

**Submission
No 185**

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

Organisation: Australian Christian Lobby

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**Submission to the
New South Wales Legislative Council
Standing Committee on Law and Justice
Inquiry into adoption by same sex couples**

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Executive Summary

The Australian Christian Lobby (ACL) welcomes the opportunity to make a submission to the New South Wales Legislative Council Standing Committee on Law and Justice Inquiry into adoption by same sex couples.

ACL firmly believes that any discussion concerning the welfare of children must begin from the position of the best interests of the child. This necessarily applies to the process of adoption, which has particularly important implications for the social and emotional well-being of children.

Where the state plays an active role in the upbringing of children, or decides who is best placed to raise a child such as through adoptive arrangements, it has an especially large burden to fulfil its obligations to that child's best interests. The best interests of the child, in that circumstance, are served by placing the child in a family situation that provides it with the best chance of success in life.

ACL strongly asserts that the family structure best suited to the successful raising of healthy, happy and successful children is one in which a child is raised by both its biological mother and father. Obviously, in cases of adoption, this optimum option is not available.

Instead, adopted children should be placed into a family situation that most closely resembles this ideal. The life-long welfare of an adopted child, therefore, is best supported in a family structure with an adoptive mother and father.

ACL further argues, in consideration of the inquiry terms of reference, that:

- This inquiry is a questionable use of parliament's time;
- Allowing same sex couples to adopt fails to further the objectives of the *Adoption Act 2000* (the Act);
- The burden of proof in establishing that children raised by same sex couples do not disadvantage those children rests with those in favour of same sex adoption. The lack of credible evidence, both Australian and international, to disprove the disadvantage, does not discharge that burden;
- The number of children available for adoption is limited. Allowing same sex couples to adopt would only expand the already large pool of adoptive parent applicants, and extend the wait for heterosexual couples seeking to adopt; and,
- Legislative changes in the area of same sex adoption in New South Wales are simply not necessary if the best interests of the child are the paramount consideration when adopting children.

The basis of the inquiry

On 24 November 2008, retired Supreme Court Judge James Wood released a 1000 page, three volume report for the Inquiry into Child Protection Services in New South Wales. The report is an indictment on the failure of the Department of Community Services (DoCS) to protect the welfare of the state's most vulnerable citizens, its children.

The report contains numerous recommendations for immediate action. Yet instead of focussing on these urgent issues, the minister responsible for DoCs, the Minister for Community Services, the Hon Linda Burney MP, has found time to pursue an agenda of radical social engineering.

Just one week after the launch of the Wood inquiry report, on 2 December 2008, the Minister announced this Inquiry into adoption by same sex couples. The failure of the Minister to take decisive action in response to the report, in favour of this agenda-driven sideshow, reflects poorly on her commitment to the health and safety of children in New South Wales.

This inquiry serves as a distraction from the real pressing issues and needs of the state at a time when extreme financial pressures are placing additional burdens on already crumbling family structures. Highlighting the questionable timing of this inquiry, journalist Alex Mitchell asks:

Which begs the question: with DOCS facing a massive overhaul and family problems growing with every twist in the economic meltdown, why is the government spending time, effort and money investigating adoption by same sex couples?¹

ACL is concerned that the Government is pursuing an ideological agenda ahead of the interests of children. ACL questions the timing and motives of this inquiry, especially given the earlier release of the Wood inquiry report. DoCS would better utilise its finite resources concentrating on the issues identified in that report.

In such uncertain times, the Inquiry into adoption by same sex couples contributes little to the wellbeing of New South Wales children and families.

¹ Mitchell, A. (2009, 30 January). '1000 pages of problems, and DOCS does what?', *Crikey*, <http://www.crikey.com.au/Politics/20090130-Adoption-by-same-sex-couples-in-NSW.xml>

Term A: Furthering the objectives of the Act

Adoption is an extremely complex process that has serious implications for all involved. It is therefore commendable that adoption practices in New South Wales are guided by a set of objectives and principles clearly articulated in legislation. The primary object of the Act is expressed as follows:

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.

ACL strongly agrees with this fundamental proposition. ACL is similarly supportive of the further object that "adoption is to be regarded as a service for the child concerned". These are sound principles that place children at the centre of all adoption considerations.

However, this inquiry, in name and through its terms of reference, is an adult-centred inquiry into whether a certain category of people should have the right to adopt. This rejects the child-centred ideals of the Act, placing the rights of adults at the forefront of considerations.

As stated in the Act, "no adult has a right to adopt the child". The onus is therefore, firmly placed upon the supporters of same sex adoption to prove, consistent with the objectives of the Act, that placing adopted children into the care of same sex couples is not detrimental to that child's best interests.

The burden of proof is especially heavy because the lifelong wellbeing of a child is at stake. An adopted child is likely to have experienced some emotional hardship, and is especially vulnerable to further stresses. The child deserves the protection of the state, and not to be the subject of social experimentation at the behest of activists. Rightly, legislators must be wary of any amendments that elevate the rights of same sex couples above the rights of a child to be brought up by a mother and a father.

Given the difficulty of reversing a policy allowing same sex adoption, should research prove conclusively at a later stage that same sex parenting is not in the best interests of the child, caution must be the principle guiding the actions of the state. As the number of potential parents presently exceeds the number of children seeking adoptive parents, there is no need to risk the welfare of children without conclusive research evidence that children raised by same sex couples are not disadvantaged by the lack of a father and a mother.

The desires of adults to become parents, regardless of their living arrangements, are always secondary to the best interests of the child. It is perfectly legitimate, and indeed essential, to discriminate in favour of the child to ensure that child's social and emotional wellbeing.

ACL strongly argues that the best interests of children are served in a family structure that most closely approximates the ideal family unit. That family structure necessarily contains both a mother and a father, which can provide the complementary love and affection, and the role models of both sexes. While marriages and de-facto relationships do break down, nonetheless, children should be given every opportunity to start life in the family structure shown by research to be the most ideal.

Term B: Same sex adoption in other jurisdictions

The Australian Capital Territory and Western Australia are presently the only Australian jurisdictions that permit the adoption of children by same sex couples. As yet, there has been no publicly documented same sex adoption in the ACT.

In Western Australia, a high profile same sex adoption case was made public in mid-2007. The incident caused a major backlash from the public. The then Labor government, which allowed the adoption to take place through earlier amendments to the state adoption act, sadly downplayed the public's concern.

Then Western Australian Attorney-General Jim McGinty's reasoning on the issue was deeply flawed. He was cited in the media arguing: "What we need to do is have loving relationships where the parents love and care for the child. That's the only criteria that needs to be employed."²

Obviously love between its parents is crucial for a child, but turning love into the only criterion by which to assess suitable adoptive parents is to fail a child's best interests. It becomes a subjective test by which adults determine their feelings towards the child. We know, however, that feelings change.

The love criterion, of which McGinty and many others speak so highly, is simply incapable of taking into account the complexities of adoption. When debate is clouded by 'love', children are failed because objective criteria and assessment are simply ignored. All considerations then rest with the competing rights of adults to fulfil their own desires. Common sense notions, such as a child's right to be raised by both a mother and a father, are simply laid waste where feelings and emotions are allowed to reign unabated.

If the best interests of the child are indeed the primary consideration, then no risk should be taken with the choice of adoptive parents. Without any evidence to prove that children raised by same sex parents are not disadvantaged, the former Western Australian government have failed that child's best interests, preferring instead to further the objectives of minority interest groups.

Parenting research

There is a growing body of respected research which strongly supports the desirability of heterosexual parenting, in comparison to same sex parenting. Also, there is no substantive evidence to demonstrate that the parental model of a mother and a father is in any way defective. Although a small number of pro same sex parenting studies seek to refute the larger volume of research, Professor David Popenoe of Rutgers University argues:

Social science research is almost never conclusive. There are always methodological difficulties and stones left unturned. Yet in three decades of work as a social scientist, I know of few other bodies of data in which the weight of evidence is so decisively on one side of the issue: on the whole, for children, two-

² Quartermaine, B. (2007, 13 June). 'Gay adoption 'groundbreaking'', *Perth Now*, <http://www.news.com.au/perthnow/story/0,21598,21898760-2761,00.html>

*parent (father and mother, not same sex coupling) families are preferable . . . If our prevailing views on family structure hinged solely on scholarly evidence, the current debate would never have arisen in the first place.*³

Regarding the veracity of social science research, the claims made on the basis of pro same sex parenting research are often unsupported. Drs Robert Lerner and Althea K. Nagai, professionals in the field of quantitative analysis, reviewed 49 studies on same sex parenting that concluded there in no difference whether a child is raised by a mother and a father, two fathers or two mothers.

Evaluating six key components of each study, including hypothesis and design, sampling and controlling unrelated effects, Lerner and Nagai found at least one fatal research flaw in each of the 49 studies. They argue that “no generalizations can reliably be made on any of these studies. For these reasons the studies are no basis for good science or good public policy.”⁴

Unfortunately, such objective analysis of flawed research is rarely taken into account during public discussion of same sex parenting ‘rights’. Many of the 49 research studies evaluated by Lerner and Nagai were used by the Victorian Law Reform Commission (VLRC) in their research and report into Assisted Reproductive Technology and Adoption to justify the extension of same sex parenting rights.⁵

The same flawed research projects that formed the basis of the flawed VLRC report, led to the flawed Victorian *Assisted Reproductive Treatment Act 2008*. This tragic legislation commodifies children, placing their best interests last in any consideration of family. ACL would strongly urge this committee, who are charged with a most serious matter, the wellbeing of children, to not neglect the best interests of children like those in Victoria.

At the same time, the VLRC significantly downplayed the findings of a leading Australian study by Charles Sturt University Associate Professor of Sociology Dr Sotirios Sarantakos, who evaluated the welfare of children raised in various family types. Dr Sarantakos found that children raised by same sex couples were “more confused about their gender”, and that “married couples seem to offer the best environment for a children’s social and educational development”.⁶

Having examined the wellbeing of Australian primary school children from three family types (married heterosexual couples, cohabiting heterosexual couples and same sex couples) Dr Sarantakos found that in every area of educational endeavour (language, mathematics, social studies, sport, class work, sociability and popularity, and attitudes to learning), children from married heterosexual couples outperformed those from the other two groups.

³ Popenoe, D. (1992, 26 December). ‘The controversial truth’, *New York Times*, p. A21

⁴ Lerner, R., & Nagai, A. K. (2001). *No basis: What the studies don’t tell us about same-sex parenting*. Washington DC: Marriage Law Project.

⁵ Victorian Law Reform Commission (2007). *Assisted Reproductive Technology and Adoption*. <http://www.lawreform.vic.gov.au/wps/wcm/connect/Law+Reform/resources/file/eb22b94ec21531a/ART%20WEB%20VERSION.pdf>

⁶ Sarantakos, S. (1996). “Children in three contexts”. *Australian Children*, 21(3), pp. 23-31.

Relationship stability

Contrary to the assertion of former Western Australian Attorney General Jim McGinty and others supportive of same sex parenting, 'love' is not the only criterion by which to determine the suitability of potential adoptive parents. All children, especially those experiencing the difficult emotional circumstances of adoption, require a stable home environment in which the parents are committed to each other.

The importance of stable parental relationship is recognised in the Adoption Act. The Act presently requires potential adoptive couples to demonstrate a sufficient level of commitment to each other by remaining in a cohabiting relationship for at least two years prior to applying for adoption. Legislators are right to consider relationship stability to be a key criterion when determining suitable adoptive parents.

With that in mind, evidence indicates that the length of relationship and level of commitment to that relationship are on average much less in same sex couples than with committed heterosexual couples. A commitment to monogamy is also an important component of relationship stability, and this is much less a feature of same sex relationships than of heterosexual relationships.

If the best interests of the child are the paramount consideration in adoption processes, then the state must rightly deem certain people to not be suitable adoptive parents by a set of objective criteria, regardless of the capacity of the adults to 'love' the child. If relationship stability is deemed to be one of those criteria, as is presently the case, then same sex couples must necessarily be precluded, to serve the child's best interests.

Term C: Scope within existing programs for same sex adoption

Modern technology has gone some way to alleviating the incredible pain of infertility, offering couples unable to conceive naturally the hope of raising their own biological children. Yet with a rapid increase in the scope and availability of infertility treatment options, there remain a significant number of heterosexual couples who are unable to conceive. Although no adult has a right to a child, adoption remains the last parenting option for many couples. There are also many couples with their own children who would like to adopt.

At the same time, modern contraception, sex education and Australia's tragically high abortion rate of around 90,000 per year, has meant that the number of children available for placement adoption has been dramatically reduced in recent decades. A recently published Australian Institute of Health and Welfare report shows that only 440 children across Australia were adopted in 2007-2008, the lowest number recorded since 1969-1970⁷.

The number of children requiring adoptive parents, therefore, remains significantly less than the number of couples seeking to adopt. Allowing same sex couples to adopt would only

⁷ Australian Institute of Health and Welfare (2009). *Adoptions Australia 2007-08*. <http://www.aihw.gov.au/publications/cws/aa07-08/aa07-08.pdf>

expand the already large pool of adoptive parent applicants, and extend the wait for applicants who can provide the different but complimentary benefits of a woman and a man.

The small number of children, relative to the large number of heterosexual couples seeking to adopt, gives the state the capacity to place those children within the best possible family structure for their upbringing. There is simply no practical need to extend the scope within existing local and international programs for same sex couples to adopt. Where the number of children requiring adoptive parents exceeds the number of available applicants, there may be some capacity to re-examine the current restriction on same sex couple adoption. Given current birth control and family planning trends, however, such a review will not be required in the foreseeable future.

Term D: Implications for children of same sex adoption

Given the best interests of the child are the paramount consideration in relation to adoption, the likely implications for children should same sex couples be allowed to adopt is the central issue of this inquiry. The state has a large responsibility to ensure that its decisions in this area are correct, because any improper judgment will ensure children are subject to lifelong consequences of a negative nature.

The family arrangement whereby children are raised by both their biological mother and father has served society fruitfully for centuries. Rightly, the state has determined that where a child is unable to be raised by their biological parents, as in the case of adoption, the next best alternative arrangement is with a family that closely mirrors the ideal type. That family contains both a mother and a father in a committed relationship.

ACL understands that many children are raised in alternative family arrangements. Whether as a result of death, desertion or divorce, a growing number of Australian children are raised in single parent households. Some children are raised by a biological parent and their same sex partner. ACL is not suggesting that adults in these circumstances are not capable of being good parents to their children. Rather, it believes the complementary love and role models of a mother and a father provide the best environment for the raising of children.

Rather than embarking on radical unproven social engineering at a time when child protections services are demonstrably failing, the state should, as it has done in the past, continue to recognise the value of opposite sex parenting for children. Preventing same sex couples from adopting children is not discriminatory against those couples; rather, it is an acknowledgement that the best interests of a child needing adoptive parents are best served with a mother and a father.

As no adult has a right to a child, a heavy burden rests with supporters of same sex adoption to prove that children are not unfairly disadvantaged if they are raised by a same sex couple. ACL contends that due to a lack of credible longitudinal evidence regarding the effects of same sex parenting, either from an Australian or international perspective, that burden of proof has not been discharged.

Fatherlessness

Although the evidence pertaining to the effects of same sex parenting are sparse, a body of available data pertaining to “fatherlessness” shows the very negative impacts on the growing number of children being raised without a father. Various studies show how children brought up in families without a father (and by extension, without a mother) role model, are in danger of being seriously disadvantaged in social development and personal opportunity.

For example, Coira, Zill and Bloom write that young children without two biological parents are three times more likely to suffer behavioural problems such as attention deficit disorder or autism.⁸ In the USA, male teens without a biological father are twice as likely to be incarcerated as teens from two-parent homes.⁹

Research consistently shows that children are more successfully raised in an environment where they have a mother and a father. Deliberately placing a child in a situation where it will lack either a mother or a father is irresponsible and the state should not be complicit in such an action. Such an action would not meet the objective of acting in the child’s best interest.

Mothers and fathers parent differently

Supporters of same sex parenting would have us believe that the gender of a child’s parents is not a relevant factor in the child’s upbringing, and that the love evident in the relationship between the parents, regardless of their gender, is the only criterion that influences their parenting abilities. Such a statement, however, is patently false. Professor Popenoe explains it thus:

We should disavow the notion that ‘mummies can make good daddies’ just as we should disavow the notion of radical feminists that ‘daddies can make good mummies’ . . . The two sexes are different to the core and each is necessary – culturally and biologically – for the optimal development of a human being.¹⁰

Responding to a growing body of research literature in this field, the Head Start Bureau of the United States Department of Health and Human Services writes:

Scholars now know that boys and girls who grow up with an involved father, as well as an involved mother, have stronger cognitive and motor skills, enjoy elevated levels of physical and mental health, become better problem-solvers, and are more confident, curious, and empathetic. They also show greater moral sensitivity and self-control.¹¹

⁸ Coira, Zill & Bloom (1995). ‘Health of our nation’s children’, in Vital Health Statistics, National Center for Health Statistics, Vol. 10, p. 191

⁹ Harper, C. & McLanahan, S. (2003) ‘Father absence and youth incarceration’, *Center for Research on Child Wellbeing Working Paper*, pp. 99-103

¹⁰ Popenoe D. (1996), *Life without father*, Harvard University Press, p.197

¹¹ Head Start Bureau of the U.S. Department of Health and Human Services (2004). *Building Blocks for Father Involvement, Building Block 1: Appreciating How Fathers Give Children a Head Start*, <http://www.hsnrc.org/fatherhood/Resources/root/data/Building%20Blocks/HSBCombo4.1.pdf>

The evidence clearly indicates that children do best when raised by both a mother and a father. However loving and well-motivated a same sex couple may be, they cannot provide the complementary love and role model of both a father and a mother, which a child both needs and deserves. Contrary to the mantra of the gay lobby, 'love' is not the only factor contributing to the successful raising of children. The gender of the parents does matter.

Term E: Same sex adoption and child welfare

Given that allowing same sex couples to adopt will not promote the welfare of children, no legislative change is required in this regard. Research has thus far not proven that same sex parenting is not detrimental to the best interests of children.

Conclusion

ACL questions the motives and timing of the inquiry, given the current difficulties facing the relevant government agency, the Department of Community Services, and increasing levels of family stress due to the financial crisis.

ACL wishes to reiterate its view that wherever children are involved in any social debate, the best interests of the child is the primary consideration. If the committee is to follow this guiding principle in practice, and not just in rhetoric, it will recognise that children have the best chance of success in life if they are raised by both a mother and a father. A same sex couple simply cannot provide the complementary love and care of a mother and a father.

As adoption is a service for the child, and not a right for any prospective parents, any criteria used to judge the merits of possible parents is not to discriminate against those adults, but to discriminate in favour of a child's right to the best possible upbringing. Due to the number of applicant parents exceeding the number of children available for placement adoption, the state has the capacity to choose wisely whom it wishes to raise children in its care.

Treading carefully in the adoption process requires that the least risk is taken in the choice of adoptive parents. In the absence of any definitive evidence that same sex parenting is not detrimental to the upbringing of children, research having failed to discharge this very heavy burden of proof, the state is right to prevent same sex couples from adopting children, in the best interests of the child.

ACL would like to see the present status quo retained, whereby same sex couples are not permitted to apply for adoption. Adoption should never become a child provision service for people who choose to be socially infertile. The standards set in the *Adoption Act 2000* should not be altered to suit the desires of adult minority groups to the detriment of children. Allowing same sex couples to adopt is clearly in conflict with the high measure set by the objective of the Act to always act in the best interests of the child.

Given the increasing body of research data highlighting the importance of a mother and a father to the upbringing of children, the state should not pursue policies that unavoidably place children into fatherless or motherless family environments.

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