

Submission
No 217

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

Organisation: The Children's Rights Council Australia
Name: Mr Edward Dabrowski
Position: National Director
Date received: 16/02/2009

CRC Children's Rights Council of Australia

Champions of Children's Rights

Submission
on the
INQUIRY INTO ADOPTION BY SAME SEX COUPLES
to the

LEGISLATIVE COUNCIL

Law and Justice Committee

The Director

Standing Committee on Law and Justice

Parliament House

Macquarie St

Sydney NSW 2000

Fax: (02) 9230 3416

Committee Secretariat Telephone: (02) 9230 2976

Email: lawandjustice@parliament.nsw.gov.au

Website:

<http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/9560123A64B83B8DCA2575130016A0CA>

Contacts

The Children's Rights Council of Australia

Edward Dabrowski – National Director

P.O. Box 2027, Bunbury WA 6231

Telephone: 0409 917 345

Email: director@crckids.org.au

Web Site: <http://www.familylawwebguide.com.au/crc/pg/start>

12 February 2009

Contents

1. Inquiry into Adoption by Same Sex Couples	3
2. Children’s Right to a Mother and a Father	3
3. Wrong-headed Inquiry	4
4. Timing of the Inquiry	5
5. Activism driving the Inquiry.....	5
6. Clash of Rights – LGBT “rights” versus Children’s Inalienable Rights	6
7. Australia’s Recent Violation of Human Rights.....	7
8. Rights in Conflict - Who’s Rights Are We Arguing For?	7
9. Contemporary Australian Law Reform of Adoption.....	8
10. Conclusions.....	11

1. Inquiry into Adoption by Same Sex Couples

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 the 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.

COMMITTEE MEMBERS

The Hon Christine Robertson MLC (*Chair*) Australian Labor Party

The Hon David Clarke MLC (*Deputy Chair*) Liberal Party

The Hon John Ajaka MLC Liberal Party

The Hon Greg Donnelly MLC Australian Labor Party

The Hon Amanda Fazio MLC Australian Labor Party

Ms Sylvia Hale MLC The Greens

2. Children's Right to a Mother and a Father

Homosexual sex is, by definition, always non-procreative. Since the institution of marriage exists, first and foremost and in all times and places, to encourage responsible procreation and childrearing, the Children's Rights Council opposes extending its prestige and benefits to same sex couples.

Intact, heterosexual marriage is the key variable in childrearing. Thousands upon thousands of research studies in all disciplines testify to a common conclusion: children raised in homes with natural parents who are married have the best prospects for growing up healthy, well-educated, productive, and happy. The core purpose of marriage law is to guide human procreation and childrearing so that the maximum number of children are born into and reared in two-natural-parent homes. To extend legal marriage to gay and lesbian couples would confuse, even subvert that core purpose.

This focus on "the good of children" explains, as well, why marriage between men and women who cannot bear children also enjoys public affirmation. They can still take part in the rearing of children through adoption, with good prospects for success because their structure still provides both a mother and a father. Their circumstance also reinforces a social model that encourages young adults toward stable, heterosexual unions. Phrased another way: when the question is "what is best for the young," it is proper to extend the general rule (heterosexual marriage) beyond the principle purpose (procreation).

The Children's Rights Council asserts that the public institution of marriage should be reserved exclusively for heterosexual unions. It is on this institution and through these tasks that any community, including ours, must build its future. Accordingly, marriage should not be the object for a new round of social engineering.

Nor should adoption be opened to gay and lesbian couples given the special standing of marriage and substantial good experienced by children through the nurture by their adoptive mother and father.

The pressure applied to allow gay adoption is clearly part of a strategy to achieve same sex marriage rights. Australians are witnessing the political and social engineering aims of a minority who are actively re-defining the natural family and natural parents into a "legal family" with "legal parents" by eliminating the gendered language of law; "mother", "father", "marriage", "paternity"...etc. They hope to reconstruct the natural family as a legal abstraction or construct which is devoid of gender and would allow any groups of persons to marry and to adopt children. The Federal Government signalled its intention to reform the law to allow gay marriage when in 2008, despite many submissions in protest, expanded the definition of de facto relationships (de facto marriage) to include same sex de facto couples. This was less to do with addressing discrimination and more to do with equating same sex unions with marriage as part of an end game to change the Federal Marriage Act to include same sex marriage. The Government of the days succeeded with this amendment because the Australian public remains generally uninformed about this radical social engineering agenda and its ramifications on family life in the future. A better informed public and families across our great South Land of Australia would no doubt oppose such moves to alter the traditional family.

3. Wrong-headed Inquiry

The NSW Legislative Council's Standing Committee on Law and Justice issued a media release on 2nd December 2008 in which the Hon Christine Robertson MLC, Chair of the Committee said;

"The Committee will also look at the experience in other Australian and overseas jurisdictions that allow adoption of children by same sex couples...

There are **important law reform issues at play here**, and we are keen to hear from as many people as possible,"

The change to adoption law which would treat same-gendered couples to be equal to heterosexual couples would, if enacted, be a profound change to the circumstances in which adopted children are raised in the absence of either a mother or a father. Given that the children are really the centre piece of any such legislation, we feel the inquiry has a wrong focus in privileging the same sex adoptive parent idea rather than the very real and direct effect on children's rights and entitlements and best interests.

To borrow a phrase from the Hon Ms Robertson MLC, the Children's Rights Council of Australia believe that "**there are important Children's Rights issues at play here**" which will determine the law reforms which may or may not be needed. The Inquiry could more accurately be titled:-

INQUIRY INTO CHILDREN'S RIGHTS IN ADOPTION AND WETHER IT IS APPROPRIATE FOR CHILDREN TO BE ADOPTED BY SAME SEX COUPLES IN PREFERENCE TO A MOTHER-AND-FATHER COUPLE.

4. Timing of the Inquiry

The timing of this inquiry initiated 2nd December 2008 with submissions closing mid February 2009 is highly significant. A period of only 2.5 months set over the Christmas Festive Holidays and Summer Holidays when most organisations have closed business and people are enjoying their holiday break would effectively limit debate and submissions to a smaller group of stakeholders. The community can rightly ask, "who then are the stakeholders most likely to benefit from such a short window of opportunity to lodge submissions?" The community can also rightly ask, "why is this important phase of consultation so short and constrained to the time when Parliament is in recess and most people are likely to be occupied with the holiday season?"

5. Activism driving the Inquiry

In the interests of full public disclosure the Government should declare which of the advocacy groups are driving this inquiry which has appeared suddenly and gives momentum to a profoundly significant change to parenting in potentially allowing children to be adopted by same sex couples in preference to available heterosexual couples. This is of grave concern to The Children's Rights Council of Australia as it would similarly cause consternation to many individuals and groups interested in safeguarding the best interests of children, parents and families.

There would appear to be no wide community call or popular movement to reform the basis of adoption of children to heterosexual couples to include gay or lesbian couples. So where does the agitation for same sex parental rights come from? In the absence of declarations or statements by interested parties it appears that the call for this radical change probably originated from the Labor Party itself. Advocacy for radical social change to the family is active within the Labor Party Politic through groups like "RainbowLabor" and would appear to have prompted this legislative review. This is despite there being absolutely no popular call for the redefinition of children's rights and children's best interests, and without widespread protest from the community to deviate from the male-female headed family whose union has traditionally served the best interests and social wellbeing of children in Australia's history and indeed for millennia, worldwide across cultures.

As stated, the call to review adoption to be inclusive of same sex couples has most likely arisen through the internal advocacy of the RainbowLabor group <http://www.rainbowlabor.org> who describe their activities in the following way:-

<http://www.rainbowlabor.org/pages/node/2>

"Who We Are

Rainbow Labor is the grassroots internal organisation for LGBT Labor members and supporters.

Our aim is to promote full equality for the LGBT community.

Every year we march in the Mardi Gras Parade, participate in community consultations, organise forums and fundraisers, and keep pushing LGBT issues within the party.

If you are interested in getting involved in inclusive campaigns for LGBT rights and meaningful engagement with the Labor Party, we'd love to hear from you."

6. Clash of Rights – LGBT “rights” versus Children’s Inalienable Rights

The RainbowLabor group announced the inquiry on their web site with a call for action. Note the focus on adult (adoption) rights and rights of same sex couples to their notion of “equality” and no mention of children’s rights and children’s birth right to be parented by their mother and father :-

<http://www.rainbowlabor.org/pages/node/7>

“It's important for as many people as possible to put in submissions to the inquiry outlining why same sex couples deserve equal adoption rights.”

Such a call to privilege the rights of this minority group of adults over and above the rights of children to be parented by both a mother and a father, clearly relegates the best interests of children to be a secondary consideration, subordinate to the aspirations of LGBT ideology regarding equality.

There is no comparable family to the intact heterosexual family. The adoptive heterosexual family is nearest in structure. Shared parenting amongst separated and divorced couples retains equal shared parental responsibility and equal or substantially equal shared time for the parents even though the family members do not all live together. Children thus retain their mother and father through shared residence and shared care. The heterosexual family trumps all other family forms through biological blood ties and socialisation of children to both sexes through the influence of both mother and father. The concept that “any parent is suitable as long as that parent is a nurturing parent” denies the reality of the natural family, and in cases of adoption of children, denies the reality of the richest benefit to be had of children having an intimate bond with their adoptive mother and adoptive father.

The LGBT activists want to create a “new right” that would permit same sex couples to adopt children. Children have an inalienable right to their natural parents (biological parents) and the natural family as upheld by the United Nations Universal Declaration of Human Rights. Heterosexual adoptive parents clearly most closely match the model of the natural family. Traditionally, in our Judeo Christian heritage and history of our society and North America and Europe, whenever the rights of the weak and voiceless clash with the rights (or asserted rights) of the powerful, the response has always been to side with the weak, and in this case, it surely must be the children.

The Children's Rights Council supports traditional marriage and the man-woman basis for marriage because of the powerful good thing that the marriage entity has always done for children's development and socialisation.

7. Australia's Recent Violation of Human Rights

The attack on the natural family and fatherhood was publicly played out in 2008. The nation witnessed radical change in the NSW legislature where the vital genealogical record provided by birth certificates was amended to exclude the father's name and to create a legal fiction that two women made a baby, when clearly this is impossible. Again the rights of children were violated and a situation enshrined in law where a child could be deliberately brought into the world to be fatherless. If this and other changes are to have a scrap of credibility then the burden of proof rests on those wanting to change the laws. We have witnessed radical legal changes designed to effect radical social change without the necessary evidence that these changes are in the best interests of children. Rather, the natural family has been weakened in what is a flagrant violation of the UN Declaration of Human Rights. At the same time, children's rights to their natural parents were subordinated to same sex preferences, again in clear violation of Australia's agreement to uphold the UN Declaration of Human Rights. Giving preference to LGBT couples to adopt children ahead of the many available heterosexual couples is inconsistent with the ideals of mother-father parenting codified in the UN Declaration of Human Rights and is likely to galvanise lodgement of a joint complaint by volunteer parenting groups and associations against Australia's Federal and State Governments to the United Nations for breaching the UN Declaration of Human Rights and the Convention on the Rights of the Child which is derivative of the UN Declaration of Human Rights.

8. Rights in Conflict - Who's Rights Are We Arguing For?

The following commentary is an excerpt from a panel debate by David Blankenhorn, respected family expert, at Dartmoor College (USA) in March 2008 on the issue of same sex marriage and the effects of changing traditional marriage and traditional parenting to include same sex unions.

Referred web site with video of debate:

http://www.vtmarriage.org/html/_david_blankenhorn.htm

In this debate, Blankenhorn illustrates the fallacy of the proposition that deliberately bringing children into the world or deliberately raising children without their natural parents is a public good when in fact it is a personal tragedy for children to be fatherless or motherless and to not have their biological parents to raise them.

David Blankehorn said:

"I don't agree with you on adopted and step families (that they are equally good different family forms). The data on step families is quite clear that on almost all measurements of well being, children from step families

fare no better than and according to many measurements fare worse than children in one parent homes; for reasons having to do with divided loyalties and conflict that gets introduced with the introduction to the home of a new parent. It's just not at all true that it's all the same and its all equally good. Even with adoption there are significant differences. Adoption is the most closely mimicking institution we have to the natural parent family and adoption is a wonderful wonderful institution but even there it's not true that there are no differences in well being.

On the assertion that "We've always had diverse family forms and we have a long tradition of it... And you mentioned Death, unfitness and extended families. I would respectfully suggest that that analogy does not hold. No one is against extended families, extended families are wonderful. Death is a tragedy, and unfitness, insanity, craziness, being an axe murderer, those are tragic occurrences. So when a child is born and the parents get run over by a truck or go crazy or become unfit, that is a tragic...we as a society have empathy and we suffer with the child who's experienced this loss. [with sarcasm] We don't give it a party and call it a diverse family form! So in adoption, is a way of society trying to respond compassionately to that loss. It says that the child cannot, tragically cannot be raised by its own parents. And therefore we are asking for volunteers to step in and be as if they were the natural parents; to replicate that experience legally and socially. It's a beautiful thing but what we're talking about now (same sex marriage) is consciously creating institutions and norms, that will bring children into the world where they can by definition, not know and be known by their own two parents. [with sarcasm] And we don't treat it as a tragedy! We're saying it's a good thing, we're saying we want it and have a party! So it couldn't be any different these two things...one is viewed as a tragic loss and the other is being proposed as a positive thing."

As David Blankenhorn illustrates, same sex adoptive parents would be required to step in and "be as if they were the natural parents". However, the lack of one gender would preclude the child from receiving either motherly nurture or fatherly nurture. The child's best interest in having the parental structure most closely mimicking the biological parents clearly suggests a heterosexual couple is optimal.

9. Contemporary Australian Law Reform of Adoption

Gender matters. It is significant that the State of Queensland has affected a major review of that State's adoption laws after widespread community consultation and concluded that the adoptive parents should not be the same gender. This common sense finding reaffirms the longstanding community standard that a child should have a mother and father, being two different but complementary genders, for the child's optimal development and assimilation into society. The Children's Rights Council notes the following aspects of the proposed QLD legislation:-

On 10 February 2009, the Queensland Government introduced the Adoption Bill into the Queensland Parliament, to replace the antiquated Adoption of Children Act 1964. Refer to Hansard: http://www.parliament.qld.gov.au/view/legislativeAssembly/hansard/documents/2009.pdf/2009_02_10_DAILY.pdf

The Minister responsible, the Hon. Margaret Keech, said about the Bill:

It is with great pleasure that I rise today to introduce into the House a bill which comprehensively reforms and modernises Queensland's 40-year-old adoption laws.

The new Adoption Bill, which reflects contemporary community standards, is now ready for parliament's consideration.

The following are extracts from the Queensland Adoption Bill 2009 which describe eligibility Note bold emphasis added with respect to spousal and gender requirements of the Bill.

The Bill: <http://www.legislation.qld.gov.au/Bills/52PDF/2009/AdoptionB09.pdf>

76 Eligibility for inclusion in register

(1) A person is eligible to have his or her name entered or remain in the expression of interest register if—

- (a) the person is an adult; and
- (b) the person or the person's spouse is an Australian citizen; and**
- (c) the person is resident or domiciled in Queensland; and
- (d) for a woman, the person is not pregnant; and
- (e) the person is not undergoing fertility treatment and has not undergone fertility treatment within the previous 6 months; and
- (f) the person does not have custody of—
 - (i) a child aged less than 1 year; or
 - (ii) a child who has been in the person's custody for less than 1 year; and
- (g) the person has a spouse who—**
 - (i) is also eligible under paragraphs (a) to (f); and**
 - (ii) is not the same gender as the person; and**
 - (iii) has been the person's spouse for at least 2 years;****and**
- (h) the person and the person's spouse—**
 - (i) are living together; and**
 - (ii) lived together for a continuous period of at least 2 years up to the time they made an expression of interest under division 2.**

89 Selection to meet needs of particular child

- (v) for a person who has a spouse—
 - (A) the spouse is not the same gender as the person; and**
 - (B) the person and the spouse are living together.**

Part 5 Application by person wishing to adopt stepchild

Division 1 Making an application

92 Who may apply

- (1) A person may apply to the chief executive to arrange an adoption by the person of a stated child if—
- (a) the person is the spouse of a parent of the child; and
 - (b) the person, the person's spouse and the child are living together; and
 - (c) paragraphs (a) and (b) have applied for a continuous period of at least 3 years up to the time of the application; and
 - (d) the person has been granted leave under the *Family Law Act 1975* (Cwlth), section 60G(1); and
 - (e) the person is an adult; and
 - (f) the person or the person's spouse is an Australian citizen; and
 - (g) the person is resident or domiciled in Queensland; and
 - (h) the person's spouse is not the same gender as the person;** and
 - (i) the child is at least 5 years old and has not yet turned 17.

Division 2 How selection must be made

156 Child's particular needs

The chief executive must have regard to the needs of the child to be adopted, including any needs relating to the following matters—

- (a) the child's age and gender;**
- (b) any Aboriginal, Torres Strait Islander or other cultural background of the child;
- (c) any existing or possible future medical condition or disability of the child;
- (d) the child's education;
- (e) whether the child has a sibling who has been adopted or is proposed to be adopted;
- (f) the child's social background.

10. Conclusions

The motivation for the endorsement of same sex marriage and same sex adoption is not the body of evidence of decades of studies on the wellbeing of children. Rather it is championed by a minority using political affiliations to wins special rights to child-rearing and encroaches on the traditional roles of natural parents.

Every child deserves and has an inalienable right to a mother and a father. It is the natural order which gives the best outcomes, health, wellness and happiness for children. There is no shortage of heterosexual couples with the same mother-father family structure to fill the void and become adoptive parents. Same sex couples cannot equate to the mother-father structure and no child should have his/her rights violated by deliberately being put into a family structure in which they are raised without a mother or without a father. Already too many children suffer this fate through divorce and often times granting of inequitable court orders.

Same sex adoption would be contrary to the Universal Declaration of Human Rights and the Convention on the Rights of the Child which support the primacy of the natural family and natural parents. In adoption, society should try to approximate the natural family by giving vulnerable and damaged children the greatest benefit possible, being the family composed of their adoptive mother and adoptive father. The Queensland Adoption Bill 2009 recognises that fact by specifically excluding same-gendered couples from adopting. The Children's Rights Council of Australia urges the Government of New South Wales to follow suit and enact the same sensible protections for children.