

Submission
No 187

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

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Position: Member for Sydney
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MEMBER FOR SYDNEY

13 February 2009

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

Dear Madam/Sir

Inquiry into Adoption by Same Sex Couples

I write to comment on adoption by same sex couples and request amendments to the *Adoption Act 2000*. I have repeatedly raised these concerns on behalf of constituents, and welcome this review as an opportunity to finally achieve fair treatment and better outcomes for children being adopted.

The exclusion of same sex couples from adoption is not in the best interests of children and does not provide equal treatment for parents in same sex relationships.

I have repeatedly raised concerns that this exclusion prevents the full realisation of the Act, which aims to provide for the best interests of children. I have consistently called for equal treatment of lesbians and gay men and their relationships, and significant progress has been made in this direction.

The NSW Law Reform Commission's 1997 report (No 81) on its *Review of the Adoption of Children Act 1965 (NSW)* recommended:

"...that the legislation should provide that an applicant to adopt must be resident or domiciled in New South Wales, over the age of 21 years and at least 18 years older than the child, and a fit and proper person to fulfil the responsibilities of a parent and the special tasks of adoptive parenting. The legislation should permit an adoption order to be made in favour of either a couple (whether married or living in a de facto, heterosexual or homosexual relationship) or a single person. The Commission recommends that the legislation require joint applicants to have been cohabitating for at least three years, and a step-parent applicant to have been cohabitating with the child's parent for at least three years, before applying for an adoption order."

This recommendation was not adopted, and during debate on the *Adoption Bill 2000*, I moved an amendment to give to same sex couples similar rights to their heterosexual counterparts, but received no support from other members. My submission to the 2006 Department of Community Services review of the *Adoption Act 2000*, repeated my call to redress this continuing inequality.

It is in the best interests of children in need of adoption that there is as large a pool of potential adoptive parents as possible. Excluding same sex couples from adoption reduces the pool of potential parents, and the possibility of successful matches that may meet the needs of individual children.

I understand that the majority of adoptions that occur now are "known adoptions" where the adoptive parent is known to the child. This should be reflected in legislation.

(2)

Surveys carried out in the UK, USA and Australia and reported by the Gay and Lesbian Rights Lobby show that over 20 per cent of lesbians and 10 per cent of gay men are already parents, and that many more intend to have children. However, same sex couples cannot make joint applications to adopt in NSW. The result is that the law does not recognise a non-biological parent in a same sex couple as a parent, unless the biological parent dies or relinquishes all parental rights, simply because the partner is the same gender as the legal parent.

Excluding same sex couples from joint adoption disadvantages children, and is unfair. This means that non-biological parent in a same sex relationship has no legal standing irrespective of playing a significant role in the child's life. The law does not recognise the partner of an adoptive parent as the child's parent in a same sex couple. This prevents some children from enjoying the protection of the law.

The Adoption Act objects include providing for the best interests of the child as the "paramount consideration in adoption law and practice". Excluding same sex couples from adopting can disadvantage children because it can jeopardise custody and guardianship; children receive fewer rights with inheritance and financial support; and it endorses and encourages discrimination.

I recommend that the Adoption Act be amended to make the definition of partner gender neutral, which would allow same sex couples to adopt, and provide for step parent and co-parent adoption.

Custody and Guardianship

It is generally considered that it is in the best interests of a child to be able to maintain a relationship with a non-biological parent if they have played a significant role in the child's life should the parents' relationship break-down. However, the current Act effectively treats non-biological parents as strangers, by excluding them from formally recognising their parental relationship with the child.

I am concerned that the failure of the law to recognise both parents results in adopted children in same sex family settings suffer in the case of relationship breakdown, removal of parents under child protection provisions, and death of an adoptive parent. This means that children have no legal right to maintain a relationship with a non-biological/non-adoptive parent in the event that a relationship breaks down, irrespective of the importance of that relationship to the child.

Similarly, if the Department of Community Services deems an adoptive parent in a same sex relationship unsuitable to be a parent, the children's relationship with their same sex partner is not recognised. Where a biological/adoptive parent in a same sex couple dies, the guardianship of children would be reviewed and could be disputed, leaving children in a more traumatic and distressing situation with their family life destroyed.

The Adoption Act should provide adopted children with certainty and a clear process for recognising parents in a same sex relationship in the event of a traumatic event such as relationship breakdown or death of an adopted parent.

Financial Benefits

I am concerned that the Adoption Act currently does not provide security of inheritance in the case of the death of a parent in a same sex relationship. The lack of legal recognition of same sex relationships means that children would be forced to attempt to prove their dependence in court, simply because their parents were of the same gender.

(3)

The Adoption Act should protect the inheritance of adopted children where their non-biological parent dies, particularly if they die without a will.

Discrimination

I am concerned that the *Adoption Act* currently endorses discrimination by excluding same sex couples from adopting. This encourages the community to view gay men and lesbians as lesser people who deserve lesser rights, and it disrespects the value of parent-child bonds between same sex couples and their children.

There has been an international trend in legal reform to extend fair treatment under the law including in NSW, and the NSW Government should follow in amending the *Adoption Act*. This is a significant concern for my constituents and I have consistently argued for fair treatment of all citizens.

Evidence

Charlotte Patterson's 1992 research paper *Children of Lesbian and Gay Parents* demonstrates that there is no reason to exclude people from adoption on the grounds of sexual orientation. The *Adoption Act* should focus on whether the applicants can meet the child's needs, and provide them with the support of a nurturing environment. There is no evidence to suggest that sexuality is an indicator of parenting capacity.

During debate on the *Adoption Bill 2000*, I referred to comments from the NSW Department of Community Services that: "A person's sexual orientation should not preclude them from expressing a personal interest in the adoption of a child. The assessment should focus on their capacity to parent a particular child taking into account the birth parent's views and the child's needs being paramount in the placement decision."

I also referred to the views of the Gay and Lesbian Rights Lobby, which stated: "Currently when the "single person" applies to adopt a child, if the person is in a relationship, their partner is generally assessed by social workers as to her or his parenting abilities. The child will only be placed if both people provide an environment from which the child would benefit. There can therefore be no reason not to make an adoption order in favour of a lesbian or gay male couple jointly. Concerns about the relationship ending are no more applicable to lesbian and gay relationships than they are to heterosexual relationships."

I understand that current practice provides for lesbians and gay men to be deemed appropriate to foster children and adopt as an individual, yet the *Adoption Act* deems same sex couples unfit to be adoptive parents. This is a double standard and should not be allowed to remain.

There is no evidence to suggest that people in same sex relationships do not provide stable and supportive relationships for children. All joint applications for adoption require an assessment of the quality and duration of the parental relationship, and same sex couples should be assessed in the same way as all applications. Maintaining the exclusion of same sex couples is simply indirect discrimination against lesbians and gay men.

Discrimination against a child with a gay or lesbian parent is not in the best interests of children, and the Parliament should amend the Adoption Act to achieve fair treatment.

(4)

Resources and Time

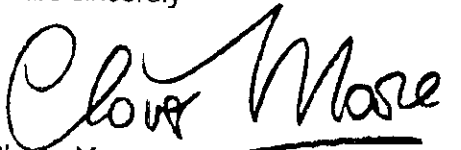
Finding suitable adoptive parents for a child is a long and complex process, which requires a great deal of time and resources. I am concerned that time and resources are used to investigate care options for children who may already have a family and loving care because same sex couples are excluded from adopting.

The Adoption Act should include same sex couples in order to prevent wasted resources.

While a proportion of constituents in all electorates are in same sex relationships, it is a matter of great importance for my electorate to provide fair treatment of same sex couple families with children. The *Adoption Act* should be amended to ensure fair treatment for same sex couples and to provide for the best interests of children.

I urge the Inquiry to recommend changes to the Adoption Act to ensure it operates in the best interest of children and provides fair and equal treatment for same sex couples who are parents.

Yours sincerely



Clover Moore
Member for Sydney