

## INQUIRY INTO ADOPTION BY SAME SEX COUPLES

**Organisation:** Life, Marriage and Family Centre  
CatholicCare  
Catholic Archdiocese of Sydney

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## **Standing Committee on Law and Justice Inquiry into Adoption by same sex couples**

### **Submission from the Catholic Archdiocese of Sydney 13 February 2009**

In our positions as the Chief Executive Officer of CatholicCare and the Director of the Life, Marriage and Family Centre, we wish to forward this submission on behalf of the Catholic Archdiocese of Sydney.

#### **Background and Introduction**

1. The **Life, Marriage and Family Centre** is an agency of the Catholic Archdiocese of Sydney and has been established to extend the research, policy, educational and pastoral activities the Church undertakes with respect to marriage and family issues. **CatholicCare** is the official welfare arm of the Archdiocese and a major provider of family and social services to the broader community. Currently there are some 589,000 Catholics in the Archdiocese of Sydney, constituting 32.3 percent of the general population living within the geographical boundaries of the diocese. Over one million Catholics live in the greater Sydney area and 1.9 million reside in the State of New South Wales.
2. The Catholic Church has a long and ongoing tradition of caring for orphaned children and for children whose parents are unable to care for them adequately. Catholic agencies have long dedicated significant resources to the care, fostering and adoption of children. We have extensive experience in the care and placement of children and continue to be involved as a significant non-government provider of adoption and related services.
3. Catholics hold strong beliefs about the dignity of the human person, especially children, and of the intrinsic value of marriage and family both for the individual and for the society. Proper social relationships call us to strive for the good of the other person. Often this may require a radical self-giving and a willingness to accept the challenges of particular circumstances. Within this context, we are very supportive of an adoption process which places the best interests of the child and their ability to flourish within society as paramount considerations.
4. The Catholic Church in Sydney has provided an adoption service since 1967, over 40 years. CatholicCare's adoption service is available to all

potential birth parents and adoptive parents regardless of race, faith or creed and its purpose is summed up in its Vision Statement which states;

“Our vision at (CatholicCare's) Adoption Services is to provide clients with a professional and ethical service in the context of collaborative relationships. Our relationships with our clients are characterized by compassion, as well as respect for the dignity and autonomy of the individual.”

5. CatholicCare offers a range of programs to support individuals, families and communities. We believe an adopted child has the right to a permanent, safe and loving family with parents who will nurture and raise the child and always strive to act in that child's best interests. This includes respect for the family unit.
6. The Dictionary of the *Adoption Act* currently defines “couple” to mean a man and a woman who are either married or in a defacto relationship. That a couple means a man and woman is consistent with Catholic teaching. Currently the jurisdiction of the *Adoption Act* is limited (section 23(1)) to orders for the adoption of a child either:
  1. solely in favour of one person; or
  2. jointly in favour of a couple.
7. Catholic teaching on sexuality, marriage and family is part of a much larger body of Catholic social and moral teaching, which includes respect for the dignity of the human person and the need to care for all, especially the poorest and most vulnerable. The Church's teaching on sexuality and family must be understood in that wider context. The genuine, committed and exclusive love between a man and a woman, grounded in marriage, is the foundation of family life and promotes the optimum welfare and development of children.
8. CatholicCare is the official welfare arm of the Catholic Archdiocese of Sydney and acts in accordance with the teaching of the Catholic Church. These teachings support the best interests of the child.

**I. Response to Terms of Reference: (a) and (d)**

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

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

9. “The objects of this Act are as follows:

- (a) 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,
- (b) to make it clear that adoption is to be regarded as a service for the child concerned,
- (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- (d) to recognise the changing nature of practices of adoption,
- (e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,
- (f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,
- (g) to encourage openness in adoption,
- (h) to allow access to certain information relating to adoptions,
- (i) to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents."

10. The objects of the *Adoption Act*, pursuant to section 6 of the Act, are intended to give guidance and direction in the administration of the Act. We wish to particularly address objects (a) and (b) and the importance of those objects to persons making decisions about the adoption of a child.
11. We also refer to section 8 of the *Adoption Act*, which requires that persons making decisions about the adoption of a child have regard to particular principles. We emphasise the relevance of section 8 (1) (b) and (c) , which requires a decision-maker to have regard to the principle that "adoption is to be regarded as a service for the child" and that "no adult has a right to adopt the child".
12. We strongly endorse the first object of the *Adoption Act 2000*, in Section 7(a):
  - (a) 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.

In relation to the matter of this inquiry, **we maintain that the best interests of the child, both in childhood and in later life, are served through the provision of both an adoptive mother and an adoptive father who have already made the lifetime commitment of marriage and demonstrated stability in that commitment.** There is a significant body of evidence in support of this position.

**i. Heterosexual Marriage respects and models the difference and complementarity of persons. The capacity of same sex relationships to do this is significantly diminished.**

13. Through marriage we move to a circumstance where we are with an 'other' who is equal but complementary, who is biologically and

psychologically different, and yet physically compatible at the most intimate of levels. The experience of the natural complementarity of men and women enables an individual to mature in his or her psychosocial understanding of what it is to be a human person. Same sex relationships cannot exemplify the same level of difference and complementarity and openness to new life. Respect for this natural complementarity is described by sociology professor Dr David Popenoe:

"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".<sup>1</sup>

14. Although conducting research in the homosexual community appears to be fraught with methodological problems, the few experimental studies that use modestly large samples of children reared by homosexual parents reveal indications of the impact of parent modelling behaviour. One found:

"...developmentally important statistically significant differences between children reared by homosexual parents compared to heterosexual parents. For example, children raised by homosexuals were found to have greater parental encouragement for cross-gender behaviour (and) greater amounts of cross-dressing and cross-gender play/role behaviour".<sup>2</sup>

15. One study in the *American Sociological Review* acknowledged the 'political incorrectness' of their finding of higher rates of homosexuality among children of homosexual households:

"We recognize the political dangers of pointing out that recent studies indicate that a higher proportion of children of lesbian parents are themselves apt to engage in homosexual activity... The adolescent and young adult girls raised by lesbian mothers appear to have been more sexually adventurous and less chaste..."<sup>3</sup>

## **ii. Heterosexual Marriages are more likely to value fidelity and exclusivity.**

16. Successful cultures have always esteemed fidelity and exclusivity within marriage. Although adultery is not illegal in Australia, the vast majority of Australians view it as undesirable and wrong. This is because most of us realise that fidelity is a positive value for the spouses, any children, the

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<sup>1</sup> David Popenoe, *Life Without Father: Compelling New Evidence That Fatherhood and Marriage are Indispensable for the Good of Children and Society*, (New York: The Free Press 1996), p 197.

<sup>2</sup> R. Green et al, "Lesbian Mothers and Their children: A Comparison with Solo Parent Heterosexual Mothers and Their Children", *Archives of Sexual Behaviour* 15 (1986): 167-184.

<sup>3</sup> J.Stacey and T. Biblarz, "(How) Does the sexual orientation of Parents Matter", *American Sociological Review* 66 (2001): 174, 179.

extended family and the community, and that sanctioned dishonesty has an insidious and damaging effect on individuals, relationships and society as a whole. The *Australian Study of Health and Relationships* (2001) revealed that over 77 percent of both men and women regard having an affair when in a committed relationship as wrong. Data from the *Australian Family Values Survey* (1997) also revealed that 'faithfulness' was considered the most important aspect for a successful marriage.

17. In contrast, in the first edition of his book in defence of same-sex marriage, '*Virtually Normal*', homosexual advocate and intellectual Andrew Sullivan wrote:

"There is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman."<sup>4</sup>

One recent university study of civil unions and marriages revealed that 79 percent of heterosexual married men and women reported that they strongly valued sexual fidelity. In comparison, only about 50 percent of gay men in civil unions valued sexual fidelity.<sup>5</sup>

18. This is consistent with the results of the extensive study of 156 males in homosexual relationships lasting from one to thirty-seven years conducted by McWhirter and Mattison:

"Only seven couples have a totally exclusive sexual relationship, and these men have all been together for less than five years. Stated another way, all couples with a relationship lasting more than five years have incorporated some provision for outside sexual activity in their relationships".<sup>6</sup>

In contrast, one major survey found that no matter how sexually active people are before marriage, married heterosexual couples are highly likely to remain faithful:

"marriage is such a powerful social institution that, essentially, married people are nearly all alike--they are faithful to their partners as long as the marriage is intact ... More than 80 per cent of women and 65 to 85 per cent of men of every age report that they had no partners other than their spouse while they were married."<sup>7</sup>

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<sup>4</sup> A. Sullivan, *Virtually Normal*, NY: Random House, 1996, pg 202

<sup>5</sup> Esther Rothblum and Sondra Solomon. 2003. *Civil Unions in the State of Vermont: A Report on the First Year*. University of Vermont Department of Psychology.

<sup>6</sup> D. McWhirter and A. Mattison, *The Male Couple: How Relationships Develop* (Englewood Cliffs: Prentice-Hall, 1984), p 252-253.

<sup>7</sup> Robert T. Michael, John H. Gagnon, Edward O. Laumann, and Gina Kolata, *Sex in America: A Definitive Survey* (Boston: Little, Brown and Company, 1994), p.105.

In addition, a further survey of 884 men and 1,288 women published in the *Journal of Sex Research* found that 77 percent of married men and 88 percent of married women had remained faithful to their marriage vows.<sup>8</sup>

19. Thus, while same sex couples have no monopoly on infidelity, the evidence reflects that married heterosexuals better value and model sexual fidelity and exclusivity. It is highly likely that higher rates of household infidelity would impact upon children. Placing children in domestic situations where infidelity may be more likely to occur threatens the stable, loving environment and appropriate role modelling which are important for the healthy development of all children, especially vulnerable ones.

### **iii. Heterosexual Marriage respects the intrinsic differences of fatherhood and motherhood.**

20. There are intrinsic differences between what fathers and mothers are able to offer their children. While gratefully respecting the often heroic efforts made by lone parents, most people do not usually enter into parenthood intending to be a single parent. Most single mothers and fathers wish that they could enjoy (or still enjoy) the complementary contributions of a spouse to the raising of their children. To suggest that fathers' and mothers' contributions to the raising of children are exactly the same is to 'dumb down' sexual difference and complementarity.
21. In the case of lesbian adoptive parents, adopted children would be without a father in the home. We know that fathers are very important for reducing both antisocial behaviour and delinquency in boys and early sexual activity in girls. Fathers exercise a unique social and biological influence on their children. As the journal *Psychology Today* reports:

"Fatherhood turns out to be a complex and unique phenomenon with huge consequences for the emotional and intellectual growth of children."<sup>9</sup>

A recent study of the effects of father absence on girls found that girls who grew up with an absent biological father were much more likely to experience early puberty and a teen pregnancy than girls who spent their entire childhood in an intact family.<sup>10</sup> We appreciate that while such studies focus on biological rather than adoptive fathers, they nonetheless demonstrate children's need for their fathers. As such, the vital role of a male father figure in adoption situations deserves weighty consideration.

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<sup>8</sup> Michael W. Wiederman, "Extramarital Sex: Prevalence and Correlates in a National Survey," *Journal of Sex Research* 34 (1997): 170.

<sup>9</sup> "Shuttle Diplomacy", *Psychology Today*, July-August, 1993, p.15.

<sup>10</sup> Ellis, Bruce J., Bates, John E., Dodge, Kenneth A., Fergusson, David M., Horwood, L. John, Pettit, Gregory S., & Woodward, Lianne. "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?" *Child Development*, 74, 801-821 (2003).

22. Relationships where homosexual men raise children deny children a mother. And yet we know that mothers are vital for providing children, particularly infants, with emotional security<sup>11</sup> and for giving daughters the trusted counsel they need during puberty and adolescence.<sup>12</sup> Adoption situations which deliberately contrive to deprive children of a mother can never be in the best interests of the child.

#### **iv. Lack of Evidence to Support Equivalence of Same Sex Parenting**

23. Some 'experts' and professional associations have boldly asserted that there are "no effects" of same-sex couple parenting on children. But it is early days to be making such claims. The studies to date have generally been undertaken by same-sex advocates and they all suffer from serious methodological problems. In a review of 14 studies of homosexual parenting, Belcastro et al reported that:

"All of the studies lacked external validity. The conclusion that there are no significant differences in children raised by lesbian mothers versus heterosexual mothers is not supported by the published research data base".<sup>13</sup>

24. In a further thorough review of homosexual parenting studies, Lerner and Nagai, who are professionals in the field of quantitative analysis, evaluated 49 empirical studies on same-sex parenting. They found little evidence to support the position that homosexual households are the same as traditional families:

"We conclude that the methods used in these studies are so flawed that these studies prove nothing. Therefore, they should not be used in legal cases to make any argument about 'homosexual' vs. 'heterosexual' parenting. Their claims have no basis."<sup>14</sup>

25. Perhaps the most thorough review was prepared by sociology professor Steven Nock, who was asked to review several hundred such studies as an expert witness for the Attorney General of Canada. Nock concluded:

"Through this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of

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<sup>11</sup> M. D. S. Ainsworth et al (1978). *Patterns of attachment: A psychological study of the strange situation*. Hillsdale, NJ, Erlbaum; D. Meadows & G. Elias, "Maternal Sensitivity to Infants' Communicative Acts during the Preverbal Period", in *Reimagining Practice: Researching Change*, 2, 206-220 (Griffith University, 2003).

<sup>12</sup> N. Parera & J. Suris, "Having a good relationship with their mother: a protective factor against sexual risk behavior among adolescent females?", *Journal of Pediatric and Adolescent Gynecology*, 17, 267-271 (2004).

<sup>13</sup> P. Belcastro et al, "A Review of Data Based Studies Addressing the Effects of Homosexual Parenting on Children's sexual and Social Functioning", *Journal of Divorce and Remarriage* 20, 105, 106 (1993).

<sup>14</sup> Dr R. Lerner and Dr A. Nagai, *No Basis: What the studies Don't Tell us About Same-sex Parenting*, Washington Ethics and Public policy Centre, (2001): 6.



those studies was conducted according to general accepted standards of scientific research.”<sup>15</sup>

26. A research paper from the Australian Institute of Family Studies confirms that the evidence for equivalency in outcomes for children raised in same sex couples is lacking:

“A number of concerns have been raised about the potential negative effects of being raised in a gay or lesbian-headed family. These include the child's confusion in terms of gender identity; problems in personal development and social relationships; harm resulting from family disruption (on the assumption that gay and lesbian relationships are more short lived than heterosexual relationships); and fear of sexual molestation by their gay or lesbian parents (Patterson 1992). The overall mental health of lesbian mothers compared with that of heterosexual mothers has also been raised as an issue (Patterson 2002: 322). Another anxiety is that children might be teased and ostracized by their peers, and consequently show difficulties in social and emotional development...

Studies based on fathers' reports of their own behaviour suggest that gay fathers may be more likely than their heterosexual counterparts to exhibit authoritative patterns of parenting behaviour (Patterson 2002: 324). However, much of the available research has involved small, unrepresentative samples that are predominantly well educated, middle class and American (Patterson 2002). The degree to which results reflect sampling biases of the research, and their applicability in the Australian context, are thus difficult to evaluate.”<sup>16</sup>

The evidence above indicates that it would not be in the best interests of children to expose them to any potential risks from same-sex couple parenting.

## **v. Evidence in Support of Married Heterosexual Parenting**

27. In contrast, there is a body of research that supports the position that children from married heterosexual two-parent households do better academically, financially, emotionally and behaviourally than children raised in other forms of relationships. One significant study reported in the journal *Children Australia* compared 174 children living in either heterosexual married, heterosexual cohabiting or homosexual co-habiting homes. The study collected information primarily from teachers and only secondarily from parents and teachers. (As such, it avoided the risk of bias on the part of parents who may have been tempted to show how 'successful' they are.) The study found that the children of married couples did the best in nine out of thirteen measures including language, mathematics, sport, sociability and attitudes to school and to learning. The author concluded:

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<sup>15</sup> Steven Nock. 2001. *Affidavit to the Ontario Superior Court of Justice regarding Hedy Halpern et al.* University of Virginia Sociology Department.

<sup>16</sup> *Family structure, child outcomes and environmental mediators: An overview of the Development in Diverse Families Study*, Australian Institute of Family Studies, January 2003.

“Overall, the study has shown that children of married couples are more likely to do well at school, in academic and social terms, than children of co-habiting heterosexual and homosexual couples...In this study, married couples seem to offer the best environment for a child’s social and educational development”.<sup>17</sup>

28. Quite apart from empirical studies, there is also the historical and anthropological datum that every society before our own has privileged heterosexual marriage as the site for the upbringing of children because this has been thought and found to be the best situation for all concerned. To propose alternative models of family and parenting is to be willing to experiment on children not for their own benefit, and to be willing to dispense with the accumulated wisdom and experience of millennia.

Australia has recently been undertaking a process of public repentance and reconciliation for a previous experiment in alternative family and parenting models: the stolen generation. Once again, had people at the time been willing to abide by the wisdom of the ages – that children are best raised by (their own) mother and father – much injustice and heartache might have been avoided.

#### **vi. Consideration for the Special Situation of Adopted Children**

29. We would also invite consideration of the following research conducted by the Benevolent Society:

“Adoption is a profound life changing event for all involved. For the adoptive parents, they have lost the opportunity to parent a biological child, for the birth parents they have lost the opportunity to parent their biological child and for the adoptee, they have lost the opportunity to be raised within their biological family. For many children they begin to hear their adoption story as a positive explanation as to how they joined their adoptive family. It is only with age and maturity that they understand the ramifications of what being adopted actually means. To be part of this adoptive family means they had to leave another family. This understanding of the complexities of adoptions starts to develop in the primary years, usually somewhere between the ages of 6-12 years. It’s a time when the penny drops from an intellectual understanding to an emotional

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<sup>17</sup> S. Sarantakos, “Children in three contexts: Family, Education and Social Development,” *Children Australia*, Vol 21, No 3 (1996), 23. See also the following: Sara McLanahan and Gary Sandfeur, *Growing Up with a Single Parent: What Hurts, What Helps* (Cambridge:Harvard University Press, 1994), p. 45; Pat Fagan, “How Broken Families Rob Children of Their Chances for Prosperity,” Heritage Foundation *Backgrounder* No. 1283, June 11, 1999, p. 13; Dawn Upchurch et al., “Gender and Ethnic Differences in the Timing of First Sexual Intercourse,” *Family Planning Perspectives* 30 (1998): 121-127; Jeanne M. Hilton and Esther L. Devall, “Comparison of Parenting and Children’s Behavior in Single-Mother, Single-Father, and Intact Families,” *Journal of Divorce and Remarriage* 29 (1998): 23-54; Jane Mauldon, “The Effect of Marital Disruption on Children’s Health,” *Demography* 27 (1990): 431-446; Frank Furstenberg, Jr., and Julien Teitler, “Reconsidering the Effects of Marital Disruption: What Happens to Children of Divorce in Early Adulthood?” *Journal of Family Issues* 15 (June 1994); Elizabeth Thomson et al., “Family Structure and Child Well-Being: Economic Resources vs. Parental Behaviors,” *Social Forces* 73 (1994): 221-42.

understanding of adoption. This developmental stage is commonly referred to as Adaptive Grieving (Benevolent Society 2006)."

30. In addition to Adaptive Grieving, another unique task involving adopted children and families is assisting the child to construct a sense of themselves as an adopted child. This process is influenced by three main domains: the child, including their personality and experience; their family environment; and the wider society, including friends, community and dominant societal views. CatholicCare's adoption service provides assistance to a number of families with identity development for their adopted child.
31. **Because a married heterosexual family provides the best opportunity for children to achieve optimum development and outcomes, it is the best family situation for adopted children who face special challenges in personal and family identity. We believe it would be unjust to make legislative changes that could potentially add to the difficulties that adopted children and adults already face with identity and with feeling different. It would be contrary to the best interests of children under the Objects of the *Adoption Act* to proceed with the suggested changes that affect adoption law and practice.**

## II. Response to Terms of Reference: (b) and (c)

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

32. Same-sex couples have been allowed to adopt in Western Australia since 2002 and in the ACT since 2004. In Tasmania, same-sex step-parent adoption (where one partner is the biological parent of the child) became legal in 2001. There is insufficient data about these experiences and therefore about the implications which can be drawn from these adoptions at this early stage.
33. Catholic adoption agencies in overseas jurisdictions that allow the adoption of children by same sex couples are currently faced with the serious question of whether they will be able to continue their important work on behalf of children in need of a secure and flourishing family and home life. Since June 2006 the Catholic Bishops' Conference of England and Wales (in conjunction with Catholic adoption agencies) has been in dialogue with the British Government over the impact of new discrimination regulations on Catholic adoption agencies which would require them to consider adoption applications from same-sex couples. The Sexual Orientation Regulations 2007 outlaw discrimination on the grounds of sexual orientation in the provision of goods, facilities and services, including adoption.

34. Cardinal Cormac Murphy-O'Connor, Archbishop of Westminster, in a press release dated 5.2.07 stated that:

"I accept there are many in our society who believe that there may well be circumstances in which a same sex couple should be allowed to adopt. But what is happening with the imposition of the Regulations is that a proper desire to remove hurtful homophobia and permit adoption by same-sex couples becomes the establishment of norms that everyone must accept. The imposition of such anti-discrimination legislation becomes the creation of new rules of normality, which, in this case, simply push the point too far. The first consequence is plain: any organisation that is not prepared to conform to this new normality has no part to play in this public service. Any organisation that wants to act on the conviction that the best interests of a child are served by being brought up by a mother and father is barred from publicly funded service in the work of adoption."

35. Catholic teaching is clear about the undesirability of same sex adoptions. In 2003 the Congregation for the Doctrine of the Faith taught:

As experience has shown, the absence of sexual complementarity in these unions creates obstacles in the normal development of children who would be placed in the care of such persons. They would be deprived of the experience of either fatherhood or motherhood. ...[T]heir condition of dependency would be used to place them in an environment that is not conducive to their full human development. This is gravely immoral and in open contradiction to the principle, recognized also in the United Nations Convention on the Rights of the Child, that the best interests of the child, as the weaker and more vulnerable party, are to be the paramount consideration in every case.<sup>18</sup>

36. Cardinal Murphy-O'Connor also wrote to the Prime Minister and Members of the Cabinet:

...to oblige our agencies in law to consider adoption applications from homosexual couples as potential adoptive parents would require them to act against the principles of Catholic teaching. We require our Agencies to recruit and approve appropriate married and single people to meet the needs of children in local authority care for whom adoption has been identified as being in their best interest. We place significant emphasis on marriage, as it is from the personal union of a man and a woman that new life is born and it is within the loving context of such a relationship that a child can be welcomed and nurtured. Marital love involves an essential complementarity of male and female. We recognise that some children, particularly those who have suffered abuse and neglect, may well benefit from placement with a single adoptive parent.

However, Catholic teaching about the foundations of family life, a teaching shared not only by other Christian Churches but also other faiths, means that Catholic adoption agencies would not be able to recruit and consider homosexual couples as potential adoptive parents.

We believe it would be unreasonable, unnecessary and unjust discrimination against Catholics for the Government to insist that if they wish to continue to

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<sup>18</sup> Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to give Legal Recognition to Unions Between Homosexual Persons*, June 3, 2003, n.7.

work with local authorities, Catholic adoption agencies must act against the teaching of the Church and their own consciences by being obliged in law to provide such a service.<sup>19</sup>

37. Catholic adoption agencies in England and Wales argued:

"...good grounds exist for granting a specific exception in relation to the work of Catholic adoption and fostering agencies. The case we make for exception is based on the Catholic teaching (especially as regards the sacrament of marriage) of our adoption and fostering agencies which entails acceptance criteria which means for instance, that gay and lesbian couples cannot be assessed as prospective adopters. The impact of these Regulations could mean therefore that, in the worst case scenario, without an exception being granted, Catholic adoption and fostering agencies would close. This would open a huge gap in service provision for many of the most vulnerable children...(and) would also entail that there would be less choice in the adoption and fostering sector as a whole for both children and prospective adopters...."<sup>20</sup>

38. Sadly, Catholic agencies did not obtain the exemption they had sought from these regulations. However the Government granted them a two-year window in which to comply with the new rules. Since this two year period ended on January 1st 2009, any Catholic adoption agency that turns away a gay or lesbian couple on the grounds of their sexual orientation could face legal action.

39. In the United States of America, State 'equal rights' laws requiring that same sex couples be allowed to adopt children have already led to the closure of Catholic adoption agencies in Boston and San Francisco.<sup>21</sup>

40. If same sex adoption were introduced in NSW, there is a risk that if CatholicCare declined to provide adoption services to persons on the grounds of their sexual orientation, it would be found to have breached the *Anti-Discrimination Act*. The current exemption for religious bodies, section 56, is not sufficiently wide to protect CatholicCare in these circumstances. In the absence of an appropriate amendment to section 56, it is possible that CatholicCare would be forced to cease providing adoption services as it could not do so without breaching the *Anti-Discrimination Act*. CatholicCare is the only provider of State-wide adoption services, apart from the Department of Community Services. As

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<sup>19</sup> Cardinal Cormac Murphy-O'Connor, Archbishop of Westminster. "Cardinal writes to the Prime Minister and Members of the Cabinet re: Catholic Adoption Agencies." Press release, issued by the Catholic Communications Network, 22/01/07.

<sup>20</sup> Caritas-social action, *Submission to the Department of Trade and Industry consultation, "Getting Equal" - Proposals to Outlaw Sexual Orientation Discrimination In the Provision of Goods and Services*, 01/06/06, pg. 2 (Caritas-social action is an official agency of the Catholic Bishops' Conference of England and Wales.)

<sup>21</sup> "Blair overrules Church on gay adoption", Reuters, London, January 30, 2007; Patricia Wen, "Catholic Charities stuns state, ends adoptions: Gay issue stirred move by agency." *Boston Globe*, March 11, 2006; Terry Philpot, "Dilemma of gay adoption", *The Tablet*, August 19, 2006.

such it plays a vital role in giving choice to parent/s considering adoption for their child. It is therefore submitted that in the event that same sex adoption is introduced in NSW the *Anti-Discrimination Act* must be amended in a way that protects the right of religious agencies like CatholicCare to continue to provide adoption services.

41. **We support the sentiments of the Murphy-O'Connor statements and expect that, regardless of the outcome of this Inquiry, CatholicCare's adoption service will be permitted to continue its work in accordance with the faith-based beliefs of its parent body, the Catholic Church. If necessary, an exemption may need to be granted for it to do so.**

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

42. Within our contemporary adoption practice CatholicCare can attest to the powerful experience when the birth parent/s consider and project what they believe will be the chosen family for their infant. Birth parent/s are very clear about what they are unable to provide for their child and the very decision for adoption is predicated around what they want and seek for their child is a better life via adoption. This is the ultimate gift the parents can give to their child – the promise of a life they believe their child deserves and one, which they feel they cannot offer.
43. It is a powerful message also for their children who grow up in an adoptive family whom they know their birth parent/s chose for them as the very people they wished to nurture and raise them. The practice of birth parent/s making requests and considering the profile of families for their child is a third positive impact in the living of adoption. This is the sense of entitlement experienced by the Adoptive Parents to know they were chosen, which enables them to move from feeling they are parenting someone else's child to full adoptive parenting. This process enables Adoptive Parents to meet the specific and unique needs of adopted children.
44. It is our experience, and one that we understand is shared by the two other local infant adoption providers in the State, that without exception all birth parent/s seek adoptive parents who are in committed heterosexual family situations. Currently it is not our experience that birth parents have ever requested a placement of their child with a same sex couple.
45. The Australian Institute of Health and Welfare *Adoptions Australia 2006-2007* report states:
  - Although the total number of adoptions has remained relatively stable since the mid-1990s, there has been a 17-fold decrease

in adoptions since the 1970s. This can largely be attributed to a decline in adoptions of Australian children.

- The number of intercountry adoptions has more than doubled over the last 25 years. There has also been a dramatic increase in the proportion of intercountry adoptions over this period— from 6% of all adoptions in 1981–82 to 71% in 2006–07.
- In 2006–07 there were 568 adoptions in Australia:
  - 71% were intercountry,
  - 10% were local and
  - 18% were 'known' child adoptions
  - For 'known' child adoptions, 76% of adoptions were by step-parents and 21% by carers.
- The total numbers of adoptions are continuing to remain fairly stable. As in recent years, the vast majority of adoptions in 2006–07 were intercountry adoptions, and the number of Australian children adopted continues to remain relatively low.
- The table below shows the number of families CatholicCare's adoption service has assisted in the past seven years and the outcomes for their children. The majority of parents considering adoption for their child eventually chose to parent their child:

CatholicCare  
Adoption Counselling and Placements

Year	Parent/s considering adoption	Adoption Placements	Other Outcomes for Children
2002/3	17	8	9 parent/s chose to parent their child
2004	22	6	15 parent/s chose to parent their child; 1 child was cared for by the grandmother
2005	22	1	21 parent/s chose to parent their child
2006	22	0	21 parent/s chose to parent their child; 1 child was cared for by the grandmother
2007	15	5	9 parent/s chose to parent their child; 1 child was cared for by the grandfather
2008 (up until Jan 2009)	14	2	8 parent/s chose to parent their child 4 children are in pre-adoptive foster care

46. The numbers of adoption placements is a small number and yet the availability of willing families, wanting to adopt, far outstrips the placements. Changing legislation and increasing this pool to include same sex couples may meet a rights based agenda – exercising the right of all adults to be considered as adoptive parents. However, this shifts the focus from what adoption is really about. The assertion that no adult has the right to adopt a child is explicit in section 8(1)(c) of the *Adoption Act*. This assertion is specifically reinforced within the Principles of the current legislation in order to ensure the child stays as the paramount focus in all matters concerning adoption practice. We will remain strong advocates for the inclusion of these Principles.
47. As discussed above, the known reality in contemporary Australia is that birth parents choose the adoptive parents, and they unequivocally choose adoptive parents who represent the traditional husband and wife family. Considering legislative change, without a body of longitudinal research to understand its full implications and without any obvious need, is not warranted nor in a child's best interests.
48. **We believe that (i) given that the current Act encourages the adoption service to give full weight to the birth parents' views about the family which will adopt their child and it is not our experience that they ever request a same sex couple; and (ii) considering the limited number of children who are available for adoption within the state there is no evident need to change the law.**

### III. Summary and closing remarks

- 49.
- The Objects of the *Adoption Act 2000* should be applied in all decisions; in particular the best interests of the child in both childhood and later life must be paramount.
  - There is no shortage of families wishing to adopt. Accordingly, there is no substance to an argument that there is a need to expand the adoption pool.
  - Adoption is about the best interests of the child, not about rights for homosexual couples. It is not just to impose such an agenda on adopted children.
  - There is a significant lack of valid research in the general community about children growing up in same sex families and the social and emotional impact on these children during childhood and adulthood – remembering that the Objects of the Act asks us to consider best interests in both stages of life.



- We know that adopted children feel a level of difference in their lives and experience additional issues concerning their identity compared with their peers who are not adopted. Same sex couples in contemporary Australia remain relatively rare as a family grouping. Adding this additional layer of difference to adopted children in order to satisfy the wants of adults is not in the child's best interests.
- The central process within adoption practice is that birth parents choose the adoptive family for their child. Without exception in CatholicCare's experience (and our adoption worker colleagues have supported this) birth parents prefer adoptive parents who are in a stable, married couple relationship. They choose for their child what they feel they are unable to give, but what they firmly believe to be in their child's best interests.
- If legislative changes to the *Adoption Act* are proceeded with, we urge that provision be made:
  - ❖ for appropriate exemptions for faith-based bodies under the *Anti-Discrimination Act*;
  - ❖ that any children placed with homosexual couples be only placed with those couples who have demonstrated a committed, long-term relationship;
  - ❖ and that the child's right to know their parents<sup>22</sup> and their family heritage be protected by requiring that their biological father and mother be listed on the birth and adoption certificates.

50. We recognise that not all married heterosexuals make good parents and that many homosexual parents are loving and generous parents. We do not favour unjust discrimination against same sex couples. However, in the best interests of adopted children, it is a matter of justice for the State to distinguish between married heterosexual couples and same sex couples in terms of their suitability to be adoptive parents. This is because sociological evidence supports placement with a married heterosexual couple as the option which best caters for an adopted child's physical, emotional and intellectual needs.

51. At the same time, there is a lack of reliable evidence demonstrating the equivalence of homosexual parenting with that provided by a married heterosexual couple. The findings of empirical studies of the effects of different parenting models on children are consistent with the accumulated wisdom of thousands of generations across every culture, society and

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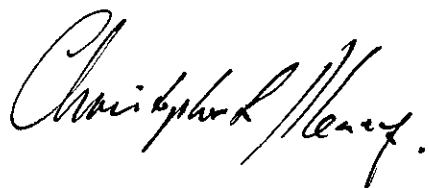
<sup>22</sup> *Convention on the Rights of the Child*, Article 7 (1): "The child [shall have] as far as possible the right to know and be cared for by his or her parents."

religion which tells us that the most advantageous way to nurture and form children is within a stable family based on the marriage of a mother and a father who make a life long commitment to each other and to any biological or adopted children they have.

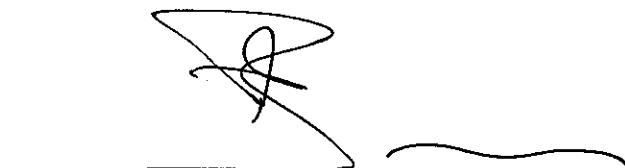
52. Given the numbers of children adopted on an annual basis (12 local adoptions, 40 known child adoptions and 112 inter-country adoptions occurred in NSW in 2006-7)<sup>23</sup> compared with the number of adoption enquiries, there would seem to be no need to broaden the pool of potential adoptive parents beyond those who are married.

Thank you for the opportunity to make a submission to the Secretariat undertaking this review. We would be happy to meet with any relevant persons to discuss the issue outlined above should that be useful. We can be contacted on 02 93905368 or by email at [chris.meney@sydney.catholic.org.au](mailto:chris.meney@sydney.catholic.org.au) and [bernard.boerma@catholiccare.org](mailto:bernard.boerma@catholiccare.org).

Yours sincerely,



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<sup>23</sup> *Adoptions Australia 2006-7*, Australian Institute Health and Welfare, Child Welfare Series No. 44, Feb 2008.