Rogerson S, Walker S, 2000 Same-Sex Relationships In Western Australia, (213)

²¹ Perrin E. 2002. Technical Report: Coparent or Second-Parent Adoption by **Same-Sex** Parents (342)

²² Nguyen. K, 2007, Foreign adoption program out for gays The Age, February 3, 2007

Federation views that the same opportunities should be provided for all within Australia. All and any changes that endeavour to make our society fair and non-discriminatory should be advocated for and applied.

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

Adoption by same sex couples promotes the welfare of children to the same extent as couples in heterosexual relationships. They are expected and able to provide love, home and shelter that any parent is able to provide their children. The legislative changes that are required in order to acknowledge and process same sex couples' adoption would be the wording and perception of a family and the definition behind the terminology of 'parents.' Society's conceptualisation of the words parent and family evolve around a male and female couple with children. However in the 21st Century the family has evolved the contemporary family can include but not be limited to include same sex partners, single parent households, second generational guardians such as grandparents and in some cases to include pets and friends. The word 'parents' has a social meaning of being two people of the opposite sex. These words could be redefined in the Adoption Act to suit the changing social settings in communities today and to include same sex couples.

Conclusion

The Federation views that it is important to identify that we are not part of a gay lobby group and we do not know what their position is. Our policy is to uphold these premises to eradicate discrimination and see diversity and acceptance entrenched in New South Wales school communities. Australia, with an estimated 20,000 couples identified as being involved in same sex relationships and approximately 20 percent living with children it is important that equal opportunities are provided and discrimination is illuminated in the adoption process. It is an ambition to then apply fair standards to the legislation so as to not discriminate against any parent in our society.

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