

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

At Sydney on Tuesday 24 February 2009

The Committee met at 9.30 a.m.

PRESENT

The Hon. C. M. Robertson (Chair)
The Hon. J. G. Ajaka
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
The Hon. A. R. Fazio
Ms S. P. Hale
The Hon. Rev. F. J. Nile

CHAIR: Welcome to the first public hearing of the Standing Committee on Law and Justice inquiry into adoption by same sex couples in New South Wales. Today we will hear evidence from the Department of Community Services, Barnardos, Anglicare Sydney, the Catholic Archdiocese of Sydney, the Gay and Lesbian Rights Lobby, a representative of Family Voice Australia and a family. Before we commence I would like to make some comments about certain aspects of the hearing.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines covering broadcasting of proceedings are available from the table by the door. In accordance with the guidelines, members of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In recording the proceedings by the media, the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I advise also that under the standing orders of the Legislative Council, any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a member of such Committee or by an other person.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to witnesses under parliamentary privilege should not be abused during these hearings. I, therefore, request witnesses to avoid the mention of other individuals unless it is absolutely essential to address the terms of reference.

Could everyone please turn off their mobile phones for the duration of the hearing, including mobile phones on silent, as they interfere with Hansard's recording of proceedings.

I welcome Mr Rod Best and Ms Mary Griffin.

RODERICK CHARLES BEST, Director, Department of Legal Services, Department of Community Services, and

MARY FRANCES GRIFFIN, Director, Adoption and Permanent Care Services, Department of Community Services, sworn and examined:

CHAIR: In what capacity do you appear before the Committee, as an individual or as a representative of an organisation?

Mr BEST: A representative of an organisation.

Ms GRIFFIN: A representative of an organisation.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Mr BEST: I am conversant.

Ms GRIFFIN: Yes, I am conversant with the terms.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you do take questions on notice, the Committee would appreciate if your responses to those questions could be forwarded to the secretary by Friday 13 March 2009. Would either of you like to make a short statement?

Mr BEST: Yes, I would. From the perspective of the Department of Community Services, the department considers that it is important that a review such as this should be cognisant of and work within the objectives of the Adoption Act. The department considers that those objectives are clear and provide a framework for thinking about any changes within the legislation and that a change such as this should, therefore, be built within that. So those objectives, looking at the paramount rights of the child, but looking not just at that—and clearly that is the most important—but also at the role of the parents and also at the objective that says in considering an adoption, adoption should also be looked at within the context of what the other arrangements might be for the child and whether adoption is the most suitable and best arrangement for the children.

More broadly within the legislation, the department is cognisant of the fact that the Government has passed in recent times miscellaneous amendments concerning same sex relations and clearly that is part of the background for this review. In terms of the concept of same sex, a Law Reform Commission paper in relation to adoptions looked at this in the 1990s. More recently, it was included within the review of the Adoption Act in 2006. This topic drew more public submissions than any other topic concerning issues within adoption. As a result of that, a paper was tabled in Parliament. The then Minister for Community Services referred the question to a ministerial advisory committee that provided advice in relation to that. So it has been an area of some interest over a period of time. Therefore, the department is keen to see the results of this report and the advice that might come from this.

CHAIR: Thank you. Can you outline the current law in relation to adoption by same sex couples in New South Wales? Is there any scope in current programs in New South Wales or internationally for same sex couples to adopt?

Mr BEST: At the present time same sex couples cannot adopt in New South Wales. The legislation provides that a couple is a man and a woman, whether married or in a de facto relationship. So the law prohibits a couple who are same sex from adopting. If the law is changed, even if there is a change because of the requirements in international conventions and the requirements for those programs, our international programs would largely prohibit same sex couples from adopting from overseas because of the requirements of those countries.

CHAIR: Can you expand on that?

Mr BEST: Yes. In terms of adoption of a child internationally, one of the criteria that you take into account are the wishes of the country that the child is being adopted from. Of all of the countries that New South Wales, Australia, currently have arrangements with none of them agree to same-sex couples adopting.

The Hon. JOHN AJAKA: That is if you are adopting from that particular country?

Mr BEST: If you are adopting from that country.

The Hon. JOHN AJAKA: Not if you are adopting within Australia?

Mr BEST: That is right but if you are looking at international adoptions that is, of course, a major part of the adoption program, and none of those currently permit it.

CHAIR: Adoption of children brought to this country?

Mr BEST: From an overseas country, yes.

CHAIR: But the people are actually based in New South Wales?

Mr BEST: Yes. So if we are looking at what is the current situation, the current situation prohibits it. If you are looking at change, and that change is to permit it, then we have to recognise that a major part of the program still would not permit it even though our law did.

The Hon. JOHN AJAKA: If you want to adopt from China you cannot if you are a same-sex couple because China will not permit it?

Ms GRIFFIN: That is right.

The Hon. JOHN AJAKA: And we have an agreement with China as to that?

Ms GRIFFIN: That is right.

The Hon. JOHN AJAKA: If you wanted to adopt a child in New South Wales the current law prevents it.

Mr BEST: That is right.

The Hon. AMANDA FAZIO: Is it not the case that some of the countries that we have the overseas adoption agreements with will allow single people to adopt?

Ms GRIFFIN: Currently we work with 14 overseas countries and there is only one of those countries, Ethiopia, which will accept applications from single people.

The Hon. JOHN AJAKA: Sorry, I missed how many countries?

Ms GRIFFIN: We currently work with 14 countries and only Ethiopia will accept applications from single parents. So it is the criteria. Each country has their own criteria: age of applicants, their marital status and the number of children in their family, criminal records. There is a range of criteria that each overseas country has.

The Hon. DAVID CLARKE: Mr Best, approximately what percentage of adoptions in Australia involves children from overseas?

Mr BEST: Almost half.

The Hon. DAVID CLARKE: That means if we allow the adoption of children under New South Wales Law to homosexual couples we could see a collapse of almost possibly half of all adoptions?

Mr BEST: No. All it would mean would be that those couples would not be able to apply for those programs. It would not alter those programs being offered to us.

The Hon. DAVID CLARKE: Yes, but those countries would require that homosexual couples not adopt those children?

Mr BEST: That is right. So we would not put forward homosexual couples for those adoptions.

The Hon. DAVID CLARKE: What if you had a situation where a court declared that that would be discriminatory and therefore you could not do that? What if you had a homosexual couple take this matter to court and there was a decision that said that would be discriminatory for you to do that? What would happen then?

Mr BEST: It would depend upon the nature of the judgement. We have got similar laws in Canada and England, which currently permit same-sex couples adopting, and both England and Canada have similar overseas programs as we do and they have similar laws on discrimination and that has not as yet arisen there. It would depend upon what the nature of the laws was in terms of compliance with those programs. At the present time because of the structure of the Adoption Act if there were no changes to the Antidiscrimination Act in New South Wales and there was just a change to the Adoption Act it would not be discriminatory under our Antidiscrimination Act.

The Hon. DAVID CLARKE: But it is quite plausible and possible that if the law was changed to permit the adoption of children by homosexual couples that you may well be stopped from putting forward adoptive parents who are heterosexual couples because that would be regarded under the law as discriminatory against homosexual couples?

Mr BEST: Again, it would depend upon the wording. The areas where it has started to arise are in the United States in terms of the permanency planning arrangements for children. In New Jersey and in Florida there are now decisions that say that it is not discriminatory but against permanency planning laws not to consider the full field of candidates.

The Hon. DAVID CLARKE: If those judgements were followed here in New South Wales we could have a situation where we could have a breakdown of adoptions because I think you said all the countries we have agreements with specify that they cannot be homosexual couples?

Mr BEST: Upon a change of laws we could work towards a termination of the international adoptions.

The Hon. DAVID CLARKE: Particularly if those judgements to which you have just referred from the United States were followed?

Mr BEST: Yes and Parliament would have to be cognisant of that when they were passing those laws.

The Hon. AMANDA FAZIO: Were they judgements from the States on permanency planning or was that legislation?

Mr BEST: Both of those were judgements based upon the permanency planning legislation.

The Hon. DAVID CLARKE: You mentioned Ethiopia being the only country that allows adoption by single parents but it does not allow adoption by homosexual couples, does it?

Mr BEST: No, it does not allow adoptions by homosexual couples.

The Hon. DAVID CLARKE: So all countries—

Mr BEST: All of the 14.

The Hon. DAVID CLARKE: All 14 countries forbid children from their countries being adopted by homosexual couples?

Mr BEST: That is correct.

The Hon. AMANDA FAZIO: I want to ask you about foster care because I have participated in a lot of inquiries in Parliament and I have heard evidence from young people who have been in foster care with gay foster carers and they were quite happy with those arrangements. How long has New South Wales allowed same-sex couples to foster care and why do we allow same-sex couples to foster care when we do not allow them to adopt?

Mr BEST: The department does not keep any data that distinguishes between the genders of carers. We cannot actually pull out data and say this was the first time that this was permitted, just as we cannot provide data on how many single people who are gay have adopted because we do not keep data on that and we never have. Looking back through the regulations foster care was first regulated for individuals under the 1969 regulations under the Child Welfare Act of 1939, and from 1969 onwards all of the legislation in foster care has only talked about a “foster carer”. That was in the 1987 Act and it is still in the 1998 Act. So unlike the Adoption Act that talks about being able to adopt as an individual or as a couple, foster care legislation has always dealt with individuals. So the issue about couples has never arisen in relation to foster care.

The Adoption Act is, as I have said, specific that couples are a man and a woman. Because the foster care legislation only talks about an individual when the antidiscrimination legislation changed it, of course, applied to foster care arrangements for those agencies that could not claim religious exemption. So from the time that came in the law required the Department of Community Services to not consider issues of gender or same-sex in terms of people applying for foster care. That has now been going for over twenty years where the department and some of the other agencies—those that do not claim religious exemption—have either been a private fostering agency under the old legislation or are currently designated agencies.

The Hon. AMANDA FAZIO: You said you do not keep any statistics?

Mr BEST: We do not keep any statistics and we never have.

The Hon. AMANDA FAZIO: How does the assessment process differ for foster carers and would-be adoptive parents?

Ms GRIFFIN: For a foster carer it is called a step-by-step assessment that was developed by the Association of Child Welfare Agencies [ACWA]. It is a standard assessment tool that is used across the sector. It looks at the ability of the people who are applying to care for children in a range of situations. The adoption assessment is more a psychosocial assessment but it covers the same sorts of things, such as family background, their capacity to parent, their capacity to parent someone else's child, and their capacity to deal with whatever the child's needs are. They are fairly similar assessments, just different tools. Obviously if you are fostering you are looking at some people who do respite care, so it is very brief care, and others who do short-term care. With the adoption you are going to parent that child forever and they will legally become part of your family.

The Hon. AMANDA FAZIO: I understand it is possible for foster carers to apply to adopt a child that they have had in foster care, usually for a reasonable period of time. What happens, or what has happened if you can give us some cases, where a gay person or a same-sex couple has been fostering a child long-term and then would like to adopt? Do they just have to keep having them in foster care?

Ms GRIFFIN: I am not a specialist in foster care because I am the Director of Adoptions and out-of-home care is handled in our field offices. I am not aware of any same-sex couples where one of the parents has adopted, but I know some are being considered at the moment. The way the law stands currently, obviously only one of the parents can adopt. If you have a child in foster care and you then look at adoption, that usually comes up during the annual review of the child. The foster carer may bring it up and say they want to adopt a child, the child may say they want to be adopted, or the birth parents may say that they want their child adopted by the carers because they think it is a good family for their child. The agency worker may do that. Then they go through an assessment process that looks at the particular needs of that child, because you have a child in front of you with a foster care adoption, and look at how those parents who are the carers are able to meet that child's needs over time and whether they are able to be good and adoptive parents. It also looks at whether they will be able to deal with issues such as the fact that the child has two families, ongoing contact with the birth family, valuing the birth family and those sorts of aspects of adoption assessment.

The Hon. AMANDA FAZIO: It sounds like we have a contradiction at the moment where a single person who is gay can apply to adopt a child but a gay couple cannot. Is that correct?

Mr BEST: That is correct.

The Hon. DAVID CLARKE: So you have a situation where a foster carer who is homosexual can apply to adopt a child and even though you might be aware that that person is living in a relationship with another homosexual that would be allowed, would it?

Mr BEST: It is possible under the law. It would certainly be taken into account in terms of the criteria, so you would be assessing, as you would with any single person, their extended family relations.

The Hon. DAVID CLARKE: But if you knew that the real situation was that it was not a single person but in fact a de facto relationship, would that not undermine the law at the moment that same-sex couples cannot adopt children? Is that not turning a blind eye to the situation?

Mr BEST: It is not turning a blind eye to any single person who adopts. Any single person who adopts can be in a relationship at that time, or in the future, and that will be taken into account, but if they have applied for only a single person adoption they are assessed as a single person adoption.

The Hon. DAVID CLARKE: But you know that the law does not allow same-sex couples to adopt and if you are aware of a situation when your department investigates and you see quite clearly there is a homosexual relationship, would you not say that this is in fact an undermining of the adoption law?

Mr BEST: No, because it is not undermining the adoption law. The adoption law is quite clear that adoption is about changing the legal status of the child with the adult. It is not changing the legal relationship with the partner at all, so it is not an undermining of the law by any means because adoption is about the legal status of the child. It is different from any other arrangement in that it is a permanent change, so it lasts throughout the child's life from that time and changes all aspects of the legal relationship between the adoptive parent and the child. There is no change to the legal status between the adoptive parent's same-sex partner and that child, so by no means is there any undermining of the law.

The Hon. DAVID CLARKE: Have you ever been given any ministerial directive as to what approach you should take in a situation where you find a foster carer is seeking to adopt a child and you are aware that that foster carer is living in a homosexual relationship?

Mr BEST: I have been Director of Legal Services for ten-and-a-half years and I have never received a ministerial directive in relation to that and I am not aware of the department having received one either.

The Hon. DAVID CLARKE: So your department has of its own volition taken the course that it has?

Mr BEST: And that has been the course for the last 20-odd years.

The Hon. AMANDA FAZIO: But would it not be against the antidiscrimination laws for you to discriminate against single people applying for adoption on the basis of their sexuality?

Mr BEST: It would not fall within the current exemptions. That is correct.

Ms SYLVIA HALE: When looking at adoption and presumably being guided by the best interests of the child, whatever they may be, is no particular weight given to whether a person is in a couple or is a single individual? How do you weigh the merits of a single adoptee as opposed to adoption by a couple?

Ms GRIFFIN: The assessment of any adoption includes the person's individual circumstances so if they are in a relationship it includes the quality of that relationship and how that impinges on the child. If they are not in a relationship you would be looking at whether they have the supports that are needed to be able to care for that child. It would come into the assessment. Even if it is a couple you still look at the supports that family has because even a two-parent family can be quite isolated. There are a number of things that you look at in an assessment.

Ms SYLVIA HALE: So you are looking at the context in which a child is being adopted?

Ms GRIFFIN: That is right.

Ms SYLVIA HALE: I have only had a very brief opportunity to look at your submission but you say that in the United Kingdom, where the Adoption of Children Act currently applies, one of the key issues raised in the passage of the Act was the need to increase the pool of potential adoptive parents. Are there pressures like that in New South Wales?

Mr BEST: I think the answer is no. In New South Wales we have far more people wishing to adopt a child than we have children available. Our numbers of children to adopt are quite small and have been quite small locally since the mid-1970s. So for the last 30 years we have had quite low numbers.

CHAIR: Does this include children with specific difficulties?

Mr BEST: Yes, it includes the full range of children available for adoption.

Ms SYLVIA HALE: You also say that the Adoption Regulation 2003 will be amended in early 2009 to include new assessment criteria for prospective adoptive parents and these criteria are less prescriptive and there is a greater focus on factors influencing parental capacity. Can you give us some indication of how they will be less prescriptive?

Mr BEST: Following changes to the Adoption Act over the last few years we have been trying to focus the criteria away from individual characteristics of applicant parents and far more on their adoptive parenting capacity. Instead of looking at quite precise details such as whether they are on fertility programs or how well the children are or what their weights might be, we look at a broader category and talk about their ability to adopt, relate to the birth family, and ability to maintain the cultural and religious backgrounds of the child. We look at a broader range of capacities rather than focusing on specific criteria.

Ms SYLVIA HALE: Does the department follow up children who have been adopted and trace how successful that adoption has been in order to modify its practices and criteria?

CHAIR: Is there a criterion for success?

Ms SYLVIA HALE: Exactly, because you obviously have to have some criteria beforehand.

Ms GRIFFIN: Australia does not do a lot of research generally because of the size of our country. There is some adoption research but there is well-known research in the United Kingdom, the United States and some European countries about what factors produce good outcomes for children. I think what Mr Best was saying about the new criteria is very much supported by adoption practitioners because it focuses on the key things for a family such as their commitment to the child, their flexible parenting style, realistic expectations, their ability to relate to the birth family and to help the child deal with the fact that they have two families. Those are the things that have been shown very clearly to lead to good outcomes for children. That is documented in the academic research. I think the new criteria support looking at that with families coming to adopt.

Ms SYLVIA HALE: Of the agencies that facilitate adoptions in this State two are religiously based and one, Barnardos, is secular. Clearly it would be a concern for the religious agencies were the law to change to subject them to the Anti-Discrimination Act and oblige them to facilitate adoptions by gay couples. How do other countries that approve same-sex adoptions deal with these problems of religious beliefs?

Mr BEST: At the present time in New South Wales I am not aware of any proposal to change the Anti-Discrimination Act in terms of the religious discrimination exemption. Because there are broad general criteria in the Adoption Act there would be no difficulty in a faith-based organisation being able to apply the adoption criteria and not work with same-sex couples. So they can fall within the exemption of the Anti-Discrimination Act.

Ms SYLVIA HALE: They could say at the outset they will not facilitate adoption by same-sex couples?

Mr BEST: That is right. The choice would be theirs. That is the proposal.

The Hon. DAVID CLARKE: What has happened overseas?

Mr BEST: The situation in England is that they have started to require agencies to apply generally and it is then a question for those agencies as to whether they will continue working within that program. As far as I am aware from the most recent inquiries I have been able to make, most of the faith-based agencies in England have continued working within the program.

The Hon. GREG DONNELLY: But they had an exemption that I think came to an end in February this year.

Mr BEST: It is quite recent.

The Hon. GREG DONNELLY: So their ability to be exempted expired some time this month. The law applies to these agencies in England from this month.

Mr BEST: Yes. I am looking at newspaper reports about what the agencies have been saying they propose to do.

CHAIR: Would you take on notice to send us details of the religious exemption process in relation to the antidiscrimination law for New South Wales?

Mr BEST: Yes.

Ms SYLVIA HALE: I am unclear at the moment. If, for example, Anglicare wants to arrange an adoption can it currently require the adoption take place only within an Anglican family or a Protestant family? Can it follow such requirements or impose such requirements?

Mr BEST: The agencies all have their own criteria. There are those laid down by statute; they are the basic, and they need to comply with those. Over and above those, they can, and they do, have their own criteria.

Ms SYLVIA HALE: And religious affiliation could be one of those?

Mr BEST: That is possible. I am not sure that it is. But I notice that they are giving evidence; I am sure they would be happy to answer that. But I am not aware that they actually do require.

The Hon. JOHN AJAKA: I direct these questions to either or both of you. If you are not aware of the answers could you please take the questions on notice. Can you indicate the number of adoptions that would occur within New South Wales in a year?

Ms GRIFFIN: In 2007-08 there were 125 adoptions; that is, orders made.

The Hon. JOHN AJAKA: I take it that half of those were within New South Wales and half related to children from overseas, if we are doing a 50:50 rule?

Ms GRIFFIN: 73 of the 125 were overseas adoptions, so that is a little over 50 per cent.

The Hon. JOHN AJAKA: Are you able to tell me how many of those 125 adoptions were by a couple and how many were by a single person?

Ms GRIFFIN: No, I could not. I could give you that information, but I could not give it to you off the top of my head.

The Hon. JOHN AJAKA: If you could take that on notice, I would appreciate it. Are you able to tell me how many people are currently on an adoption waiting list, if there is such a thing? Again, could you split that into couples and single people?

Ms GRIFFIN: It is a bit of a complicated answer, because we do not actually have a waiting list as such. People can express interest in adoption and they can express interest currently in intercountry or local. At the moment we would have over 400 expressions of interest for both intercountry and local.

Under the intercountry adoption program, people can express an interest and they can come to training when they book into the next available training session. Then they can decide to lodge an adoption application,

be assessed, and then if they are approved as suitable to adopt they can choose to send their adoption application to whatever country they are eligible for and is currently taking applications. That will depend on whether they meet the criteria. Overseas countries are very strict. They have certain criteria, and you are either in or out, and it is not up to Australia to question those criteria. That is how intercountry works.

The Hon. JOHN AJAKA: Again, please take this question on notice if you need to come back with the figures. Assuming it is around 400, how many would be couples and how many would be singles?

Ms GRIFFIN: I will take the question on notice.

Mr BEST: We would only be getting data to you in relation to those from the department. There could be people applying to Anglicare or—

The Hon. JOHN AJAKA: If you could give me an indication. You might say from the department it is 400, but there could be another 500 out there or there could be another one out there.

CHAIR: It is Anglicare and Barnardos we need information from as well.

Ms GRIFFIN: That is the intercountry program. For a local adoption, people can express interest. We only bring so many people into the program each year. Last year there were 15 local adoptions. Obviously, you do not want hundreds of people waiting there, so we will just bring a certain number over a year.

The Hon. JOHN AJAKA: A bit like hospital waiting lists.

Ms GRIFFIN: So that we have a good number of families that have all different sorts of characteristics that can meet the range of children that are needing a family. That is a different process.

The Hon. JOHN AJAKA: Would you be able to give an indication of how many children are waiting to be adopted, or again is there a waiting list in relation to children in various homes, foster care, et cetera, who are eligible to be adopted?

Mr BEST: There certainly would not be a waiting list. Within the department we would be identifying children through the permanency planning program of children in out-of-home care, and as soon as those children were identified we would immediately be proceeding to try to find an adoption for them. There is no waiting list for those. It might be the case that there are some children who have very severe disabilities, and therefore it might be difficult to find people who would be prepared to adopt them. That is not so much a waiting list, in that we are not quite sure that they are going to be suitable for adoption.

The Hon. JOHN AJAKA: Sometimes you hear that there are hundreds of children waiting to be adopted and there are hundreds of people who want to adopt but the two just do not seem to come together and it takes years and years. That is why I was interested in the statistics.

Ms GRIFFIN: Are you talking about children overseas or children in New South Wales?

The Hon. JOHN AJAKA: In New South Wales.

Mr BEST: In New South Wales we do not have a great demand of mothers wanting to give up their children for adoption.

Ms GRIFFIN: If a parent comes forward requesting adoption, that family is worked with to adoption. There are a number of people in our pool who do profiles of themselves, and we actually give the birth parents the profiles of the families and they can choose which family they wish their child to go to.

The Hon. JOHN AJAKA: Again, please take this on notice if you need more time. Let us assume my wife and I wanted to adopt a child and we approached you. All things being equal from beginning to end, what would be the average period of the process to adopt a child in New South Wales?

Ms GRIFFIN: Between six and nine months, from the time of the lodgement of the application to an approval decision.

The Hon. JOHN AJAKA: If I wanted to adopt from overseas?

Ms GRIFFIN: It is the same process. The assessment is the same. Obviously there are other issues about cultural identity.

The Hon. JOHN AJAKA: If I wanted to adopt from overseas, would I first approach you, put in the application, be certified by you, and then the application would be sent overseas? Or are you cut out of the process completely?

Ms GRIFFIN: DOCS is currently the only agency that provides intercountry adoption services. DOCS put out an expression of interest last year to see if any accredited adoption agencies, or ones that could be accredited, would like to provide those services, but at the moment it is only DOCS.

Ms SYLVIA HALE: Were other agencies interested?

Ms GRIFFIN: That process is in train at the moment.

CHAIR: Do you think the low numbers of young persons requiring adoption relates to the foster program effectiveness, as well as mothers not wishing to give their children up?

Mr BEST: It was quite a dramatic drop in the mid-1970s. New South Wales had quite a high rate of adoption up until then, so it was mirroring the situation, for example, in England, which has continued since then. There have been a number of academic articles as to what the change was in New South Wales, and they are all linked in with changes to illegitimacy laws, changes to social security payments, and a shift in the feminist movement. There are a whole range of reasons which seem to have come together, both from Commonwealth law and State law and within society as a whole, which led to a change.

We have to remember that there are cultural issues, particularly in relation to Aboriginal children. With Aboriginal children, they are comprising between 25 and 30 per cent of the out-of-home care population. With no cultural tradition of adoption for Aboriginal children, that is part of the population that you would not be looking towards for adoption.

The Hon. JOHN AJAKA: Do you have statistics of a situation where a couple or a single person has adopted a child and after a period of time no longer wants to continue with that adoption?

Mr BEST: We certainly would be able to identify where someone is wanting a court order to have an adopted child adopted by someone else, and that would be the normal process that that might go through. They are very rare. The adoption program in New South Wales is very successful in terms of the number of children who are adopted staying within that adoption placement.

The Hon. AMANDA FAZIO: Ms Griffin, you will probably need to take this on notice. I refer to the figures you gave us for 2007-08. I think you said 52 children who were locally adopted, 125 were adopted in total, 73 from overseas.

Ms GRIFFIN: 15 local, and there were 10 step-parent, three other relatives, 22 foster care adoptions and two other adoptions which were called special case adoptions. In total, that is 125.

The Hon. AMANDA FAZIO: How many of those children adopted were babies?

Ms GRIFFIN: I could not tell you. Very few. Obviously the step-parent and the relative and the carer are usually older. Some of them might be toddlers with the carer adoptions. With the intercountry adoptions, there are not a lot of very young babies. Overseas countries are now needing placements for children who are older with more complex needs, because they have placed most of their younger children within their own country. But the 15 local, they would be probably under 12 months.

The Hon. GREG DONNELLY: My question is directed to both of you. Mr Best, at the commencement of your testimony you started to deal with the objects of the adoption Act. I specifically refer to part 7 of the Act. Paragraph (a) reads:

- (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.

So there is a requirement for consideration for the child, not just with respect to their immediate childhood but basically for their life. Paragraph (b) reads:

(b) to make it clear that adoption is to be regarded as a service for the child concerned.

Those two paragraphs, in conjunction with each other, really make up the essence of the objectives with respect to adoption in New South Wales, is that correct?

Mr BEST: I think so, yes. My only hesitation is the other principle, which is: Is adoption the best way forward?

The Hon. GREG DONNELLY: Subject to that?

Mr BEST: Yes.

The Hon. GREG DONNELLY: But clearly—and correct me if I am wrong—there is not significant consideration to the interests of the parents in wanting to adopt, is there? The focus of the legislation, and the emphasis on the legislation, is the rights of the child, is that correct?

Mr BEST: That is correct.

The Hon. GREG DONNELLY: With respect to the question of adoption itself, and the meaning of adoption, I read you this definition which appears in the Commonwealth Government's Australian Institute of Health and Welfare's "Adoptions Australia 2007-08". I think these are the figures that Ms Griffin has been referring to in her testimony. The publication came out in February 2009. At page one the introduction reads:

An adoption is the legal process by which a person legally becomes a child of the adoptive parents and legally ceases to be a child of his/her biological parents. When an adoption order is granted, the legal relationship between the child and the biological parents is severed. The legal rights of the adopted child are as if he or she had been born to the adoptive parents, and the legal rights that exist from birth with regard to the birth parents (inheritance and name, for instance) are removed. A new birth certificate is issued to the child bearing the name(s) of his or her adoptive parent/s as the legal parent/s, and the new name of the child, if a change has occurred.

Is that a succinct definition of the position with respect to adoption in New South Wales?

Mr BEST: Yes.

The Hon. GREG DONNELLY: There is no variance in the way in which adoption operates in New South Wales as described in that definition?

Mr BEST: No.

The Hon. GREG DONNELLY: With respect to the inter-country adoption arrangements, on page 15 of the same report under the column "New South Wales", if we work our way through the countries, they operate under the Hague adoption convention and the non-Hague convention, for the year 2007-2008, we have 3 from China, 2 from Columbia, 2 from India, 19 from the Philippines, 1 from Sri Lanka, none from Thailand, and 1 from other, which is footnoted below and for the non-Hague ones, 23 from China, 7 from Ethiopia, none from Hong Kong, none from India, 12 from South Korea, 2 from Thailand, 1 from Thailand, giving a total of 73. With respect to the arrangements that were referred in answering Mr Clarke's question about heterosexuals versus homosexuals being able to adopt from those countries, I noted that the Commonwealth Attorney-General's website has the full detail of the arrangements of the criteria of each country. If New South Wales changed its definition in the Adoption Act to provide for homosexual adoption, I think Mr Best you said that would mean homosexuals would not be offered for those countries to adopt because it is known that those countries do not provide for such arrangements. But in terms of the nature of those arrangements with those countries and Australia, does the Commonwealth negotiate those arrangements with those countries or does New South Wales?

Mr BEST: They are currently all negotiated by the Commonwealth.

The Hon. GREG DONNELLY: With respect to those arrangements that deal with adoption, notwithstanding the particular criteria that the country provides, do those arrangements vary from time to time?

Mr BEST: Yes, and countries will move in and out of the program as well. Sometimes countries will no longer wish their children to be adopted overseas.

The Hon. GREG DONNELLY: So those arrangements do vary over time?

Mr BEST: Yes.

The Hon. GREG DONNELLY: I think you said that all those countries do not provide for homosexuals to be able to adopt their children?

Mr BEST: We permit singles.

The Hon. GREG DONNELLY: Do you know if those arrangements prohibiting homosexual adoptions have been in place for some time?

Ms GRIFFIN: As far as I am aware, yes.

Mr BEST: As long as we can remember, yes.

The Hon. GREG DONNELLY: So at no stage have any of those countries that Australia has an arrangement with have provided for homosexuals to be able to adopt?

Mr BEST: I cannot remember at any time.

Ms GRIFFIN: No.

The Hon. GREG DONNELLY: Moving on to the criteria that arose out of Ms Hale's question with respect to the Department of Community Services in terms of consideration of who may adopt in New South Wales, Ms Griffin, you say that those criteria will be flexibly looked at from a particular date in the future?

Ms GRIFFIN: The new criteria will be part of the Adoption Regulation 2009, which is being finalised as we speak, so they will apply from when that comes into force.

The Hon. GREG DONNELLY: Whereabouts is that regulation up to in terms of its drafting?

Mr BEST: There is a draft being prepared by Parliamentary Counsel. The draft has not been finalised.

The Hon. GREG DONNELLY: Has the draft gone to the Minister yet?

Mr BEST: No. It is still in the early stages of drafting.

The Hon. GREG DONNELLY: In terms of looking at the factors that influence the department's consideration with respect to the provision of children into an adopted arrangement, does the department put weight on the significance of the body of social science, which gives particular importance to the rearing of a child with a mother and a father; in other words, placing the child in a circumstance where they are being adopted and being raised by a mother and a father as opposed to, for example, a single person or even theoretically a homosexual couple because this inquiry is looking at this issue? Does the department take into account the body of social science that looks at the importance of a mother and a father in the rearing of children?

Ms GRIFFIN: I am most familiar with academic research in relation to good outcomes for children from permanent care and foster care, so I do not feel that I am able to speak about what you are talking about. As I said earlier, the factors—

The Hon. GREG DONNELLY: So you are—

CHAIR: Let her answer the question.

The Hon. GREG DONNELLY: I want to clarify my question. You are only familiar with the social science relating to foster caring, is that which you are saying?

Ms GRIFFIN: And adoption; permanent care, foster care and adoption. The factors that are very clear in good outcomes for children are the ones that I mentioned previously. Marital status, from what I have read recently in the research, for example, is increasingly irrelevant to the capacity of people to provide nurturing care. It is rather the qualities and skills of the individual person that is important and then obviously if they are in a relationship, the strength of that relationship and what that would give to the relationship then with the child.

The Hon. GREG DONNELLY: I specifically want to hone in on the issue of a mother and a father, not the question of marriage, because with respect to the current Act both married and de facto heterosexual couples can adopt, so that is a given. I am talking about the body of social science that gives emphasis to the importance of a child being raised by a mother and a father. Are you familiar with that body of social science?

Ms GRIFFIN: When I look at the best interests of children, it is really about the capacity of the person and not the family structure that they are in that should be important to a practitioner in making decisions around children. I think the objectives and principles of the Act are very clear in that it has to be the best interests of the child and not necessarily the structure. It is quite clearly in the Act that no adult has the right to adopt a child, so the decisions have to be focused on the best interests, so I am not sure that I can answer that question.

The Hon. DAVID CLARKE: Have you looked at any of the studies referred to by Mr Donnelly?

Mr BEST: Clearly, a whole range of studies are looked at and literature searches and the like, those are undertaken. What we are looking at in each of those cases is to try to identify what the criteria might be. Having done so however, when we actually come down to the program, we try to match a child with the best arrangement for that child. We might have that as a background but with the number of children that we have, and particularly those children who have high needs, the issue is trying to find individuals who are best for that child rather than coming from more of an academic approach and saying, "These are the criteria that we have to tick off".

The Hon. DAVID CLARKE: So there is not even a preference in the department to place children with a mother and a father?

Mr BEST: We would always look to see what is in the best interests of this child and what are those needs.

The Hon. DAVID CLARKE: Is that one of the aspects, that you believe it is in the best interests of the child that there be a mother and father, if possible?

Mr BEST: We would of course be looking to see if we can give the best family situation for any child who is adopted.

The Hon. DAVID CLARKE: Yes, but in the specific question that I put to you, do you believe that it is in the best interests of the child that there be, where possible, a mother and a father?

Mr BEST: We want the support there for that child and that child's circumstances will depend upon what those arrangements are.

The Hon. DAVID CLARKE: Yes, I think we are at cross-purposes. I am putting a specific question to you.

Mr BEST: Yes, and I am giving a specific answer.

The Hon. DAVID CLARKE: Maybe we can be a bit more specific. I am putting: do you believe that it is a factor to be taken into account that it works in the interests of the child that there be a mother and a father, where possible?

Mr BEST: It certainly works in the interests of a child that there is a proper family relationship for that child to move into.

The Hon. DAVID CLARKE: Of a mother and a father?

Mr BEST: And a normal family is a mother and a father.

The Hon. GREG DONNELLY: I will not go into a lot of detail but I draw your attention to this, perhaps to give some emphasis to the point I am making, that any cursory literary research produces a volume of information about the importance of mothers and fathers, that is mothers and fathers to children in terms of their development. A good example of Steve Biddulph, who is Australia's leading family psychologist, stated in the third edition of his book *Raising Boys*, which was released last year, "The research supporting the importance of dads is overwhelmingly clear. Boys with absent fathers or with problem fathers are statistically more likely to be violent, get hurt, get into trouble, do poorly in school and be members of teenage gangs in adolescence. They are less likely to progress to university or have a good career. They marry less successfully and are less effective fathers themselves." In regard to daughters he states in his book, "Fatherless daughters are more likely to have low self-esteem, to have sex before they really want to, to get pregnant young, be assaulted or abused and not continue their schooling. Families without men are usually poorer and children of these families are likely to move downward in the social economic ladder. Is that enough to convince you?" he states. What do you say in regard to Steve Biddulph's comments, Ms Griffin?

Ms GRIFFIN: I am not familiar with the research that he is basing his comments on. I have worked in adoption since 1973 and I have seen society's circumstances change and the nature of people's relationships and I still come back to the best interests of the child have to be about the people that you are looking at for adoption, their particular circumstances and what they can offer a child. If we are looking at a single parent adoption by a woman, then obviously as part of that assessment you would look at the availability of male role models in her life. That would be part of the assessment.

The Hon. GREG DONNELLY: So not someone to act as a father, just as a role model?

Ms GRIFFIN: That is not what I am saying.

CHAIR: You are asking for an opinion. I feel like I am in estimates and I do not want to be. She has to obey the Government's policies and guidelines.

Ms GRIFFIN: First of all, you do have a mother and father in adoption because you have your birth parents and we support open adoption so one would hope that you would have ongoing contact with those birth families, so that is an aspect that you would have to look at when you are looking at what the best interests are, as outlined in section 8 of the Act. I still think it comes back to looking at the skills and qualities of the particular person you are looking at who is going to be the parent and making the decision about whether they are the right people to best meet the needs of that particular child and each circumstance is so different and people can bring different things. I think particularly for adoption and the most important thing, other than a general parenting capacity, is their capacity to include the birth families, to value the birth family, to help the child deal with the fact that it has two separate families.

The Hon. GREG DONNELLY: Perhaps I might conclude with this comment because I am conscious of the time. In 2004 the American College of Paediatricians issued a statement with respect to homosexual parenting. I will not read the whole statement read to conclusion. It is not a statement, but the research data and concludes:

The research literature on child-rearing by homosexual parents is limited.

I will interpolate that between 2004 and now, I think the reality is things are pretty much the same. There is not a lot of literature. Would you agree to that?

Mr BEST: I would certainly agree to that.

The Hon. GREG DONNELLY: There is very limited literature out there in terms of the effect of children being raised in homosexual families.

Mr BEST: And of the literature there is, it is unclear as to whether it has had appropriate control groups and whether it has been a sufficient number.

The Hon. GREG DONNELLY: That is true.

Mr BEST: So not only is the literature limited, but also it is of limited use in terms of its scientific basis.

The Hon. GREG DONNELLY: That is correct. In fact there was a fair bit of critiquing being done about the validity of many of those research projects. The article goes on to state:

The environment in which children are reared is absolutely critical to their development. Given the current body of research the American College of Paediatricians believes it is inappropriate, potentially hazardous to children and dangerously irresponsible to change the age-old prohibition on homosexual parenting whether by adoption, foster care or by reproductive manipulation. This position is rooted in the best available science.

It is a very definitive statement by the American College of Paediatricians. Are such clear statements made by organisations like that, which obviously specialise in looking at the best interests of the child, matters that come before the department in terms of influencing its thinking on the arrangements with respect to adoption?

Mr BEST: Clearly, they do—just as does, similarly, the statement by the American Psychological Association, which has a membership of some 50,000 psychologists and which also brought down a report in 2004. It says that that association opposes any discrimination based on sexual orientation. Their department's position is that that is why we welcome this inquiry: the literature is there on both sides. The literature which is there on both sides is not easy to understand or apply. We are hoping that this inquiry will assist in that regard.

The Hon. GREG DONNELLY: This is not an issue of discrimination. Let me go back to the legislation in New South Wales.

Mr BEST: Which is quoting the APA.

The Hon. GREG DONNELLY: The issue of discrimination is a separate issue that may be raised and debated, but let us go back to what we are looking at, which is the question of adoption. We have clear agreement and obviously we are at one in understanding that certainly provisions in the legislation, 7 or 8 (a) and (b), clearly place the prospective child to be adopted as the primary consideration in terms of adoption in New South Wales.

Mr BEST: That is correct.

The Hon. JOHN AJAKA: I will ask this question for the sake of clarification. Earlier I based a question on an assumption that my wife and I wanted to adopt a child, and I asked about a time line. You indicated nine months.

Ms GRIFFIN: I am sorry, that is until you are approved as suitable for local adoption.

The Hon. JOHN AJAKA: That is what I wanted to clarify.

Ms GRIFFIN: Then you are in a pool of approved people for the next child needing a family. You could be absolutely right for them, or you could wait for two years.

The Hon. JOHN AJAKA: That is why I asked the question. It is an approval process, if I may use that term, to obtain certification within nine months. But subsequent to that, it could be a situation of anywhere from six months to two years or three years.

Ms GRIFFIN: Or it could be the next week. Some people happen to be the right person, so there is no time line. You cannot estimate because, again, it is child focused. It is about the child coming in. You have all these people approved as suitable, but which one is the most suitable?

The Hon. JOHN AJAKA: So it is not a matter of "I applied first, so I get the first baby".

Ms GRIFFIN: No, because that is not child focused. That is right.

The Hon. JOHN AJAKA: It is a matter of choosing from the pool the best—

Ms GRIFFIN: The most suitable.

The Hon. JOHN AJAKA: —parents or parent for that child, in the best interests of the child.

Mr BEST: And the birth parents would have a say in that as well.

The Hon. JOHN AJAKA: Excellent. The only other clarification question I have is one that leads from what my colleague was asking you earlier. If the legislation was changed to allow same-sex adoption, do you believe there would be a situation whereby overseas countries would suddenly no longer have an agreement with us, or is it your position that couples would still be able to apply to overseas countries, but that same-sex couples would be prevented from applying overseas. Would that be the position?

Mr BEST: That is right.

Ms GRIFFIN: But they cannot apply now. The overseas country will not accept their application, and they are the ones saying yes or no.

The Hon. JOHN AJAKA: What I want to make sure about is that changing the law in New South Wales will not prejudice couples from still applying overseas.

Mr BEST: That is correct.

Ms GRIFFIN: I do not think it will, unless there is a legal issue.

Mr BEST: That is a change to the Adoption Act, so that is not quite the same question as the questions the Hon. David Clarke was asking.

The Hon. JOHN AJAKA: I understand that. He was asking about prejudice and the court.

Mr BEST: That is right.

The Hon. JOHN AJAKA: I just wanted to least clarify that.

Mr BEST: If we just change the Adoption Act, that is a situation that seems to apply in Canada. It does not seem to have altered their homosexual adoption act.

The Hon. DAVID CLARKE: There was an exchange between you and the Hon. Greg Donnelly when he pointed out paediatricians in the United States are saying that it was not in the best interest of the child and you said that on the other hand you have the psychology association saying that it was discriminatory.

Mr BEST: No.

The Hon. DAVID CLARKE: That is what you said.

Mr BEST: They talk about discriminating between heterosexual and homosexual. They were not talking about discriminatory in the sense of our Anti-Discrimination Act. They were talking about delimiting or demarcating.

The Hon. DAVID CLARKE: In a situation like that in which you consider that you have evidence on both sides, what do you do in the best interests of the child? Do you play safe, or do you take a punt?

Mr BEST: You try and work it out and say, "Where is our literature taking us?" Therefore you say that the literature is at the moment appearing to say it is balanced and you are coming back all the time to say, "What is in the best interests of this particular child?", rather than being driven by saying, "We must apply these rules to every child who comes to us."

The Hon. DAVID CLARKE: So you have the psychologists saying one thing and the paediatricians saying the other, and there is a balance.

Mr BEST: And it will not even be as easy as that. You would have articles from paediatricians for and against, and you will have articles by psychologists that are for and against.

The Hon. DAVID CLARKE: When you place children with carers, in some instances that would not work out; there would be negligence or abuse by carers. Does that happen from time to time?

Mr BEST: Certainly.

The Hon. DAVID CLARKE: Do you keep figures as to whether that happens more with single carers or couples, or do you not keep statistics on that?

Mr BEST: We do not keep statistics on that. We keep statistics in relation to the number of claims coming through and they are reported in our annual report, but apart from what is in the annual report that is the extent of the database we keep.

The Hon. DAVID CLARKE: Would that not be a factor to be taken into account? If that showed some sort of pattern, would that not be something you would be interested in discerning? If the figures threw up a pattern that couples appeared to be far better providers because there were few instances of negligence, or whatever, why would you not keep those figures?

Mr BEST: The figures are very small. The majority of the claims that are still coming through are largely still historical claims. People tend not to sue until they are in their thirties and forties. Most of the claims that currently arise did not arise from families at all: they arose from the institutions. If we are looking at the figures, it would not be hard to pull those out because the numbers of claims are small. The vast bulk of those—my rough guess would be over 90 per cent—are arising from institutions rather than from individuals.

If we are actually looking at individuals, and because the numbers are so small I can probably remember a number of them off the top of my head, they are just about all from heterosexual couples, but you would not be able to rely on that for any purpose at all because the figures are just so small. We might have one claim a year and we have almost 14,000 children in out-of-home care. We have one claim at the moment which is prosecuting the State for abuse in care. Being able to rely upon those figures really would not be able to assist because they are so small.

Ms SYLVIA HALE: We have looked at the position of countries that prohibit adoption by same-sex couples. What is Australia's position, given the variety of legislation and the positions in this country? Does Australia have criteria on who can adopt Australian children?

Ms GRIFFIN: Each State has its own criteria. Is that what you mean? Each State adoption legislation has its own.

Ms SYLVIA HALE: Someone would have to come to, for example, the Department of Community Services [DOCS] to ascertain the situation.

Ms GRIFFIN: People who are resident in this State.

Ms SYLVIA HALE: There is no uniform position.

Ms GRIFFIN: No.

Ms SYLVIA HALE: Given that official approval of adoption by same-sex couples is a relatively new occurrence, one assumes that the opportunities for research into the impact of that will be, of necessity, very limited.

Mr BEST: Yes.

Ms SYLVIA HALE: Until we have greater experience of it, or a greater relaxation of laws, we will not have the solid research material on which to draw any conclusions.

Mr BEST: And of course there are different types of research as well. One helpful type of research is the longitudinal studies. By their very nature, they take decades.

The Hon. GREG DONNELLY: I wish to follow up a question by Ms Sylvia Hale about taking time to fully grasp the nature and understand the differences, if there are differences, in terms of the impact on parenting of heterosexual versus homosexual parenting. Surely it is the case that if the Act provides very clear objectives whereby the child's consideration is of paramount importance, it really is not up to a government or a government department to try other arrangements, if I may put it that way, with respect to the family arrangement of a mother and father, which is well proven to be effective and in the best interests of the child.

Mr BEST: There is nothing in the legislation which requires that a child be adopted by a mother and father.

The Hon. GREG DONNELLY: But there is an underpinning model that, as part of your consideration when you are looking at the adoption of children in this State, surely would be something you would look at very seriously.

Mr BEST: You look at the criteria that is there in the regulation and you look at the criteria which is there in the Act, and that is what you apply.

The Hon. GREG DONNELLY: While understanding the overwhelming social science, which underpins that the influence of a mother and a father are vitally important to the wellbeing of the rearing of a child.

Mr BEST: Yes.

CHAIR: This is now becoming a conversation.

The Hon. DAVID CLARKE: It is being put as a proposition.

The Hon. AMANDA FAZIO: No, it is being put as an assertion.

The Hon. GREG DONNELLY: No. I was asking if that is the criteria, or part of the criteria, that is used when looking at placing a child in adoption.

Mr BEST: You would apply the Act and the regulation, and that could have been taken into account in Parliament in passing the legislation.

CHAIR: Thank you very much indeed for your time today and for coming to speak with us. You have given us some incredibly valuable information. We did not cover all the questions on notice. We would be very grateful if you would take them on notice and get back to us any answers you still have on that. If you have some specific information on the judgements from the United States based on permanency planning legislation, we would be grateful for that to be taken on notice.

Recognising that you have made a statement in regard to the regulation and the Act, we would be grateful for the assessment tools you utilise in the processes of determining the suitability of individuals to adopt and foster. Many of our questions were based around that specific issue. Hopefully you have some neat criteria that would assist us. The secretariat will be in touch with you about the questions on notice. Thank you very much indeed.

(The witnesses withdrew)

CHAIR: Welcome, Mrs Voigt and Ms Moggach, to the first public hearing of the Standing Committee on Law and Justice inquiry into same sex adoption in New South Wales. I will not read the entire formal statement because I know you were present earlier when it was read. The people who are present understand the broadcasting guidelines so I will not read them. There are rules about delivering messages and documents, which you would have heard earlier. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during this hearing. I therefore request witnesses to avoid any mention of other individuals unless it is absolutely essential to address the terms of reference. Please ensure all mobile phones are turned off as they interfere with the recording mechanisms.

LOUISE VOIGT, Chief Executive Officer and Director of Welfare, Barnardos, Ultimo, and

LYNNE PATRICIA MOGGACH, Deputy Senior Manager of Barnardos find-a-Family, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee; that is, as an individual or as a representative of an organisation.

Mrs VOIGT: I represent Barnardos.

Ms MOGGACH: A representative of Barnardos.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mrs VOIGT: Yes.

Ms MOGGACH: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee please state that fact and the Committee will consider your request. If you do take questions on notice, the Committee would appreciate if the response to those questions could be forward to the secretariat by Friday 13 March 2009. You will be notified of the questions. Would either or both of you like to make an opening statement?

Mrs VOIGT: I will start with an opening statement to explain to the Committee who we are and why we are here. Barnardos is a major children's welfare organisation in New South Wales and the Australian Capital Territory. We support the extension of adoption to same sex couples as we believe it would be in the best interests of the children who are with us to be adopted by the same sex couples with whom they are fostered. New South Wales adoption laws are appropriate for the current needs of children; that is, they recognise the need for adoption of children by carers known to them. I stress they are the only adoptions that we do. Those carers are usually foster carers involved in providing homes for children currently in out-of-home care.

Our program of Find-a-Family is the permanent program in New South Wales. However, we have a full range of other fostering programs in both New South Wales and the Australian Capital Territory. That includes crisis care and respite care, so questions about foster care are seen by us in a much broader light. Foster carers are recruited on the basis of skills and capacity to meet the needs of children who enter the care system, often traumatised and distressed. For example, we would often see a woman or two females, same sex couples, for a severely sexually abused adolescent. That is just an example, but there is a whole range of particular reasons why a child might need a particular type of carer.

Insecurity and change in placement is too often experienced by children in foster care. Barnardos made the decision many years ago that we would increasingly encourage adoption for children in our foster care program. Approximately one-third of the children in our permanency program are adopted. Increasingly same sex couples approach us to become carers; that is, carers of children often with very complex needs. The assessment is a very careful process and supervision post placement enables appropriate judgements about the likely benefits to be realistically made. Changes of the law will enable more suitable carers to adopt children they are caring. Currently, of course, they could adopt if only one of the couple adopted. We have had some single adoptions by people.

Barnardos has significant experience of both foster care and adoption data. We place about 700 children per annum. I can give only per annum figures, because some children come in and out. These are short-term crisis, respite care and adolescent care.

CHAIR: I will start with a question given to you on notice. Please outline Barnardos' role in facilitating adoptions in New South Wales. You have already told the Committee how many, but can you talk through the process that you work on when facilitating adoptions?

Mrs VOIGT: Barnardos has been an accredited adoption service provider since 1985. Initially we facilitated the adoption of school-age children and later extended it at the request of the department to preschool-age children. Since 1985 more than 400 children have found permanent families. You will recognise when children come to us they stay a long time. One hundred and forty-seven, or approximately one-third of those children, have been adopted; 54 of those adoption applications had all the necessary consents; 24 had been where the child's consent only was required; 93 applications have required the dispensation of at least one parent's consent, often where the parent was unable to be identified or located; and 16 applications have been contested in the Supreme Court—all have been granted.

In the 2008 calendar year Barnardos facilitated the adoption of 12 children, including one sibling group of three and three sibling groups of two. The average age for adoption is nine years six months in our program; so you will understand that the children in our program are not babies.

The Hon. GREG DONNELLY: Thank you for appearing before the Committee today. The Committee members have had a chance to read your submission. Earlier you made the point, and I wrote it down at the time, that Barnardos deals only with adoptions involving carers known to the child. Did I misunderstand what you said?

Mrs VOIGT: No, you understood.

The Hon. GREG DONNELLY: Okay. All other instances you do not deal with?

Mrs VOIGT: Correct.

The Hon. GREG DONNELLY: With respect to the proposed change to the legislation, if it were changed as reflected in your submission that would impact on children who do not form part of the work done by Barnardos, if I can put it that way. Would you accept that?

Mrs VOIGT: Yes, of course.

The Hon. GREG DONNELLY: That being the case, in other words a change would impact on children that you currently do not deal with, can you explain to the Committee how you can speak, if you are speaking, on behalf of those children in your submission?

Mrs VOIGT: I am not speaking on behalf of babies given up for adoption by their mothers. There are very few of those currently. It is anticipated by the New South Wales Act that increasing numbers of children will be unable to be adopted. In fact, there has been quite a lot of community concern that children in foster care are available for adoption because for those children are often have a very in-between life in that they do not belong properly to anyone. Many of them move repeatedly. Adoption has been shown to be a much more secure option for children in the welfare system.

The adoption legislation in New South Wales is particularly valuable because it does two things; firstly it encourages adoption, or allows adoption, by carers known to children. Secondly, it enables contact with the biological family of origin, which is very important for children. Although many of those families have been very abusive or neglectful, they are the children's biological family and it is shown that it is extremely important for children to understand their biological roots.

The Hon. GREG DONNELLY: You made a point about making foster care children available to homosexual couples. Is that a form of arrangement that you enter into quite regularly?

Mrs VOIGT: In our totality of foster care programs, which includes Find-a-Family, the permanency program, about 8 per cent of our carers are same sex couples.

The Hon. GREG DONNELLY: Of that 8 per cent, does that mean by definition all others, the 92 per cent, are heterosexual?

Mrs VOIGT: No, indeed, because we are very happy indeed to get single carers. For many of our children single carers are the preferred adoption because they are less likely to become involved in power struggles between the members in the household. For some people a group of carers might be suitable where you would have, for example, an extended family group of a husband, wife, grandma, et cetera.

The Hon. GREG DONNELLY: That being so, can you easily break those down into percentages? As you said 8 per cent were same sex, but based on what you just said that would have to be couples because some individuals could be same sex individuals?

Mrs VOIGT: That is correct.

The Hon. GREG DONNELLY: Do you have a table that breaks down those percentages into numbers?

Mrs VOIGT: No.

The Hon. GREG DONNELLY: Do the same sex couples and individuals who come forward to seek to foster care through Barnardos identify themselves as such?

Mrs VOIGT: The majority do, yes. It would be very unusual for us to accept someone who does not, because it is extremely important that we know about families that approach us. It is part of the assessment process.

The Hon. GREG DONNELLY: You have a process that I am unaware of—which is why I am asking this question—whereby you sit down with an individual or couple and ask them questions about a range of things before you add them to your schedule of potential foster carers?

Mrs VOIGT: I will ask Lynn Moggach to answer that question for Find-a-Family. It is slightly different, for example, if we were looking for adolescent carers.

The Hon. GREG DONNELLY: Sure.

Ms MOGGACH: The process is very intensive and goes over a number of months. It includes an initial telephone conversation and going out to see people who are seen as being possible carers. We do screening checks and we sit down—the assessment process itself is a minimum of four interviews, perhaps longer depending if there are children involved in the family. There is a core-training program that goes over three days and an additional component as well if people are infertile. There are references, medicals and criminal record checks.

The Hon. GREG DONNELLY: I refer you to the second paragraph of your conclusion on page 13 of your submission that says, "And on the overwhelming research that shows that children with gay or lesbian parents fare as well as those raised in families with a mother and a father." What overwhelming research have you relied on to come to that conclusion?

Mrs VOIGT: Yes, we are happy to provide a list—it is very expensive indeed. It is not opinion; we are talking here of outcome data rather than opinion. We would be happy to provide that.

CHAIR: Would you take that on notice?

The Hon. GREG DONNELLY: If you could provide that it would be very helpful?

Mrs VOIGT: Happy to do so.

Ms SYLVIA HALE: You say that one in three children in the permanency program are adopted?

Mrs VOIGT: Yes.

Ms SYLVIA HALE: If the law were to change what would be the ratio of children who would be adopted in your view?

Mrs VOIGT: I would not anticipate there would be any change at all but it would enable children who are currently fostered by same-sex couples to move through the adoption process. It would be a very minor increase if in fact that was so, but I would not anticipate a great deal of change. We are talking very small numbers.

Ms SYLVIA HALE: It would be very minor because currently you only have about 8 per cent of your parents who are same-sex couples?

Mrs VOIGT: That is right.

Ms SYLVIA HALE: When children are in foster care what observations, surveillance, supervision or assessment do you make of how happy or how effective that care is?

Mrs VOIGT: In New South Wales there is an organisation called the Children's Guardian, a government organisation that sets standards that organisations such as mine must apply. We are an accredited organisation for five years—which is the maximum accreditation. We are ourselves surveyed. That means that we have to have appropriate care planning processes and appropriate monitoring processes. I cannot tell you every single person is visited every single week but I can say some are visited weekly and none are visited less than two monthly. This would be in Find-a-Family much more likely to be a monthly meeting with both the carer and individually with the child. It is important that there is discussion and a relationship built with children so that they feel confident and comfortable about speaking with adults that they know.

Ms SYLVIA HALE: In the process of monitoring the situation you would be able to identify those occasions where the fostering situation was not working out well?

Mrs VOIGT: Indeed.

Ms SYLVIA HALE: Have you had any indication of where you have had a child fostered with a same-sex couple or a gay or lesbian individual that has had an adverse impact on the child?

Mrs VOIGT: No.

Ms SYLVIA HALE: Have you had any evidence to that effect?

Mrs VOIGT: No, we have had no evidence whatsoever of that. If you ask for the pure numbers, of course, far more heterosexual couples fail because they are far more of them.

Ms SYLVIA HALE: That is what I was going to ask you.

Mrs VOIGT: I mean it does not mean anything. But also we have had absolutely no evidence whatsoever.

Ms SYLVIA HALE: Regardless of whether they are same-sex or not what percentage of fostering arrangements fail?

Mrs VOIGT: Are you asking in Barnardos or are asking in the Department of Community Services [Department of Community Services]?

Ms SYLVIA HALE: Barnardos.

Mrs VOIGT: At Barnardos in Find-a-Family it is extremely rare. On first placement at the moment I think we are succeeding in 82 per cent—that means over five years or more. In world terms that is very high.

Ms SYLVIA HALE: If you say that a change in the law would have a minimal impact on the numbers of children who are eventually adopted, why are two thirds of the children who are in permanent placement not adopted in your view?

Mrs VOIGT: Because some of the children do not wish to be adopted—they are very clear about that. The carers of some of the children, whilst making very permanent commitments to them, the cost of the needs of the child maybe very excessive because of the severity of the medical and other help that they need. For some children the uncertainty about their parents, for example, may hold them back from wanting adoption. We anticipate that this number will grow. In the past I would have answered you by saying that the Department of Community Services was not terribly co-operative about adoption but since we have had the changed legislation there has been quite a significant change in this State. I have spoken up in Queensland and places and they are very admiring of some of the things in this State.

The Hon. AMANDA FAZIO: Some of the submissions we have received in this inquiry cite evidence that children placed in same-sex families are at greater risk because such parents are more likely to experience mental illness, substance abuse, transient relationships et cetera. What is your opinion about those comments? Also what is your experience with these sorts of suggestions?

Mrs VOIGT: I know of no evidence of this. I know of many opinions of this but the evidence I do not know. In terms of our direct experience, I would say that we do not have any evidence of this. We are selecting people with stability firstly. Our carers are a very selective group, if you like, because they have been through a careful process of winnowing out. Very many heterosexual couples do not get through the process. We try to get a process which in the beginning they self-select. Once we talk to them about the fact that the children they will be working with will not be idolised little babies who look really sweet; these will be complex and difficult kids who bring baggage and history with them many people just go away because that was not what they wanted to do. My experience both with gay and heterosexual families is that on occasion life gets to them. They have break-ups or divorces or things happen or they get depressed but it is not very high because we have a fairly selective group.

CHAIR: Does that also include the support processes that you offer?

Mrs VOIGT: We hope so, yes.

CHAIR: Do you structure your assessments so that you have less?

Mrs VOIGT: Yes, we do. In our recruitment process, through both training and assessment, we would be not selecting people who had a history of serious mental illness, for example, unless it were for a very brief period of time or for a particular child who they might be related to, and then we would offer real supports.

The Hon. AMANDA FAZIO: My understanding is that the children that Barnardos arrange foster and long-term care for tend to be children with more complex problems than perhaps other agencies deal with? That is my understanding but is that correct or not?

Mrs VOIGT: For Find-a-Family that is correct. For all the other fostering programs such as the short-stay programs we accept children who, for instance, are in front of the court and so they are in the midst of acute trauma at that moment. But, yes, for the longer-term programs the Find-a-Family program tends to have more difficult children.

The Hon. DAVID CLARKE: In support of your recommendation that same-sex couples be allowed to adopt you say a large body of research about parenting by same-sex couple's supports it. You then go on to list five authorities that you say have reviewed all the research. You then quote approvingly a comment that says that all the relevant research examining the impact basically supports this contention. Are you aware of the considerable body of opinion that goes the other way?

Mrs VOIGT: I thought you were talking of research? If it is opinion—

The Hon. DAVID CLARKE: I am sorry. I will correct that—research.

Mrs VOIGT: If you would let us know of which particular piece of research then we will be happy to look at it.

The Hon. DAVID CLARKE: I take it from your answer that you do not believe that there is any such research?

Mrs VOIGT: Outcome research that has been done that I am aware of where in fact they have looked at what the effects are upon children has not shown detrimental effects.

The Hon. DAVID CLARKE: So you are saying you are not aware of any such research that goes counter to the proposition you are putting?

Mrs VOIGT: If by that you mean it is outcome research, no I am not.

The Hon. DAVID CLARKE: What other research would you refer to? You are talking about outcome research?

Mrs VOIGT: I am talking about the effects on children.

The Hon. DAVID CLARKE: So you do not believe there is any research that shows that there are detrimental effects on children that flow from being in the care of same-sex couples?

Mrs VOIGT: Not at the present time. Primarily one could say this is because there are a limited number of these studies.

The Hon. DAVID CLARKE: Are you sure of your answer?

Mrs VOIGT: I am sure of my answer. If you were referring to whether it is more desirable to have—

The Hon. DAVID CLARKE: No.

Mrs VOIGT: If you were referring to same-sex couples I am not aware of any research which I have looked at currently which shows this, but if you have some I am happy to look at it.

The Hon. DAVID CLARKE: Have you seen any research by the Society of Paediatricians in the United States?

Ms MOGGACH: We have seen that. I am also aware that the American Academy of Paediatricians does support adoption by same-sex couples. It seems to be that there is conflict there between those two academies of paediatricians.

The Hon. DAVID CLARKE: But the point is that the society is strongly opposed so when you say you are not aware of any research what you are doing is accepting one body of opinion and rejecting the other body of opinion. I put it to you whether you were aware of any and I took from your answer that you were not. I have just pointed out to you that there is a body that you now say that you are aware of but disregard their evidence in any event.

Mrs VOIGT: You asked if I was aware, which is why I turned to Lynn, because I am the chief executive officer and details of minor matters—which we see this as—I may not be aware of. However, we are aware that there have been breakaway groups from a number of primary national psychological and psychiatric association's that have expressed different views. From that point of view, yes, we would be aware of that but they are minor.

The Hon. DAVID CLARKE: Do you put the American Society of Paediatricians in that category of a breakaway group?

Ms MOGGACH: That is our understanding.

Mrs VOIGT: That is right.

The Hon. DAVID CLARKE: You have studied their research and you repudiate it, do you?

Mrs VOIGT: Could we perhaps come back to this committee by further investigation about who they are and how many they number in comparison with the major body in the United States?

The Hon. DAVID CLARKE: Yes, and also an assessment of the research they have done.

Ms SYLVIA HALE: That might be difficult. You referred to single carers earlier and spoke very highly of them.

Mrs VOIGT: For some children, yes, not for all children.

The Hon. DAVID CLARKE: So you think in some situations it is actually better for children to have a single carer rather than a couple?

Mrs VOIGT: I refer you to children such as a little girl who was sexually abused by her father, her grandfather and by various other relations who is absolutely terrified of men. In her case, yes.

The Hon. DAVID CLARKE: Many other situations like that, as a percentage?

Mrs VOIGT: Very many. Barnardos has very many children who have experienced very serious domestic violence and very serious child abuse violence. For some of those children, single carers are easier and more comfortable for them.

The Hon. DAVID CLARKE: Finally, when you refer to these five researchers who have reviewed all the information you are not aware of any others that put a counter point of view?

Mrs VOIGT: I am aware of opinions of others. I will in fact leave that to Lynn, if she is aware of particular research, and we will provide to this Committee a better backgrounding of research.

The Hon. DAVID CLARKE: Except that you have not provided their names in this list.

Mrs VOIGT: We will do so for you.

CHAIR: They just said they would.

The Hon. DAVID CLARKE: Yes, but I am just asking why some of these contrary researchers were not mentioned.

Mrs VOIGT: We believed that the department would be providing you with a full list of research, but if you require us to do so we will do so.

The Hon. DAVID CLARKE: From both sides. We would be very grateful.

Mrs VOIGT: If we can find others, yes.

The Hon. DAVID CLARKE: But you are not aware of any at this stage?

Mrs VOIGT: I am not aware of any.

The Hon. JOHN AJAKA: Do I understand correctly that foster parents receive more assistance, either financial or otherwise, for caring for a child than if they subsequently adopted the child?

Mrs VOIGT: Yes.

The Hon. JOHN AJAKA: I must say I had not considered that before. There is almost an incentive for a foster carer to maintain a foster care relationship rather than go to a full adoption relationship because really they are not going to seek the same assistance.

Mrs VOIGT: That would be true for some families but you could say the counter is also true because they will not have social workers like us walking in and telling them what to do, and who likes that? It could be

either. Obviously for some families rearing the child is extremely difficult. That would be one of the reasons they may not.

The Hon. JOHN AJAKA: The other area I wanted to raise with you—I was going to cover single carers but you have covered that well, and I thank you for that—is that if same-sex adoption was permitted do you believe that more same-sex couples would apply to be carers because there is the possibility of being able to adopt a child with whom they have formed an attachment? In other words, do you believe some same-sex couples do not apply to be carers because they see there is no way it will progress further than that? Or do you think it will not make any difference?

Ms MOGGACH: I think it will make some difference because obviously under the current Act one person in a same-sex couple can apply to adopt the child. However, that does not give the child the security of having both of his or her parents as parents. I think what it will do is that while we have same-sex couples who apply to foster, the people who really want to make a commitment to being a parent as a couple and to have that family will be given the opportunity to think through that process more.

CHAIR: You have taken quite a few questions on notice and the secretariat will send you that information. We would like it back by 13 March. We did not get through a lot of the formal questions we sent you so we would be very grateful if you could send back the answers to those when you send back the answers to questions on notice. We thank you very much for coming here today. As I said at the beginning it is very important that we hear from organisations such as yours. It sounds like we should be congratulating you on your work.

(The witnesses withdrew)

(Short adjournment)

SUSAN MADDEN, Principal Officer, Out of Home Care, Anglicare Sydney,

JANE ROWAN WEST, Principal Officer, Adoptions, Anglicare Sydney, and

JACQUELINE PALMER, Senior Manager, Child Youth and Family Services Department, Community Care Division, Anglicare Sydney, sworn and examined:

JOHN DOUGLAS BELLAMY, Researcher, Anglicare Sydney, affirmed and examined:

CHAIR: Thank you for attending the first day's hearing of the Committee's inquiry into adoption by same-sex couples in New South Wales. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mentioning of other individuals unless it is absolutely essential to address the terms of reference. If you have mobile phones it is better that they are turned off because they interfere with the recording system.

If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice, the Committee would appreciate it if the responses to those questions could be forwarded to the Committee Secretariat by Friday 13 March.

Would one or all of you like to make a brief opening statement?

Ms WEST: I will make an opening statement. Anglicare's adoption and out-of-home care services adhere to the principle of the child's best interests being paramount, both in the present and in the future, in practice and service delivery. Infants placed through the local and special needs program of Anglicare's adoption services are pre-verbal and cannot advocate for their own interests. Those who do so need appropriate caution as legislature governs a delicate social ecology.

Anglicare's position as a Christian organisation is that children are best cared for by a mother and a father and this is the model that provides optimal care. The experiences of being mothered and fathered by two parents in a stable, lifelong relationship constitutes optimal conditions for child development. Anglicare's responsibility as one of only three accredited non-government providers of adoption services in New South Wales is to provide a service to the adopted child as the client. It is therefore necessary to ensure that the adopted child is provided every opportunity to experience optimal parenting throughout their childhood. It is not a service that exists primarily to meet the desires or needs of adults.

Adoption involves raising someone else's child and should not be a laboratory for solving vexed issues. The importance of both genders should only be discarded when it is certain it is not relevant to optimal development. We need to make a distinction between same-sex parenting or caregiving and the adoption of a child. Adoption usually involves raising a relinquished child at a young age with no biological ties to the adoptive parents—that is very clearly someone else's child. Ideally the child should be raised and given opportunities that promote and do not put at risk their emotional, social or psychological development. Same-sex adoptive parenting is outside the norm, and adopted children already struggle with feelings of difference. In Anglicare's view it is important to avoid imposing more than the necessary adjustments on them. This is outlined in section 4.1 of our submission.

Adoption requires integration at a number of levels: the role of being part of two families, their pre-adoptive histories, the loss involved in being raised outside their family of origin, and being seen to be different. These matters pose complex integration tasks for an adopted child. Anglicare is therefore proposing that the current legislation is adequate and that the proposed changes to the legislation to allow same-sex adoption would not promote optimal care for the child.

CHAIR: Could you outline Anglicare's role in facilitating adoptions in New South Wales, including how you determine which families will adopt, the family training you provide and the support you provide, and how many adoptions you facilitate each year?

Ms WEST: Our role in facilitating adoptions occurs at a number of levels. We work with birth parents and prospective adoptive parents, with all main parties to adoption and in recruiting pre-adoptive foster carers. It

is important that by the time a child is placed with their adoptive family they have withdrawn attachment behaviour and reattached a number of times.

We are accredited by the New South Wales Office for Children and the Children's Guardian to provide adoption services. There are two placement programs. There is the local adoption program, and we run another program, which is also locally based, for children with special needs. They can range from well-understood syndromes such as Down syndrome or Asperger's syndrome through to children who have very, very complex medical needs or have been born with very rare disabilities and syndromes.

The service works with birth parents who are initially exploring adoption. On average, I would say we would work with 16 to 18 birth parents or birth families per annum. Sometimes our figures have dropped to as low as 12 birth families but sometimes they have been as high as 28 in a 12-month period. Part of the work—because we need to justify to the court that there has been absolutely no duress, coercion or persuasion applied in the process—is assisting birth parents to work out what it is they really want for their child and whether they can parent. So our placement rates do not reflect the number of birth families we work with.

Both programs are core business. An average placement figure would be perhaps six or seven children per annum, but again that can fluctuate so that is an average. Children are placed, and then the adoption order is filed for six or eight months into the placement, because we need to demonstrate to the court that the placement is working before we can file for an order.

I think prospective adoptive parents and carers really have to satisfy our agency that they have capacity—for carers not just to get an infant's behaviour of feeding regulated and to set up the properties of attachment, but they have to demonstrate that they can hold information in confidence, that they can manage working with birth parents, because birth parents visit their children while they are in care. They also have to demonstrate that they can manage transition, which is the transition of the child from their care to their adoptive family. So it is quite a complex task in which they have to make numbers of fine-line judgements and demonstrate a great deal of sensitivity to all parties. Similarly, adoptive parents have to go through a very rigorous process from the point of enquiry to the point of approval. Not all couples who enquire or even do training go on to assessment and then to be approved. But fairly much, most couples who embark on the training do end up going for assessment and then approval.

There are a number of criteria that the couples we place with need to satisfy. With the local adoption program they need to satisfy us that they have had fertility investigated, and provide proof that they have done this and/or received treatments. There is an age ceiling for our agency, which is based within 200 kilometres of Sydney. It is 43 for first adopters and 45 for second adopters. They must demonstrate to us that they have a reasonable life expectancy, because obviously placing in a family where couples can commit to at least 20 years of parenting is very important. There can be exclusion criteria for health reasons, or decisions made for health reasons.

The assessment is very rigorous, because it is not just about what the couple bring to the fray but it is also about demonstrating insight that the child is in fact biologically someone else's child and the differences that makes, that the child will have to manage two family histories, and that they not just have insight but also that they genuinely embrace openness and contact in adoption, not just pay lip-service to it. Many adoptive parents would admit that they initially find that prospect quite difficult to manage, as would birth parents, but by the time those families have been through the preparation process we expect that they will demonstrate that they can commit very genuinely to those processes.

We offer four sessions of professional training development for foster carers. It is mandatory for them to attend those so that they remain up to date with agency practices, with legislation, and also with trends in caring for infants. Each placement generates extensive post-placement support and intervention, particularly in implementing the adoption plan, which is the legal contract or agreement between both families that determines the frequency and type of contact that birth and adoptive families will have, and other interventions are initiated when an adoption arises.

When we place a child with special needs, our commitment to that family is for an 18-year period, with regular phone contact, a home visit and often an application for a subsidy. Also, we have mediation reunion outreach and searching services, particularly for adoptions made for adopted persons and birth families where the adoption was made prior to 1990. Also, lastly but importantly, birth parents are also involved in the selection of adoptive parents. They are presented with several, usually three, adoptive parent profiles which the approved

adoptive parents have prepared themselves which yield personal information about family background, non-identifying but personal, about background interests, reasons that they wish to adopt, all those sorts of really important things.

The birth parents will select a profile and hence an adoptive family for their child. Anecdotally one of the primary motivations for birth parents consenting to adoption is that the child will have a mother and a father, which is something they could not provide for their child themselves, so the commitment that the approved couple brings to adoption is very important to birth parents.

The Hon. AMANDA FAZIO: Other inquiry participants have referred to extensive evidence concluding that it is family processes such as equality of parenting relationships within the family rather than the form of the family that determines children's wellbeing and long-term outcomes. What is your view of that evidence?

Dr BELLAMY: In a situation where we are looking at the long-term outcomes of the children, the sorts of things that are going to influence those long-term outcomes are going to be multiple and many. To say that one class of variable has an impact but another class will not have an impact could be oversimplifying the situation. My expectation would be that family type would have some impact, though it maybe less than family processes but that if we were able to do the sort of study that is able to take all these things into account, we would expect there to be some sort of an impact.

The reason I say that is that in terms of evidence from overseas work, one of the references that we refer to is from Stacey and Biblarz, academics from the United States, who mention in their findings the type of family having an impact on the outcomes are children down the track. In terms of that little piece of evidence, I would say yes, that it would make a difference.

The Hon. AMANDA FAZIO: And because your organisation has a core belief that a family should be constituted of a mother and a father, do you ever facilitate adoptions by single people?

Ms WEST: We have in the past. Again, it has been through the special needs program because we are recruiting individually for the specific child. In local adoption we have a pool of approved adoptive parents from which we show profiles but even though it is lawful at present in New South Wales to place with a single person, when single adults contact us with the hope of adopting, we will say to them that they are perfectly at liberty to do that and that they can embark on the process of inquiring, training, et cetera, but—and there is a "but"—we know that birth parents will select the profile of a couple.

There is a very fine practice issue here of not wanting to encourage people to invest a lot of time, energy and experience in this process without really a strong conviction that we can place with them. But through the special needs program the parent, with time, becomes more and more a carer, so what we are looking for is the capacity and it is the agency making the call there.

The Hon. AMANDA FAZIO: With children who are older do you involve the children in that process of whether they want to be adopted and, if so, what they are looking for in an adoptive family?

Ms WEST: We do not necessarily manage those adoptions. Jackie and Sue are involved in placing older children so they are probably better able to speak to that.

Ms MADDEN: We have some experience with children who have been adopted from care. Normally in the adoption service they are under five but with children being adopted from care they could be any age under the care order.

The Hon. AMANDA FAZIO: In those cases do you consult with the children about the adoption process and their wishes?

Ms MADDEN: Yes. There will be some participation of the child and certainly their consent can be sought once they are 12. They would have counselling and an assessment to make sure that they are informed about what is required or what the implications of the adoption are. Mandatory information is provided to young people and work is done to prepare them for that.

Ms WEST: It is lawful in New South Wales for children 12 and over to sign a consent for their adoption.

The Hon. AMANDA FAZIO: I know that you do not do adoption for same-sex couples but do you have any comment to make on the ability of same-sex couples to effectively foster children?

Ms PALMER: Our foster care program does not recruit same-sex couples either, so the basis of our submission is the same whether it is foster care or adoption. We do not have any experience of children in same-sex couple situations being fostered either.

The Hon. DAVID CLARKE: Dr Bellamy, somebody from another organisation earlier today—I do not want to quote them incorrectly—was not aware of any research with outcomes that demonstrated that it was not in the best interests of children to be adopted by same-sex couples. I do not know whether you heard evidence?

Dr BELLAMY: I think so, yes.

The Hon. DAVID CLARKE: Do you have a comment on that? I am looking at Professor Sarantakos from Charles Sturt University and Professor David Popenoe, Dr Robert Lerner and Dr Nagi from the University of Chicago, Biblarz and a series of others who have studied the research and they certainly do not come to that conclusion. Do you have a view on this issue?

Dr BELLAMY: I do not have a firm view but I have to say that looking over the literature that we have looked at in putting the submission together it is pretty clear that there is a lot of ideological division between people who are doing research in this area and that is something that we are concerned about. We want to know about where the different researchers are coming from, given the research that they are doing. Some of them are very upfront—as we quoted in our paper with one of the researchers—and make it clear why they are doing the research.

There are also some ethical issues that come up in the literature as well to do with things such as methodology in sample size and so on, which can be fairly arcane to people outside but are quite important things to consider when looking at population studies that might involve small numbers of people compared to a larger population group in trying to work out whether there are statistically significant differences or not between the two groups.

In our submission we have not so much tried to marshal all the various sorts of research, both for and against, but rather to look at some researchers who have tried to critique other people's research or a range of research and the sorts of assumptions that they are working with. We have tried to highlight those to some degree in our submission and also some of the conclusions that they reach.

The Hon. DAVID CLARKE: Ms Palmer, I will read you a quote from Professor David Popenoe, who has not only surveyed all the research but also has done some research himself, as I understand it:

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, children having two parents—male and female—and not a same-sex couple, is preferable.

You aware of that statement? Do you have a view on it?

Ms PALMER: I am aware of that statement, but not the person you mentioned. Yes, I am aware. I support it; yes, I agree.

The Hon. DAVID CLARKE: Have you accessed the scientific, medical and psychological research on this issue?

Ms PALMER: The research has predominantly been looked after by Dr Bellamy. My understanding comes very much from my practice and from what I have observed, and from what I believe to be right around the issue of optimal care. As we have made clear in our submission, that is the preference for children to have both a mother and father, for reasons we have discussed.

The Hon. DAVID CLARKE: Let us put aside your beliefs. Tell us about your experiences and your observations from being involved in this field. What has that shown to you, setting aside your beliefs?

Ms PALMER: I think that the research shows that the contribution of both male and female parents provides optimal care for kids in terms of meeting their emotional, psychological, and physical needs. There is a preference for that balance to be there for them. Just talking about research, the research around placing children for adoption in same-sex couple families is not large, nor is it even as large as the evidence or research around kids growing up in same-sex couples when one of the parents is their biological parent. I am just wary of accepting any evidence that says it is okay to have same-sex couples as parents, especially in the situation of adoption. It is an unknown. There is mixed evidence.

The Hon. DAVID CLARKE: That includes your own observation and experience in the area?

Ms PALMER: Well, I do not have experience in supervision of kids and placement with same-sex couples. I only have experience with children in placements with heterosexual couples in what is, I think, still regarded by society at large as a normative situation.

Ms SYLVIA HALE: Earlier you were talking about the criteria that families are required to fulfil. For Anglicare, is there ever a religious requirement that they be professing members of the Anglican community?

Ms WEST: No. There is no religious requirement. I guess what we are really wanting to do is have a range of people approved as adoptive parents in our pool, just as we have a range of birth parents. What we are trying to do is mirror and match.

Ms SYLVIA HALE: So it would be irrelevant as far as you are concerned whether the adopting family were atheists, Catholics, Jews, or Calathumpians.

Ms WEST: In principle, yes. In practice, it may be difficult because I cannot imagine that people who are committed to atheism or something that is really anti-Christian would want to lodge an application with Anglicare.

Ms SYLVIA HALE: You would think that they would use Barnardos.

Ms WEST: Yes, because there is an alternative secular non-government agency.

Ms SYLVIA HALE: In terms of your experience with adoption by gay couples, which admittedly is non-existent, presumably because of the nature of your organisation you would expect it to be self-selecting. People who would go to Anglicare presumably would be people of the Anglican profession or at least some type of Protestant variation thereof, or Christian.

Ms WEST: Not necessarily. What they need to be able to do is reconcile themselves to our processes which are in part determined by our organisation.

Ms SYLVIA HALE: What I find curious is that you are prepared when it comes to adopting a child to say persuasion could be irrelevant, all other things being equal, but when it comes to what is your position in relation to adoption by same-sex couples, according to your summary in part six you say that this is an authentic and fundamental issue of religious belief, and it goes on to say that it is Christian belief. In assessing your approach to this issue, it is dominated by your religious convictions, but when it comes to placing a child, that is not an absolutely fundamental requirement. I just find that a bit of an imbalance.

Ms WEST: I do not experience it as a conflict of interest. What we do is profoundly child focused. What we are really looking to do is place a child, having had a thorough background provided by their birth parent or parents, with a family that we feel—or, in our assessment, more to the point—will best meet that child's needs. For example, we would work with birth parents who may not declare any particular religious persuasion, but specifically because birth parent requests are considered. We cannot always meet them, but they are considered for placement. We will work with parents who say unequivocally that they do not wish their child to be placed in a church-attending or Bible-believing family, but then by the same token we work with birth parents who specify that they would like their child placed with a Christian family.

Ms SYLVIA HALE: If I have read your submission correctly and if you had, for example, a child and no-one else or no other family was prepared to take the child on but you found a gay couple that was prepared to take the child on and satisfied your other criteria, would you facilitate that adoption?

Ms WEST: I do not think that we could do that in terms of what our organisation requires of us, but in adoption circles, if there is a child who is hard to place—for example, there are Aboriginal placement principles and we may have no-one in our pool with Aboriginality or contact with the Aboriginal community—when people are assessed to adopt and are approved, they can sign an agreement which means that their profiles can be exchanged across agencies if an agency is having difficulty in finding the most appropriate family for a child. So in that instance, if we were having really, really big difficulty placing a child because we could not find a really good match or fit them in terms of a family, we would go to other agencies, and they would do what they could.

Ms SYLVIA HALE: But you are saying that you could not facilitate it because of the nature of your organisation, that is, mainly your fundamental belief. If so and if you are saying that you could not do it because it conflicted with your fundamental beliefs, but you are prepared to hand that child's adoption to another agency that did not have that fundamental belief, how do you square that with your conscience or your philosophical position?

Ms WEST: It is more about operating within the guidelines and provisions of the organisation. It does not come down to a personal level.

Ms SYLVIA HALE: I am not suggesting that. But I am saying that if the guidelines of your organisation are such that your fundamental religious beliefs would prevent you from facilitating an adoption by a same-sex couple, would that not also prevent you from facilitating the adoption by another agency by a same-sex couple?

Ms WEST: I think again it comes down to the child's needs and what is optimal for the child.

Ms SYLVIA HALE: Let us assume that the child's needs could be met adequately. From your point of view, that may be a leap of faith.

Ms PALMER: We would not be facilitating another agency going through that adoption process with that child and that family. We would be stating that that is not appropriate to us because of our foundations that we believe are right—a kid's right for optimal care—but there is a choice at the moment working in the community. Other agencies, until the legislation changes, would have that capacity to pick it up, if the law changes.

CHAIR: How are other children in need allocated to different organisations?

Ms WEST: With Anglicare's adoption service, it is entirely voluntary.

CHAIR: A lot of these children with permanency processes come through the foster processes.

Ms WEST: Yes.

CHAIR: How are they allocated?

Ms WEST: That is involuntary, so I will hand that question over to Jackie or Sue.

Ms MADDEN: Our agency is an accredited foster care service. We receive referrals from the Department of Community Services after the children have had final orders that are usually granted by the Children's Court.

CHAIR: It jumps then to one of the three.

Ms MADDEN: Yes. We were considered as an agency that may have the potential for foster care placements, so that is how they refer to us.

The Hon. GREG DONNELLY: Thank you for your testimony. I take you to page nine of your submission, particularly to point 30 at the top of the page. Under the heading of evidentiary issues associated with this debate, you refer to United States researchers Judith Stacey, who was a very well-known academic on same-sex matters in the United States, and Timothy Biblarz, and they are sympathetic to same-sex caring. They

agree with their opponents, presumably comprised of individuals who hold an alternative view, that "ideological pressures constrain intellectual development in this field". Dr Bellamy, is that the point to which you referred earlier—that this whole issue in terms of considering the matter of subjects fostering and adoption is an area where there is a fair bit of debate about the evidence?

Dr BELLAMY: Yes. I think I said that there seems to be ideological conflict, and you can see that in the literature as you have a look at it. Stacey and Biblarz go a bit further in their comment and say that these things are actually constraining intellectual development in the field. They talk about the sort of assumptions that their opponents have and they see that as a constraint. They also say that because their opponents have certain assumptions, these same assumptions are taken on board by those who would be in favour of same-sex couples being carers. This is why they have reached the conclusion that overall there is a constraint on growing and developing.

The Hon. GREG DONNELLY: With your study of this area, which I gather would involve looking at academic journals and other publications, would you conclude that in terms of what you are generally aware of there are some real disuse associated with the statistical analysis of the survey work that is done to look at this area?

Dr BELLAMY: Yes. I notice that was referred to earlier by the witness from the Department of Community Services [DOCS]. One of the references in our submission is to a paper by George Rekers and Mark Kilgus, "Studies of Homosexual Parenting—a critical review". As the title implies, they examine and review a number of studies. When you read the article you can see that they are really looking at it purely from a methodological point of view and drawing real question marks over a lot of studies and saying: Are these adequate in terms of meeting the basic sorts of things to do with sampling size, sampling strategies, and so on? The whole article really is devoted to that single issue.

The Hon. GREG DONNELLY: To get to the nub of this issue to understand the impact of homosexual parenting, would it be your submission that we need to conduct a far more rigorous and longitudinal analysis of the impact of homosexual parenting on children? For example, should the Government pass legislation to change the status quo?

Dr BELLAMY: We would agree with that. Our concern would also be that the foundation that is already there—or the question we would ask is whether it is solid enough to go ahead and make a change like that? Is the evidence compelling enough? Or is it more suggestive rather than conclusive? They are the sorts of questions that arise when one reads those critical reviews, whether it be by those in favour or those against.

The Hon. GREG DONNELLY: Given that we are dealing with the fundamental welfare of a child, and children, bear in mind the explicit provisions within the adoption legislation that deals with be paramountcy principle—and I refer specifically to paragraph 7 of your submission which states:

A cautions and caring legislature should never place itself at the "vanguard" of promoting unnecessary, and potentially adverse, legislative change in the area of adoption law.

Do you have a concern that a change, if it did occur, could have a detrimental impact on children in New South Wales?

Dr BELLAMY: It flows from our concern as to whether the evidence is clear and unequivocal. If it is not, it raises that possibility. Yes, given that we are a child-focused service, and even more than that we are dealing with children who have no say, as it were, in their future, then, yes, it makes it doubly more so of something that needs to be looked at closely.

The Hon. GREG DONNELLY: Is it your submission that the wise approach is to be cautious and that the evidence should be examined over time, and that from a proper examination of the evidence conclusions could be drawn? At that point a decision to change, if that is what the evidence suggested, would or could be made. Is that what you are saying?

Dr BELLAMY: Yes.

The Hon. GREG DONNELLY: Professor Kim Oates, who was the Chief Executive Officer of the Children's Hospital at Westmead and a team of professionals from that hospital produced a publication in 2005

titled "The complete parenting guide: caring for the young child from toddler to teenager". The research was overseen by Professor Oates. A section of that publication deals with mothering and fathering, and it states:

But modern fathers are more involved with their children than fathers of many previous generations were and are able to offer their children their particular gifts.

The sentence I was you to focus on states:

The importance of a father's contribution to his children's health and wellbeing should never be underestimated.

Here we have an expert, the chief executive officer of the Westmead Hospital, and a number of professional experts from that hospital acknowledging what appears to be a fundamental importance of fathers and fatherhood in the raising and rearing of children. They say that it "should never be underestimated". From your experience over many years of facilitating adoptions of children in New South Wales, do you agree with that statement?

Ms PALMER: Yes, I agree with that.

The Hon. GREG DONNELLY: Can one simply turn it around and say the same with respect to mothers and children with regard to the fundamental importance of having a mother with respect to the raising and rearing of a child?

Ms PALMER: Yes.

The Hon. GREG DONNELLY: There is a fundamental complementarity between those two.

Ms WEST: That is the important thing: the fundamental complementarity and that both sexes bring something different to parenting that we in our practice value but also see in good outcomes for children.

The Hon. GREG DONNELLY: Hence the phrase "optimal parenting"?

Ms WEST: Yes.

The Hon. JOHN AJAKA: I appreciate all the answers given to previous questions. I understand from previous witnesses and yourselves that you have a pool of couples who wish to adopt—one indicated "a range of people"—and that you would like to mirror the match. Others have said, in the simplest terms, that they want the best couple for the child and in the best interests of the child having regard to all the circumstances. Is that a fair statement?

Dr BELLAMY: Right.

The Hon. JOHN AJAKA: If you have a situation in which you are looking at a range of people or a pool of couples, one would assume logically that the larger the pool, the greater the range of couples, and the more particular circumstances of the couples, would allow you a better opportunity to find the right couple, the right persons, for that child. Would that be a fair comment?

Ms WEST: I would like to hear what you say a couple of sentences on.

The Hon. JOHN AJAKA: All right. The Committee heard from an earlier witness that in certain circumstances it was believed from what was occurring that even one person was a better match for the child than a couple, because of the child's circumstances, or the abuse, et cetera. The witness gave the example of a child who had been abused by father, grandfather and others. The child was terrified of any man contact and clearly wanted to be raised by a woman. If we accept all of that, I have difficulty in understand how including same sex couples into that pool to be chosen from is a detriment to the best interests of the child. Ultimately when the entire pool is considered—whether same sex, heterosexual couple, married couple or a single person—your responsibility is to choose the very best person or persons for that child, is it not?

Ms WEST: We could tackle that in a number of ways. In the example of the child who has been subject to absolutely horrendous abuse and demonstrates symptoms of trauma, and particularly cannot tolerate being cared for by a male, we would be in a position—although that is not the sort of adoption our adoption

service is doing—but perhaps it may come through out-of-home care. It would be acceptable to place with a single carer in that instance.

The Hon. JOHN AJAKA: What if in all the circumstances you had a same sex couple who was far more appropriate in the best interests of a child than a married couple? Do you simply exclude them on the basis that they are a same sex couple and nothing else?

Ms WEST: What Jackie Palmer said a moment ago is significant: that we are still operating in a context where there is a range and choice of agencies. When we receive same sex couple inquiries we direct them to Barnardos. Up to this point we have not had that situation. I cannot really comment about what we have not done.

The Hon. JOHN AJAKA: If the law were changed, how would that affect you? Would you maintain the same position? Or would you open the pool?

Ms PALMER: We would need to see the amendments to the legislation before we give a complete response to that. We need to consider the implications on our provision of optimal care that we have been talking about. We have already discussed our best practice endeavour is best served in the way we have described it and not by same sex adoptions. If the legislation is passed and that is allowed we would seek an exemption. The final decision around that would remain with the Council of Anglicare Sydney, at our level.

CHAIR: Have you experienced a process of religious exemption on other issues? Have you used that exemption for discrimination?

Ms PALMER: No.

CHAIR: Currently it does not exist in adoption law. I was going to ask you whether it would be a problem. You have mentioned it in your submission.

Ms PALMER: Currently the legislation that the foster care program comes under overrules it. There is no requirement, no exemption, it is just authorised carers. So we live happily with that at the moment. It could be with the Adoption Act as well.

CHAIR: Thank you for your very thoughtful submission. The information in relation to research processes and methodology was very good and sound information. The secretariat will forward questions on notice to you, as we did not get through them all, and a response is required by Friday 13 March 2009.

(The witnesses withdrew)

CHAIR: Welcome to the first public hearing of the Standing Committee on Law and Justice inquiry into adoption by same sex couples in New South Wales. You would have heard the guidelines announced earlier. Broadcasting guidelines are available from the table at the back of the room. If you want to converse or communicate with anyone, the staff will assist you. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Please turn off mobile phones as they interfere with Hansard recording. I welcome Mr Meney to this inquiry.

CHRISTOPHER LAURENCE MENEY, Director, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, sworn and examined:

CHAIR: In what capacity do you appear before the Committee; that is, as an individual or as a representative of an organisation?

Mr MENEY: As a representative of the archdiocese.

CHAIR: Are you conversant with the terms of reference for the inquiry?

Mr MENEY: I am, Madam Chair.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request. If you do take questions on notice the Committee would appreciate if the response to those questions could be forwarded to the secretariat by Friday 13 March 2009. Would you like to make an opening statement?

Mr MENEY: Yes. Thank you for the opportunity to appear before this Committee. I recognise that on this issue there are people of goodwill on both sides, including before me at the moment. I am appearing on behalf of the Life, Marriage and Family Centre of the Catholic Archdiocese. 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.

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 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. We are in this context very supportive of an adoption process that places the best interests of the child and their ability to flourish within society as paramount considerations. The principle that the best interests of the child must be paramount in any decision about adoption of that child has been affirmed explicitly by the international community in the Convention on the Rights of the Child, which states:

State Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.

This is also reflected in the New South Wales Adoption Act.

The Catholic Church in Sydney has provided an adoption service since 1967—over 40 years. It is available to all potential birth parents and adoptive parents regardless of race, faith or creed. Over the past seven years CatholicCare's adoption service has assisted 112 families, of which 83 chose to parent their child. We believe this is a very positive outcome and reflects our commitment to supporting vulnerable families and enabling, wherever possible, children to know and be raised by their natural parents. It is CatholicCare's experience that without exception all birth parents seek adoptive parents who are in committed heterosexual family situations. Currently it is not our experience that birth parents have ever requested the placement of their child with a same-sex couple.

The number 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 by exercising the right of all adults to be considered as adoptive parents. However, this shifts the focus from what adoption should truly be about: that no adult has a "right" to a child. This is explicit in section 8 (1) (c) of the Adoption Act. Children are persons to be loved for their own sake. Every child is a gift, not a possession to be acquired.

The reality is that birth parents choose the adoptive parents and they unequivocally choose adoptive parents in stable heterosexual family situations. Considering legislative change, without a body of longitudinal research to understand its full implication and without any obvious need, is not warranted nor is it in a child's best interest. There is significant evidence to support adoptive children being placed with married couples when such couples are available and willing to welcome these children. Married couples tend to place a high value on commitment and fidelity, which provides a safe and loving environment to children. Empirical studies, as well as the wealth of our collective human experience, has shown a distinctive—and distinctively valuable—benefit that women give to children as mothers and men to them as fathers.

Every society before our own has privileged heterosexual marriage as the place for the upbringing of children because this has been sought 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. Some experts and professional associations have claimed equivalence between married heterosexual parenting and same-sex couples, but this claim remains unproven. The studies to date have generally been undertaken by same-sex parenting 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 database.

Lerner and Nagai, in the 49 empirical studies that they reviewed, concluded:

The methods used in these studies is so flawed that these studies prove nothing. Therefore they should not be used in legal cases to make any argument about "homosexual" versus "heterosexual" parenting.

Professor Nock before the Attorney General of Canada said:

Through this analysis I draw my conclusions that all the articles I reviewed contained at least one fatal flaw of design or execution, and not a single one of those studies was conducted according to general accepted standards of scientific research.

A 2003 paper from the Australian Institute of Family Studies confirms the lack of evidence:

Much of the available research has involved small, unrepresentative samples that are predominantly well educated, middle class and American. The degree, to which results reflect sampling biases of the research, and their applicability in the Australian context, are thus difficult to evaluate.

It would be unwarranted and deeply unfair to place children in same-sex parenting situations when its equivalence with married heterosexual parenting has not yet been established and the evidence base is so lacking, particularly with respect to longitudinal studies.

If same-sex adoption were introduced in New South Wales there is a real 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 in section 56 is not sufficiently wide to protect CatholicCare in those circumstances. CatholicCare is the only provider of state-wide adoption services, apart from the Department of Community Services. As such it plays a vital role in giving choice to parents considering adoption for their child. In light of these considerations we 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.

In conclusion, we would like to emphasise that the family is much more than a legal, social or economic unit: it is a community of love and solidarity based on marriage, which joins families, generations and even cultures. Even though, sadly, marriages and families break down, our collective personal and social experience still attests to the enduring meaning and value of marriage. It is the place for a man and a woman to

commit their lives to each other and open their lives to the gift of children. It is the place where children receive the unique and complementary love of both a mother and a father, who commit to love each other for life. Married parents are able to give children a distinctive and priceless experience of being mothered and fathered, and to witness to them on a daily basis the equal dignity, worth, beauty and value of men and women. Thank you for the opportunity to speak. I am happy to answer further questions from the Committee.

The Hon. DAVID CLARKE: The Committee has before it a submission from Barnardos. In advocating support for same-sex adoptions Barnardos quote approvingly the following statement from Malin and Betts:

In summary, all the relevant research examining the impact on children of having a lesbian or gay parent shows parental sexual orientation to have no measurable effect on the quality of parent-child relationships or on children's social adjustment or mental health."

What is your attitude to that statement?

Mr MENEY: I would say they are methodologically flawed and those who have done meta-analysis of a vast number of studies do not reflect it. Unless the studies are done in a fair and unbiased way, in terms of their ability to select and randomly sample, you are not going to get an objective outcome. That is the problem with a lot of the research. In the absence of research, which is clearly demonstrating any equivalence between married heterosexual parents and same-sex parents, I think it would be highly imprudent to place a child in those circumstances.

The Hon. DAVID CLARKE: Your research of the research done by the researchers would not support in any way the statement that all the relevant research examining the impact on children points in the other direction?

Mr MENEY: No, in no way does it do that. I think that would be a highly selective comment and probably reflective of the fact that it is a very difficult issue and people are often driven by their own perceptions of what they would like to see happen. I think it is always prudent to look at a whole range of studies in the area and those that deal in meta-analysis—that look at dozens and dozens and dozens—are saying that they are flawed, they are limited and they do not deliver what they were hoping they would deliver.

The Hon. DAVID CLARKE: Would your opinion be that those who advocate a change to the law to allow same-sex adoptions have not discharged the onus or standard of proof in this case?

Mr MENEY: It would depend on what standard one wanted to apply in reference to how one would institute and legislative change but I think there is a lot of value in looking at what is tried and true across a whole lot of cultures in different circumstances and ages and looking at the sociological evidence of recent decades as well. It would also be important to acknowledge that there is an enormous body of collective social experience that is not represented in journals published by various bodies around the world.

The Hon. DAVID CLARKE: While keeping in mind that we have to put the interests of the child first, where would you put the onus that needed to be discharged?

Mr MENEY: I think it is always important to remember that it is the interests of the child that is paramount. One should never place a child in a situation where we did not try to provide the best possible circumstance. No adult has a "right" to a child. No married parent has a "right" to a child. Parents have a right to try and have children by marriage and have respect for the dignity of that child. In the case of adoption we know that children are already in situations that are less than typical. They require various forms of support and counselling over time to make sure they understand that all those anxieties that they may be having are not their fault and are not as a result of anything they have done. They need that special support. Hence to place a child in a situation that introduces another overlay factor they are then made to feel more different again and I do not think that is in the best interests of the child, given the lack of supporting sociological evidence to demonstrate an equivalence between married family situations and same-sex parenting.

The Hon. DAVID CLARKE: You would be aware that not one of the nations that we have adoption agreements with will allow their children to be adopted by same-sex couples?

Mr MENEY: I am aware of that. I am aware that the Irish Parliament has recently introduced an Adoption Act specifying and updating all their adoption procedures in accordance with the international law and the Hague Convention and specifically excluding same-sex couples.

The Hon. DAVID CLARKE: If the law in New South Wales was changed to allow same-sex couples to adopt children could you foresee problems with the courts declaring the Department of Community Services as being discriminatory in putting forward the names of only heterosexual couples for the adoption of children from overseas? Do you understand my question?

Mr MENEY: No.

The Hon. DAVID CLARKE: We have a situation where these nations will not allow their children to be adopted by homosexual couples so the Department of Community Services only puts forward heterosexual couples to adopt. What would happen if the courts in New South Wales declared that it was discriminatory for the Department of Community Services to just put forward the names of heterosexual parents? Could you see problems arising from that situation?

Mr MENEY: I think wherever you have conflict between international and national and State legislation it always leads to all sorts of appeals and difficulties in the legal arena and in the social arena. Australia is always having tension between international covenants and the legislation we have in terms of our national obligations. Where you are deliberately aware that such tension would be created and you deliberately legislate along such lines it would seem to be highly imprudent to do so and it would show that we are being inconsistent in the way we are signing up to international treaties or operating within international law and what we are doing domestically.

We might be in the very situation where we have to give an exemption to DOCS under the Anti-Discrimination Act if you start to make all sorts of legislative changes. I believe it would be a legal nonsense to put ourselves knowingly into such a position.

Ms SYLVIA HALE: On page 12 of your submission you note that Catholic agencies in the United Kingdom did not obtain the exemption from the regulations that they sought. They were given a two-year window of opportunity in which to apply, and that has expired, and any Catholic adoption agency that turns away a gay or lesbian couple on the grounds of their sexual orientation could face legal action. Why did the United Kingdom refuse to grant the Catholic agencies an exemption? Do you know why?

Mr MENEY: There would be a long discussion about why courts make certain decisions but in this particular case they decided that all couples presenting in whatever circumstances should be entitled to adopt and to be considered as such. Were an organisation such as the Catholic Church to say that we believe that it is not in the best interests of the child to deliberately place them in a social home situation where they would be deprived of either a mother or father, and we could not do that, people would see that as discriminatory.

Ms SYLVIA HALE: To your knowledge have Catholic adoption agencies in the UK withdrawn their services?

Mr MENEY: Yes they have.

Ms SYLVIA HALE: So they think that in assessing the best interests of the child it is better for them not to go to any family at all rather than to one that is composed of a same-sex couple?

Mr MENEY: No, that is not the choice they are making.

Ms SYLVIA HALE: What is the choice they are making?

Mr MENEY: They are not saying they are not to go to any family at all. They are saying that it is not in the best interests of the child to place them in a household where they will be deliberately deprived of a mother and father, and that they cannot act to do that, but within a flourishing democracy one would assume there is a place for all those people who want to contribute to public wellbeing.

Ms SYLVIA HALE: But you are saying they are withdrawing from the process because they cannot comply with the antidiscrimination laws and they are assuming that other agencies will step in to perform the role they are refusing to perform.

Mr MENEY: What will happen to the possible outcomes for a particular child as a result of a church agency's withdrawal is quite debatable. The church and the church agencies can only decide to do what they think is best for the child. What other bodies subsequently decide with reference to a particular child will be on the basis of the criteria and the decisions they make.

Ms SYLVIA HALE: You say on page 2, and you repeated it earlier today, that Catholic Care's adoption service is available to all potential birth parents and adoptive parents regardless of race, faith and/or creed and it is then summed up in a vision statement. Does this mean that at the moment Catholic Care would be quite happy to facilitate adoption by a couple that practised birth control, or were not married or who disputed such doctrines as papal infallibility? Would those religious beliefs impact on whether Catholic Care proceeded with an adoption?

Mr MENEY: They are not the sorts of things that are normally part of the discussion process between adoptive parents and the agency.

Ms SYLVIA HALE: You say they are not normally part of the discussion process yet you say they are matters of fundamental belief that are sufficiently important in the UK to prevent agencies participating in the process. Here in Australia you turn a blind eye to them because you say it is in the best interests of the child that they be adopted. It just seems to me there is something of an inconsistency.

Mr MENEY: I think you are comparing apples with oranges when you talk about what happens in the UK because there is an inability to comply with the law and so they had to withdraw their services from an area.

Ms SYLVIA HALE: But if the law were to change here and no religious exemption applied you would be facing the same situation.

Mr MENEY: A similar situation, yes, that is correct.

Ms SYLVIA HALE: I am trying to ask how you would respond in the light of your apparent not taking into account fundamental issues of belief when you are facilitating the adoption process through Catholic Care at the moment.

Mr MENEY: There are a whole range of things that the Catholic Church holds to be true and important and many things about how people should live their lives and be able to flourish as persons, but we do not advocate that they necessarily be mandated under the law.

Ms SYLVIA HALE: So why do you select whether a couple is gay or not as the absolute stumbling block?

Mr MENEY: It is not the absolute stumbling block. It is one item that directly relates to ensuring that the best interests of a child in terms of ability to flourish as a person are always taken care of. We believe that the situation that most enables that to happen is the placement of a child with a married couple who are committed to one another for life and that to place a child who is in an extremely vulnerable situation in another arrangement that is different from that is not doing justice to that child. So we are unable to embark on that process because we would see that as an unjust process that is not in the interests of the child.

Ms SYLVIA HALE: So to you the gender of the parties is more important than the commitment or the quality of the commitment between the parties?

Mr MENEY: What is most important is the ability of the parties to deliver what is in the interests of the child in terms of the ability to provide a mother and a father and to enable mothers to mother and fathers to father. I think it is a long stretch to suggest that fathers can mother or that mothers can father, and that is where the child's best interests are going to be compromised in that situation.

Ms SYLVIA HALE: Do you have philosophically a conception of what is the quintessential mother and what is the quintessential father and never the twain shall meet? My understanding is that human sexuality

is more or less along a spectrum and that people at either end of the spectrum share qualities with people at the other end of the spectrum and it is impossible to say that this is a mother, other than biologically having had a child, and this is a father. How do you distinguish between the mother and the father?

Mr MENEY: I think there are substantial differences between men and women. I think what men can offer as fathers in terms of their ability and their influence on children are well documented in the evidence, and I have represented some of those in the report. Similarly, mothers raising children and caring for infants and how they respond to difficult times. The nature of sexuality being some sort of continuous spectrum is a much put about notion but one which is ideologically driven. There are certainly circumstances in which people may have attributes of either sex but that is not the case where you have a continuous spectrum of sexuality as such.

The Hon. GREG DONNELLY: You made some reference to section 56 of a piece of New South Wales legislation. I did not hear which legislation it was.

Mr MENEY: It was section 56 of the Anti-Discrimination Act.

The Hon. GREG DONNELLY: Mr Rod Best, the Director of Legal Services at the Department of Community Services appeared before us this morning; I do not think you were in the room. Mr Best stated emphatically that it was his view that the current exemption provision would be sufficient to protect the interests of churches and faith-based organisations, such as the Catholic Church, from claims of discrimination with respect to same-sex adoption. That is 180 degrees from where you say the position is. Is that advice you have taken or is it a matter that you believe to be the case because you have studied the section and you believe that is what it provides for?

Mr MENEY: It is certainly our advice at the moment that it does not provide sufficient coverage to enable us to claim an exemption in that situation. We know that there are already cases subject to ruling in New South Wales involving other church agencies that have led to quite a degree of confusion. There is a case under appeal at the moment. The provisions in no way seem to be quite so clear-cut as the witness you mentioned suggested.

The Hon. GREG DONNELLY: So in your opinion there is at least some question mark over the comprehensive protection, if I can use that phrase, that the existing exemption would provide organisations such as the Catholic Church?

Mr MENEY: I think it is a very big question mark. I think it is very important for bodies of a whole range of persuasions to be able to contribute to the public good in a flourishing democracy and that is what we would like to see ourselves doing. We do not claim that every other agency has to do business the way that we do it, but we do claim a right as a part of a flourishing community which represents a sizeable proportion of the population to be able to provide our contribution in a way that is in keeping with our beliefs and what we believe is in the best interests of children in the circumstances.

The Hon. GREG DONNELLY: Pages 7 and 8 of your submission to the Committee refer to the lack of evidence to support equivalence of same-sex parenting. I do not intend to take you through your submission but to put this position to you: at the very least it can be said there is a fundamental difference of opinion—in other words, those who say it is in the best interests of the child to have a married mother and father in a permanent relationship raising a child, which is your position, versus that of a homosexual couple provided with the opportunity to adopt and raise a child—and there is a debate in the public domain of those alternate positions. Would you agree with that statement?

Mr MENEY: In terms of the outcomes for children?

The Hon. GREG DONNELLY: No, in terms of what is out there in the public debate between the alternate views. I am not saying it is one view versus the other, just that there is a fair bit of debate about this, is there not?

Mr MENEY: There is an enormous discussion. It is a very sensitive issue for a lot of people and I think that despite the way it is sometimes represented it is not always to do with inherent biases. Often it is to do with people's genuine concern about the best interests of children. The more we can try to bring public debate back around that point and away from any agenda to do with the rights of adults, the more we will be able to deliver what we should be doing in terms of our adoption Act and the way we administer it.

The Hon. GREG DONNELLY: Taking that point further, it would be true to say that this is not a question of discriminating against homosexuals in terms of what they see as the right to be able to adopt a child but, rather, the rights of the child being of paramount importance in the consideration for adoption.

Mr MENEY: In situations where you have a child that is already in a strange arrangement as a result of not being able to have their normal biological parents, and then we are trying to consider how do we act in their best interests, the State has an obligation to be extremely careful about how it acts in the child's interests. It cannot be influenced one way or the other in terms of agendas to do with rights or entitlements, or anything like that. It is to do with the child. That has to be the central consideration.

The Hon. GREG DONNELLY: It would be your submission that this whole matter, when looked at properly, stepping back and taking away the ideological glasses that individuals might bring to this—if we have the paramountcy principle for the child as being the issue that we agree on, the State should proceed in looking at this issue exercising abundant caution?

Mr MENEY: I would agree with that statement.

The Hon. GREG DONNELLY: In your testimony you refer to fathering and mothering of a child as being important, not just in the context of the doctrines and the views of the Catholic Church but—and this is where they are not at odds with each other—the social science of mothering and fathering and what that social science shows us. I would like to take you to a quote from Michael Lamb, who is recognized internationally as the pre-eminent expert on the role of fathers. I want to specifically quote from the fourth edition of his well-known book *The Role of Fathers in Child Development*. Dr Lamb says:

Now that researchers have amassed a solid body of evidence regarding the benefits of positive father involvement for children's wellbeing, researchers, practitioners, and policymakers are eager to link scientific findings to initiatives and programs designed to enhance and support a commitment of fathers to their young children.

What Michael Lamb is saying there is that there is a wealth of information about the role of fathers and the positive contribution that fathers make to the wellbeing of the development and rearing of children. In the research that you have done in looking at this area, is that statement consistent with what you have seen as to the role of fathers?

Mr MENEY: I do not think there would be an academic body anywhere in the world now that would seriously debate that fathers are not vital in terms of outcomes for kids. I think all the sociological effects—if you look at what happens in urban environments, rural environments, the outcomes for kids as a result of not having fathers in the home indicate that that is against their best interests; they do worse on a whole range of parameters. Granted, much of that research is looking at heterosexual family situations which have broken up, or fathers who have not assumed their responsibilities as fathers to raise their children and have walked away from them. But the absence of the father figure has a deleterious effect on outcomes for kids.

The Hon. JOHN AJAKA: Would the same apply to the mother? When one looks at same-sex adoption, one is also looking at two men adopting a child. Would your views be the same in relation to the female mother component not being present in the relationship?

Mr MENEY: The contributions of mothers and fathers are both vital, but the effects that result from not having a mother are different from the effects that result from not having a father.

The Hon. JOHN AJAKA: I think most of the questions I had to ask have been answered, and I thank you for that. I think you were present when I asked the last question. If there are is a pool of couples ready to adopt and it is apparent on all the factors, the best interests of the child being paramount, that a same-sex couple would be better for that particular child in that circumstance, would it not be more appropriate to have that situation? Or is it your view that there will never be a situation where a same-sex couple would be better in the circumstances?

Mr MENEY: I think in the situation where we know that there is a large pool of committed heterosexual parents available the question does not seem to have a direct relevance, given our own experience and, we believe, that of other agencies in the area, that the placement of a child, if one assumes that having a mother and a father is in their best interests, there is a multitude of applicants ready to comply and do whatever it needs to be done in terms of opening up their hearts and homes to receive that child.

The Hon. JOHN AJAKA: If you take the situation of a Supreme Court judge or a High Court judge in a long-term gay relationship, are we seriously saying that that person could never be a fit and proper person, in the best interests of a child, to adopt?

Mr MENEY: We are seriously saying that, no matter how committed that couple are to one another, they could never mother that child, and to place a child in that circumstance would be an injustice to that child.

The Hon. JOHN AJAKA: If changes to the law were to occur, and incorporated in that were changes to the Anti-Discrimination Act or any other relevant Acts, that would eliminate your concerns about what has occurred in England, would it not?

Mr MENEY: Assuming that those changes allowed us to continue to operate as an adoption agency, that would alleviate our concerns about our ability to continue to provide adoption, but it would not alleviate our concerns about what would happen in our society with children who might be placed with other agencies.

The Hon. JOHN AJAKA: Looking at it from the point of view that if those changes did occur and they were sufficient to protect you, you would still prefer to continue with being able to provide adoption services, as long as you have the entitlement to say we will not be including same-sex couples and there was no breach of any Act as a result of that?

Mr MENEY: We would continue to do whatever we can to provide a service to the community. Having said that, we would also argue that there would be a need to prudentially look at what sorts of same-sex couples—even though we would disagree with placing them—including the longevity of their commitment. We would also strongly advocate that the biological details about a child's background, in terms of who their biological father and mother were, should be retained both on the adoption and birth certificates, so the child would have a right to that information.

The Hon. JOHN AJAKA: It has been raised several times today that a single person who is able to adopt is ultimately in a same-sex relationship, that there seems to be an opportunity to do that. Do you have any views on that?

Mr MENEY: I think there are many situations—I know of them myself, as a father—where you might want someone else to have the right to pick up your child, or take them to a doctor, or authorise medical treatment. I know I can just sign that over on a piece of paper and give it to the school, or whoever. So there would be provisions under some form of guardianship situation perhaps where a biological mother, for example, moved into a same-sex relationship. But I do not believe it requires an amendment to the law to enable the partner of that same-sex mother to adopt the child. I think there are other ways in which those sorts of situations could be dealt with; it does not require an amendment to the Adoption Act. I would be strongly concerned about creating any social momentum whatsoever to encouraging adults to deliberately contrive to produce and have kids with the intention of not allowing them to have a mother and a father. I believe that is a real risk with the proposed changes to the legislation.

CHAIR: Thank you very much for your attendance. The work that has gone into your submission and your evidence has been very useful to us. If we have questions on notice, the Secretariat will send them to you. 14 March is the cut-off date, so that we have time to consider them before we report.

(The witness withdrew)

(Luncheon adjournment)

CHAIR: Welcome to the first day of the public hearing of the Standing Committee on Law and Justice inquiry into adoption by same sex couples in New South Wales. We have guidelines with respect to the broadcast of proceedings and for people wanting to know about those, there are forms at the back of the room. The clerks will assist anyone who wishes to send any messages. Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference and I ask that people turn off their mobile phones.

EMILY GRAY, Convenor, Gay and Lesbian Rights Lobby and

GHASSAN KASSISIEH, Policy and Development Coordinator, Gay and Lesbian Rights Lobby, affirmed and examined:

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms GRAY: Yes.

Mr KASSISIEH: Yes.

CHAIR: If you should consider at any stage certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. If you do take any questions on notice the Committee would appreciate if the response to those questions could be forwarded to the secretariat by Friday 13 March. Would you like to start by making a short statement?

Ms GRAY: Yes. Firstly, I would like to thank the Committee for inviting us here to present evidence today into the inquiry into adoption by same sex couples. I am sure the Committee is familiar with some of our work to date, especially focusing on the rights and recognition of children living in same sex families. The Gay and Lesbian Rights Lobby was formed in 1988 and takes a strong evidence-based approach and consultative approach to inform our recommendations.

In New South Wales individual lesbians and gay men are eligible to apply for adoption but not for same sex couples, as you would know. The lobby strongly believes that couples should be assessed according to objective criteria on their individual merits in relation to their ability to provide a stable and loving home to a child. Sexual orientation provides no meaningful indication of a person's capacity to parent. It is important to get this point clear. This is not about a right to adopt. No person in New South Wales has such a right. It is about, however, returning the focus on what is in the best interests of the child in an individual case. It is also about removing outdated and prejudicial stereotypes, which offend the dignity of thousands of lesbians and gay men who already parent or contribute significantly to the wellbeing of children. It is also about ensuring that the widest range of potential homes is fairly and equitably considered on a case-by-case basis.

What we are talking about is opening the eligibility criteria, not forcing relinquishing parents to give their child to any particular set of parents. In our adoption system relinquishing parents guide the adoption process and should be given the option of a same sex couple as they are currently given the option of individual gays and lesbians. But even more importantly, adoption for same sex couples is about the recognition of children already in care of same sex foster carers, step-parents and some co-parents. Adoption would give these children and their parents a legal mechanism to formalise an existing child-parent relationship in order to confer on to the children and their families all the benefits, protections and entitlements of legal parentage.

We believe that it is not in the best interests of a child to be denied the recognition of one of their parents under New South Wales law, particularly as New South Wales' law already affords some female same sex couples equal parentage recognition and Federal law now provides most same sex families with equal coverage. Our recommendations, in short, for the Committee are: to extend adoption eligibility to same sex couples under the Adoption Act; to introduce a new second parent provision to allow the de facto partner of a parent to adopt their partner's child with a presumption in favour of adoption when a child has only one legal parent for a second existing legal parent; and to possibly recommend a further inquiry into situations where children may have more than two parents. Thank you very much for inviting us here today.

The Hon. JOHN AJAKA: Do I understand that one of your main concerns is a situation where there is already a parent of a child but you are wanting the adoption process to be opened up so that parent's partner is then in a position to adopt a child so that you then have the two parents of a same sex couple, is that the situation?

Ms GRAY: That is correct. In fact, it is our main concern. As you probably know, there are not many circumstances—I believe in Western Australia only one same sex couples has now adopted an unknown child since the laws were changed over there. The majority of our cases that we are talking about here are where children already exist in families and where we want both of the parents to be recognised as legal parents.

The Hon. JOHN AJAKA: So it is not the situation from your lobby group, if I can use that term, where you want same sex couples to join the pool, as we have been discussing previously in other evidence, of couples who are adopting children who are up for adoption?

Mr KASSISIEH: Really, they are already in the pool as individuals. The issue is they cannot adopt as a couple. There is nothing to stop a gay or lesbian person from putting in an application individually. What we are talking about are people, say for example, foster carers who are currently in the care of a child who may have a long-term parental responsibility order issued in their favour and once that child is 18 that order expires and the parent and that child are legal strangers again.

We are saying that adoption provides a mechanism to ensure that the child has the protection throughout their lifetime of recognition of their family for areas like inheritance plus all the areas where a child-parent relationship hinges on further entitlements under the law.

The Hon. JOHN AJAKA: You are saying you could have a situation where a child from a very young age has been with a same sex couple in foster care, the child turns 18, a child has a loving relationship with this couple, the couple want to provide for the child in a parental situation, the child consents, the parents consent and there is no objection whatsoever but there is no mechanism for an adoption to occur as a couple?

Mr KASSISIEH: Yes.

The Hon. JOHN AJAKA: But there is a mechanism for adoption to occur and for one of them to adopt a child?

Mr KASSISIEH: That is right. There is an example that has come to our attention as well. A couple in the United Kingdom who adopted had a similar situation. They could only have one parent legally adopt. The other has a parenting order in his favour so that both of them have some limited recognition as parents while the other has complete recognition as a parent. Second-parent adoption in that case would allow both of them to have the same status. Once the child is 18, they would continue having recognition of their family.

The Hon. JOHN AJAKA: You heard the earlier argument, and I just want to be sure that I have understood this correctly. It is not the situation that you are saying that same-sex couples want to compete against heterosexual couples for the right to adopt a particular child from a group. You are more concerned about a situation in which a child is already in that relationship with the same-sex couple or one of them, and the reality is that there is no other group or other couples who are trying to adopt a child. Do I have that right?

Mr KASSISIEH: That is right; it is about known-child adoption. But I would formally also say that there is no such thing as parents or prospective parents competing for a child. The law is clear on that: It is when the best interests of the child dictate that it will go to the parent who is most suited to that child's needs. There is no right for any person to adopt a child. We are not saying that same-sex couples are demanding a right or any such thing. All they are demanding is the ability to just have that gate open so that they can be assessed like any other couple in situations when there is a child already in their care and they are prevented by the law from having that recognition.

The Hon. JOHN AJAKA: It is not so much demanding a right; it is more the removal of a restriction. Is that a fair way of looking at it?

Ms GRAY: That is correct.

Mr KASSISIEH: That is correct.

Ms GRAY: There are two things that we are after: The main one is that we are concerned about the approximately 4,000 children that are in same-sex family relationships throughout Australia. Some of those children are already protected by recent legislation that came through the New South Wales Parliament extending parentage to same-sex female couples, but some of those children are still left out. We believe it is really important for those children who are left out to have legally recognised parents—not just for inheritance but also so that they have parents who can take them to the doctor or sign permission rights for school, et cetera.

The second category is opening up the category of unknown adoption. At the moment we have this bizarre situation where a single gay or lesbian person can adopt an unknown child, but a couple who would perhaps provide even a more stable and loving environment are not able to adopt, simply because of the person they are going out with or the person they are having a relationship with. We believe that those restrictions should be lifted.

The Hon. JOHN AJAKA: Thank you. Madam Chair, I apologise, but I have to leave.

The Hon. GREG DONNELLY: Recommendation 1 of your submission refers to a change in the definition. I am a little confused because on the one hand the evidence seems to be that you are primarily trying to put forward a position to deal with a situation that is quite discrete in terms of dealing with the rights of same-sex couples and their ability to adopt a child. But in effect, the proposed recommendation opens the field up completely. What it does is actually provide for the ability to adopt a child, whether it is a known adoption or an inter-country adoption, or whatever the arrangement might be. It seems to be a conflict. You are arguing a particular point, but the recommendation you are seeking covers the field, if I can describe it that way.

Ms GRAY: I suppose I could start answering this and Ghassan could follow up. The reason we have done that is, yes, we are seeking to cover the field and we are seeking to have discrimination removed. What we are trying to convey, I suppose, is that the majority of people who will be affected by this are the 4,000 children who already exist in same-sex families throughout Australia and who are part of those families in New South Wales.

Secondly, the reforms that have already happened in Western Australia, which now allow unknown adoptions by same-sex couples, resulted in only one child being successfully adopted by a same-sex couple. The reason that we are emphasising known adoption is because that is really where the majority of our concerns lie at the moment. Those children already exist and need the protection of two legal parents.

Mr KASSISIEH: Also the definition of "couple" applies to both known and unknown adoptions. So if you do not change the definition of "couple" as it is in the Adoption Act, things like step-parent adoption, which hinges on that definition and definitions such as "spouse" and "de facto" that also operate throughout the Act, also provide the mechanism for known child adoption. Step-parent adoption is based on who is defined as a spouse and whether you were a couple or not. At the moment, couple is a man and a woman, and spouse can only be an opposite sex partner. You would need to change those definitions to allow known adoption also to occur.

The Hon. GREG DONNELLY: The effect of granting a recommendation, as I understand it—and I think you have answered the question—is that it really does cover the field. It opens up homosexual couples to be able to adopt children, which is of course subject to the approval of the adoption as in inter-country, if such were permitted by overseas countries, local adoption, and what are known as the known-child adoptions. It would cover the field, would it not?

Ms GRAY: Yes, it would. Yes.

The Hon. GREG DONNELLY: With respect to adoption, this is the key part of the technical definition:

An adoption is the legal process by which a person legally becomes a child of the adoptive parents and legally ceases to be a child of his/her biological parents.

That is the effect of formally adopting a child. It is a formal legal cessation of the relationship with their biological parents, so it is obviously a very significant matter for that child. In the context of two homosexual men who seek to adopt a child, I am wondering whether the effect of granting the adoption of that child by those

homosexual men would be to terminate any legal relationship between that child and that child's biological mother. Is that correct?

Ms GRAY: The relationship that they would have with the child would be no different to the relationship that a heterosexual couple who had legally adopted the child would have with the birth mother. We are not seeking any special considerations here. It is exactly the same relationship as would exist between the heterosexual couple who had adopted a child and a male homosexual couple. However, another one of the—

The Hon. GREG DONNELLY: I invite you to answer the question. My question to you was that in the particular case with respect to two homosexual men adopting a child, the effect of granting the adoption would be to cease any legal relationship between that child and that child's mother. Would that be the case?

Mr KASSISIEH: It could be that the child's mother's relationship had already actually ceased, and what has happened is that only one of those parents has been able to adopt, in which case the child has only one legal parent—one of the gay dads.

The Hon. GREG DONNELLY: Hang on, you are raising a hypothetical situation, and I am not.

Mr KASSISIEH: Actually it is a situation that we have outlined from a couple who have come to us.

The Hon. GREG DONNELLY: Hang on. I am interested—

CHAIR: No, do not hang on.

The Hon. GREG DONNELLY: Hang on.

CHAIR: No, do not hang on. Keep going, but the interchange is not happening.

The Hon. GREG DONNELLY: I am just posing the question and I am trying to get a clear answer. I will put the question a third time. In the case of two homosexual men adopting the child, the effect of that adoption would be to terminate any legal relationship between that child and that child's mother. Is that the case?

Mr KASSISIEH: Yes. Like any adoption, it terminates the legal relationship with the birth parents, yes.

The Hon. GREG DONNELLY: So it would terminate the legal relationship completely.

Mr KASSISIEH: For any adoption, that is the effect of an adoption order.

The Hon. GREG DONNELLY: Let us remember that under any of these circumstances, such as inter-country, local adoptions and known-child adoptions, the effect of lesbians being granted adoption of a child would be to terminate completely any legal relationship between that child and that child's biological father, would it not?

Ms GRAY: I am not sure I understand this line of questioning because at the moment it is exactly the same relationship between the child and the lesbian parents or, as you put it, homosexual male parents as it is between a homosexual couple who are adopting a child.

The Hon. GREG DONNELLY: Ms Gray, you may not understand my line of questioning, but I will repeat it. If you have two lesbians—

Ms GRAY: You do not need to repeat the question. Yes, that will.

The Hon. GREG DONNELLY: So the answer is yes, it will terminate the legal relationship.

Ms GRAY: As it would in any other adoption process with a heterosexual couple, yes.

The Hon. GREG DONNELLY: So that child would no longer have a legal relationship with their biological parents.

Mr KASSISIEH: Except where a child is currently in a situation where only one of the current parents is recognised, in which case it will not eliminate the existing relationship with the parent but would add a second parent. That is an example of a second parent or a step-parent adoption where there is currently only one legal parent. What the Adoption Act allows is for another parent to formally have parentage granted for an adoption order granted without severing the relationship with the existing parent. The child would have two legal parents instead of one.

The Hon. GREG DONNELLY: But in the particular case I referred to, and to which Ms Gray has responded, the actual relationship in the second example between the child and his or her biological father would be terminated. That is the position, as I understand it.

Mr KASSISIEH: In unknown adoption, yes.

The Hon. GREG DONNELLY: Can you help me out by explaining an issue that I am sure is something that you have considered and reflected upon? With respect to the Family Court jurisdiction in Australia exercised by a Family Court Judge or a Federal Magistrate who deals with the Family Court jurisdiction, currently there is capacity under section 64B (2) to provide for parenting orders. Is that the case?

Mr KASSISIEH: Yes.

The Hon. GREG DONNELLY: Are you familiar with that provision of the Family Law Act, which is Commonwealth legislation?

Mr KASSISIEH: Yes.

The Hon. GREG DONNELLY: I will not read through it, but it is quite a comprehensive provision which deals with a range of aspects of what could be the parenting order made by the Family Court under the respective section. The final point states:

- (i) any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

Ms Gray a moment ago spoke about the example of having to change the legislation in New South Wales for adoption to enable a same-sex couple to obtain the recognition that would enable them to complete a school note or to let the teacher know that the child is sick. I hope I have got that right. It is my understanding that if a parenting order is issued under the Family Law Act, they are precisely the rights granted under the order to enable people to do things like that when dealing with aspects associated with the wellbeing of the child, such as when the child is going to school or in a whole range of other circumstances.

Mr KASSISIEH: Until they are 18.

The Hon. GREG DONNELLY: Yes.

Mr KASSISIEH: It grants parental responsibility, which is different from legal parentage. Legal parenting is a whole order of rights and responsibilities granted in common law and in statute to parents and children. Parental responsibility is a smaller area; it is akin to being like a foster carer. You have responsibility for care and welfare, so you can make decisions on things like medical conditions, school permissions, and you need to be consulted, for example, on the child's religious beliefs and schooling requirements.

What it will not provide is if there is any law that says a parent or a child receives a certain right or benefit, and the parent is defined under the law either to have a parentage presumption, which a parenting order would not be included in, or under common law, which would include biological parents, or under an adoption order. Parenting orders do not change the definition of a parent and child for any other area, such as inheritance laws. Also parenting orders expire once a child is 18, so that child again becomes a legal stranger to their parents once they are an adult.

Ms GRAY: Can I add something?

The Hon. GREG DONNELLY: Sure.

Ms GRAY: Another aspect in relation to parenting orders is that although they can be very useful, in a number of consultations that the Gay and Lesbian Rights Lobby have done, and also the Australian Human Rights Commission, many community members indicated the long time it often takes to get a parenting order and also the cost involved is an added stress for same sex families that heterosexual couples and families are not subject to. So we do not believe that same sex couples and families should have to go through that arduous process.

The Hon. GREG DONNELLY: Sorry, I do not understand your point about same sex couples being subject to that, because the vast majority of applications before the Family Court dealing with parenting orders would be heterosexual couples.

Ms GRAY: Sure. But this is specifically in relation to—

The Hon. GREG DONNELLY: So, they would be exposed to the same costs. There is no discrimination here; this is the issue of dealing with getting a parenting order whether you are heterosexual or homosexual?

Ms GRAY: But parenting orders in relation to, for example, an opposite sex couple, the adoption would be available; or where the recognition of a lesbian mother would be available—which is now available, given that the legislation recently went through the New South Wales Parliament—we are talking specifically about same sex couples having to get parenting orders when adoption should be there for them as it is for opposite sex couples.

The Hon. GREG DONNELLY: That is what you claim is a right that they have, that is the lobby's position.

Mr KASSISIEH: The parenting order was traditionally made when relationships broke down. A court can order between the parents things like where the child would live or what time is spent with each parent. It can also order parenting orders and responsibilities to people who are not parents, people who have an interest in the care and welfare of a child. So they have broadened their scope, but gay and lesbian families have had to use them as the primary form of recognition and for a purpose that they were not supposed to be made for. That is, a child living with a same sex couple for their entire life can only rely on a Family Court order that expires when they are 18 to grant any sort of recognition of that parent's role in that child's life. By contrast, an adoption order—

The Hon. GREG DONNELLY: Sorry, at 18 that is the age of—

Mr KASSISIEH: Majority.

The Hon. GREG DONNELLY: I have more questions, perhaps I will have time later.

Ms SYLVIA HALE: You have stated that it is possible for a single gay person to adopt a child, but it is not possible for a gay couple as such to adopt.

Ms GRAY: Yes.

Ms SYLVIA HALE: Have you found any cases where single gay people seeking to adopt have faced any discrimination or additional difficulties as compared to couples who seek to adopt by virtue of the fact that they are single rather than part of a couple?

Ms GRAY: Our understanding of the research is that far fewer single people are chosen as adoptive parents as opposed to couples. The numbers would be quite small. Mr Kassisieh may have something to say.

Mr KASSISIEH: New South Wales is different from other States. Generally other States allow only individual adoption in special circumstances; for example, for a child with special needs. The Queensland legislation says that, as an example. New South Wales simply goes on objective criteria: Is this person fit and proper to care for a child, and have the resources and support required? There is no legal impediment, no difference for a couple or an individual under the law. The adoption process is guided by the wishes of the relinquishing parents. Generally they have to consent to where the child is placed and often, post the adoption,

there is a formal plan around contact and maintaining a relationship with the birth parents. It is negotiated through those other less legalistic processes.

Ms SYLVIA HALE: If you say that the criteria for adopting are of being fit and proper and able to provide a suitable environment, it appears, if one is to be consistent, that to give it to an individual and to deny it to a couple is far more detrimental to the welfare of the child than the existing relationship.

Ms GRAY: That is correct, and that is one of our main arguments. We believe there are so many same sex couples in our community who already have children that those children would benefit a lot from having two legal parents. In the case of unknown adoption, we also think it would be better for children to have the love and care of two parents rather than one. That is one of the main reasons why we think the law should be changed.

Ms SYLVIA HALE: There seems to be agreement, regardless of one's ideological perspective, that two parents are better than one. However, there is one school of thought that contends that it has to be a man and a woman. Would you care to give your perspective on that position?

Ms GRAY: Yes. We have looked at very credible research over the past few years, some Canadian research, research by the Australian Psychological Association and Victorian research by an academic named Ruth McNair. All of that research confirms that it is the love and care given to a child rather than the gender of the parent is that contributes mostly to the child's intellectual, moral social and emotional wellbeing growing up, and as an adult. I know some people question that and pitch research against research, but the research we now have is quite credible. A lot of it has been done over a 30-year period and so we believe that there is no reason why a same sex couple is any less loving or less beneficial to a child than a heterosexual couple.

Ms SYLVIA HALE: Are you saying that there is longitudinal research available?

Ms GRAY: That is correct.

Ms SYLVIA HALE: It seems to be one of the difficulties that that research is a relatively recent phenomenon.

Mr KASSISIEH: There are some longitudinal studies developing. Those studies have developed in sophistication. The main studies previously, 30 or so years ago, looked at children who were brought up by lesbian or gay parents who were previously in heterosexual relationships. More so, research has looked at children who are born into same sex families. The McNair study that Emily Gray spoke about was done for the Victorian Law Reform Commission's inquiry into ART and adoption. It did a review of both the critics of same sex parenting research and the same sex parenting research and looked at the methodology. It found that the methodology was becoming more sophisticated; they were having more objective external sources to test the liability of parenting accounts. Also, a lot of those children have grown up so we are starting to get some research directly reporting the experiences of those children. As with any research it is limited to its methodology.

There has been research in this area for a good 30 years, so it is a continuing body of knowledge that develops. Certainly at this stage no detriment has been found to any child who has been brought up by a gay or lesbian parent. In some cases there have been positives; parents have been found to use less physical discipline, for example. There are claims from both sides, but I point the Committee to the McNair summary for a really good critique of the critics of the research and why their arguments around methodology cannot stand in light of the way that the research has been done and developed.

Ms SYLVIA HALE: Would you provide the Committee with that reference?

Mr KASSISIEH: Absolutely.

Ms SYLVIA HALE: One of the difficulties confronting the Committee is that each person's reference is counter-checked by another person's reference. Trying to weave one's way through the mass of research or the lack of research is difficult.

Mr KASSISIEH: We did list it under section 4.2. The first is the Australian Psychological Society, the most recent review published in 2007, it is footnote 93, Susan Johnson and Elizabeth O'Connor. Sorry, it is

Elizabeth Short and others. The Victorian Law Reform Commission Report, in 2004 by Dr Ruth McNair, "Outcomes for children born of ART and diverse range of families".

Ms SYLVIA HALE: In New South Wales there are three agencies that facilitate adoption, one is Barnardos Australia, another is Anglicare, and another is CatholicCare. In evidence this morning the Committee discussed the position in the United Kingdom, where the law now requires that they treat all couples, or all people seeking adoption, even-handedly regardless of their sexual orientation. The suggestion was that the Catholic agency was considering withdrawing from the adoption process entirely because it felt that it could not participate in finding places for children with gay couples for religious reasons. The suggestion was that in New South Wales that would be handled by some sort of religious exemption by those agencies being granted. If they chose to decline to find places for children with same sex couples they could do so. What is your view of such exemption?

Mr KASSISIEH: There is already an exemption in the ADA in relation to goods and services. Sorry, it is a blanket exemption, section 56, a religious exemption that has four parts. It applies also to homosexuality as a ground and marital status, I think it is called marital or domestic status and includes same sex couples. It applies to the provision of goods and services. So adoption service providers would be classed as a service provider there.

CHAIR: Would there have to be legislative change in order for that to follow through to ensure that the exemptions existed?

Mr KASSISIEH: The exemption exists at the moment.

CHAIR: I understand that, but there is some suggestion that if this legislation were to be changed perhaps work needs to be done to ensure that exemption exists.

Mr KASSISIEH: But would that not undermine the removal of discrimination in the first place?

CHAIR: I understand that.

The Hon. DAVID CLARKE: You are saying that the exemption should go?

Mr KASSISIEH: No, I did not say that at all.

The Hon. DAVID CLARKE: What are you saying?

Mr KASSISIEH: I suggest that if it is a service provider that is being commissioned by the Government to provide a service that is public taxpayer funded, to not play by the eligibility criteria that any other service provider would have to do, is to give a special exemption to a service provider that essentially provides a secular service.

The Hon. DAVID CLARKE: So you do not believe that exemption should remain?

Ms GRAY: We can take that question on notice to see if any legislative change would be needed if you did want to continue the religious exemption.

Ms SYLVIA HALE: It is my understanding that, for example, the exemptions as they apply to private schools in terms of whom they hire, that these cause a fair amount of heartburn.

Ms GRAY: As an organisation that advocates equality in social justice for members of our community, obviously we would be opposed to such an exemption taking place. That is not only because we believe it should be up to the parents, the relinquishing parents, to choose what families they want their children to go to and that is simply the criteria for allowing families to be in the pool, that should be removed. That is how we believe it should occur. At the moment the exemptions that currently exist for private schools do cause a lot of children and teenagers in our community a lot of grief, and also a lot of gay and lesbian teachers are able to be sacked because of their sexuality. We oppose such an exemption.

The Hon. GREG DONNELLY: You would be aware that that exemption has been overruled by a court in New South Wales, and which is subject to appeal with respect to a foster carer?

Mr KASSISIEH: No, the exemption has not been overruled. That decision made a finding of fact on the basis of a situation where a foster agency from the same denomination as another foster agency, which did accept same sex couples, argued that it was part of their religion to deny same sex couples. They could not prove on the facts that when another foster care agency from the same denomination did allow same sex couples, that there was any consensus on doctrine, so it could not use that exemption in that case.

The Hon. GREG DONNELLY: The exemption has been overruled by that court's decision.

Mr KASSISIEH: In terms of the facts on that particular case.

The Hon. DAVID CLARKE: If the exemption was not overridden, you would like it to be overridden

Mr KASSISIEH: I would probably say that the exemption is too broad.

The Hon. DAVID CLARKE: That is what I am saying. If it were not overridden, as Mr Donnelly said that it was, you would like it to be overridden?

Mr KASSISIEH: We certainly do not support a public funded service provider discriminating against lesbian and gay men.

The Hon. DAVID CLARKE: So is the answer to my question yes?

Mr KASSISIEH: I think the question is very broad. There are specific issues there of balancing very complicated rights to religion and rights to equality and I do not think it can be answered that easily.

The Hon. DAVID CLARKE: Except I thought Miss Gray said yes? You do not want that exemption to remain?

Mr KASSISIEH: In relation to adoptions?

The Hon. DAVID CLARKE: Yes.

Mr KASSISIEH: Absolutely, if the eligibility criteria allows same-sex couples.

The Hon. DAVID CLARKE: Ms Grey you said you are not advocating the right of same-sex couples to adopt a child where neither is a biological parent of a child but only where there is such a relationship, is that correct?

Ms GRAY: No. I said our main concern is for the children who already exist in same-sex relationships. So we are advocating for that but we are also advocating for unknown adoption.

The Hon. DAVID CLARKE: One could have got the impression that you were mainly focused on same-sex couples being entitled to adopt but only where there is a biological connection between one of the parents?

Ms GRAY: What I was trying to say is that is our biggest concern at the moment because in the cases where unknown adoption has occurred in Western Australia, for example, where that is legal, I know one such case over the past five years where that has occurred.

The Hon. DAVID CLARKE: While it is your biggest concern it is not your only concern. You want a total removal of any restrictions whatsoever in regard to same-sex couples being able to adopt?

Ms GRAY: Restrictions on same-sex couples being able to adopt, that is correct.

The Hon. DAVID CLARKE: The Committee is faced with this situation. It has a lot of research before it, medical research, scientific and so forth that it is not in the best interests of children to allow same-sex adoption. You refer to credible evidence the other way but other people say that your evidence is not credible and vice versa. The Committee has a situation where there is research on both sides and who decides what is and is not credible? Why would the Committee not come down on the side of caution until it is clear? You say there

is research going back over 30 years but those who oppose same-sex adoptions will say they have a lot of research as well. Why would the Committee not come down on the side of caution?

Ms GRAY: I understand the Committee must find it quite overwhelming to have contradictory evidence from both sides asserting that it is in the best interests of the child to have or not to have same-sex parents. I understand the contradiction but the reality of the situation in Australia and in New South Wales at the moment is that there are 4,000 children who already exist with same-sex parents where those children only have one legal parent because of the discriminatory laws that exist. We do not believe that is in the best interests of the child. We believe it is in the best interest of those children who already exist for the law to recognise that they have two legal parents, for a whole range of reasons.

The Hon. DAVID CLARKE: But what you are proposing is going to go well past the 4,000 children that you are talking about. The Committee has a lot of research that says it is not in the best interests of children to be adopted by same-sex couples. I again ask you why the Committee should not come down on the side of caution with this conflicting research?

Ms GRAY: I think coming down on the side of caution could be coming down on the other side. You could also be jeopardising the best interests of the children that do already exist in Australia with same-sex parents. We do not think that is coming down on the side of caution; that is coming down on the side of discrimination. Actually it is a lot more dangerous than allowing the law to objectively include same-sex couples in the criteria for the adoption process.

The Hon. DAVID CLARKE: The issue is not discrimination: The issue is what is in the best interests of the children.

Mr KASSISIEH: That is correct and we are saying it should be done on a case-by-case basis, taking people as they are in their circumstances and according to objective criteria. If they, like any other couple, cannot show you that they are fit and proper persons to bring up a child then they should not be placed in a pool of eligible persons to be considered to adopt a child. They should be judged on their individual merits without discrimination in a law that offends the dignity of people who are already parenting, people who are teachers, people who are social workers, and people who contribute a great deal to children in this State.

The Hon. DAVID CLARKE: But the Committee has a lot of research which tells us we should draw a different conclusion?

Ms GRAY: Historically there has been lots of research about lots of different minority groups saying they are not fit to be parents or not fit to marry people of another race. There is research, for example, going back decades in America not allowing African Americans to marry white people. That kind of research has a place in time and I think the majority of Australians now realise that it is the love and care that a child receives rather than the gender of their parents that determines their well being.

The Hon. DAVID CLARKE: With great respect it is not a substantial argument to say centuries ago research said you should not marry someone of a different race. We are talking about scientific medical evidence now. The situation is that the Committee has a lot of evidence that suggests the contrary to what you are saying. For instance, I have a lot of experts here as well but none of them are mentioned in your submission?

Mr KASSISIEH: I have pointed you to the reviews that do engage with the critics and they also draw flaws in what the critics say. We are not social researchers ourselves but we can read people like the Australian Psychological Society that puts out a review of credible research that has been peer-reviewed in scholarly journals which look at sociological as well as psychological markers of children's development.

The Hon. DAVID CLARKE: I understand that. You can look at those and you can quote those but in response I can quote Dr Lerner and Dr Nagai and Professor Judith Stacey and a host of others who go the other way. You can quote those people and so can I but they come to diametrically opposed views. That is why I am saying I have to be convinced beyond any reasonable doubt that it is going to be in the best interests of the children.

Ms GRAY: That is why we are emphasising the children that do already exist. I do not want to repeat myself endlessly on this point.

The Hon. DAVID CLARKE: But you do not restrict it to those who already exist, you want to extend it further?

Ms GRAY: State and Territory governments throughout Australia have been recognising the co-parents in lesbian couples, for example, where you have one biological mother and one lesbian non-biological mother who are partners. Most States and Territories now recognise the second parent as being a legal parent. Similarly we have just had over 100 pieces of legislation introduced at the Federal level acknowledging the legitimacy of same-sex relationships. Now there is lots of research going back decades I am sure on the appropriateness or non-appropriateness of same-sex relationships and the effect of those relationships on the broader community, especially research that comes from a religious background. We understand why some people hold those views. We do not agree with those views but the reality is the laws are moving in a particular direction. There are over 20,000 gay and lesbian couples in Australia and there are over 4,000 children living in those families and we believe it is time for the law to catch up and recognise those families.

The Hon. DAVID CLARKE: Except the researchers that I refer to are not religious but scientific.

The Hon. AMANDA FAZIO: I have read your submission carefully and I appreciate what you are really asking for is equality and an end to discrimination but in relation to your second recommendation I want to clarify a couple of aspects. In your submission on page 36 you talk about the age of child requirement and the length relationship requirement. I am interested to know whether you are suggesting those two requirements should go? Because in the case of children born to gay and lesbian couples who assist with reproduction technology you would have one custodial parent and one genetic parent who is not part of that relationship. Do you believe that the other half of the couple should not have to wait until the child is five years old or that they have lived with a child for three years before they can adopt?

Mr KASSISIEH: Our position on second parent adoption is different from the presumption in relation to ART—that automatically applies from the time of birth. The birth mother and her male or female partner or married spouse is recognised as a parent from birth. We are saying that the age of the child restriction should be removed because second parent adoption will be most relevant where the current presumption does not apply or due to discrimination in other areas, other jurisdictions in particular where one of the parents could not fully benefit from that presumption. I have given three examples in that section.

In relation to the length of relationship requirement we are not recommending any change. We are just saying that it does not need to be stated because it is already stated in the definition of a spouse or a couple which automatically specifies that they need to be together for at least three years before they can qualify. It was because it was doubling up essentially.

The Hon. AMANDA FAZIO: That is all I needed to clarify, thank you.

(The witnesses withdrew)

CHAIR: I ask all members of the public and the media to leave the room please. Reverend the Hon. Fred Nile if you wish to stay in the room you will have to become part of the Committee and move to the table. The Committee is able to co-opt members from the upper House to sit with us but you do not have voting rights.

(Reverend the Hon. Fred Nile joined the Committee)

(Evidence continued in camera)

(Public hearing resumed)

DAMIEN FRANCIS TUDEHOPE, Solicitor, Family Voice Australia, sworn and examined:

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr TUDEHOPE: Yes, I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that, and the Committee will consider your request. If you take any questions on notice, the Committee would appreciate it if the responses to those questions could be forwarded to the secretariat by Friday 13 March. Would you like to begin by making a short statement?

Mr TUDEHOPE: I take it that members of the Committee have two submissions made by Family Voice Australia, which are the initial submission and a supplementary submission addressing the secondary issue that was raised by the terms of reference relating to organisations that may be impacted as a result of amendments to the Adoption Act.

At the outset I state that there is a tendency in relation to these sorts of inquiries to polarise the positions of the people who appear before them. What I would like to say at the outset is that by adopting the position whereby we oppose same-sex adoption, it should not be construed in any way as adopting an anti-gay position. We are not discriminating against or proposing to discriminate against people of a different sexual orientation. We just oppose this amendment to the Adoption Act.

Often the way these sorts of terms of reference pan out is that there is a sort of fundamentalism which goes with them. The fundamentalism is that, if you oppose same-sex adoption, you must be anti-gay. That is just not the case. In fact, we think it is a wrong notion to construe that anyone who opposes same-sex adoption is necessarily anti-gay. We just say that there is a different way of approaching it, and our fundamental position is that adoption ought to be confined to heterosexual couples. We think that primarily that fits with the objects of the Adoption Act and fundamentally we say it is in the best interests of children, which we say is what adoption is all about.

Ms SYLVIA HALE: There is no question that there is research on both sides suggesting either that it is in the interests of the child to proceed with same-sex adoptions or that it is against the interests of the child. What strikes me when I observe the way in which my daughter and her partner are raising their child compared to the way in which I was raised when a child is just how roles are changing. For example, yesterday their 15-month-old child was ill, so her father stayed home to look after her. Usually her father gives her a bath and changes her nappy, or whichever parent is there. The contention that there is quintessentially a man and a woman who provide the complimentary aspects of a relationship, although that may once have applied in a very gendered or sexual stereotype society, is no longer the case.

Increasingly we are finding that men are perhaps becoming freer in their relationships with other people as evidenced by a preparedness to kiss their children in a way that, say, my father might not have been prepared to do, so it would be wrong and counter-productive to pretend there is a male and female ideal that must govern the adoption relationship. Would you comment on that? I would like to have your response.

Mr TUDEHOPE: If you are saying to me that there is no difference between men and women, I fundamentally disagree with you. I think that there is objectively and in whatever way you want to look at it different roles that men and women play. If you are saying that men increasingly are able to provide nurturing in the same way as we have traditionally understood that women have provided nurturing, certainly I would agree that there is emphasis. I do a lot of work in saying that men ought to provide more assistance around the home than they currently do. In your father's and my father's lives, the whole of home maintenance was generally looked after by mum, and dad would be the breadwinner. I accept immediately that that role has changed.

Ms SYLVIA HALE: If we concede that there are women who cannot bear children and there are men who cannot fertilise eggs, we cannot say that the sexual distinction is one of a biological nature. Can you provide the Committee, and I do not expect you to do that at the moment, with those aspects of women that

cannot be found in men, and vice versa? If you are convinced that there is this essential difference, I would like to know what it is.

Mr TUDEHOPE: In our submission, we have addressed it, but probably in a limited way. There are different roles that men and women play in relation to their impact on their children. There are different ways of looking at it, such as the way that you might come into a family and look at the way in which the family members interact with each other. You might say that there is dad doing things like the washing up, which probably in your father's and my father's case they never did. You might say is that not a development in society? But what I would like to say is that if you are looking at it in terms of the impact of the father on the child, that is the important point that you need to be making in relation to this inquiry.

I would expect, and you would expect, and you expect that most people would expect, that fathers play much more of a role in their homes than fathers previously did. What I am asking is, though: Has that changed the relationship that the child has with the father, and those things that the father brings to bear on the development of a child? I say that in terms of perhaps the authority that a father brings to bear in his own home, not because he exercises more authority or less authority, but because of simple things such as perhaps the tone of his voice or the way that he perhaps watches sport on television. Men still do those sorts of things.

The fact of the matter is that although we might have changing roles in terms of affection and nurturing, fathers and men are different and have different interests and deliver different messages to their children, which their children accommodate.

Ms SYLVIA HALE: What I see happening is that messages now delivered by fathers are very different from messages delivered in, say, Victorian times. For example, one can see a far greater intervention by fathers in the raising of their children, their preparedness to sit down and read to their children, a whole range of behaviours that were not present 100 years ago. Children learn from behaviours as they are expressed on how their parents relate to them.

Mr TUDEHOPE: Let me engage on that, because you raised the issue of reading to children. Perhaps I draw the distinction between the way I read to my children and the way my wife reads to our children. We both do it, and you might say that is a great thing, but the things that I may emphasise when reading to the children and perhaps talk about when reading to them may well be different from the things that she talks about and emphasises. There is a difference.

Ms SYLVIA HALE: Yes, but the things I emphasise when reading to children or grandchildren could well be different from the way that Ms Fazio and Ms Robertson ever read to children. There is such a variety within women, and such an equal variety within men, that it is impossible to say that some behaviour is totally exclusive to men and some totally exclusive to women. Because you cannot supply both of those in a relationship, therefore same sex couple adoption should not continue.

Mr TUDEHOPE: Do I construe from that that you will accept that there is no difference between males and females in relation to their roles?

Ms SYLVIA HALE: I am quite happy to accept that there is a huge variation amongst individuals and a lot of that may be socially stereotyped. Of course it comes down to nature versus nurture. I am saying that the differences between individuals will often outweigh the supposed differences between men and women.

Mr TUDEHOPE: I do not think we can achieve a lot by you and I bouncing each other backwards and forwards in relation to that. Perhaps some material is available, I suppose scientifically, which goes to cranial activity that is different in women and men, and the reactions in relation to an emotional stimuli which relate to men and women that are treated differently. If necessary I will provide the Committee with that information.

The Hon. DAVID CLARKE: Mr Tudehope, as I understand it about 60 per cent of adoptions in New South Wales involve children from overseas, from countries that do not allow same sex couples to adopt. If the law is changed to legalise same sex adoptions in New South Wales, I can foresee as a result of court activism and intervention, the Department of Community Services being precluded from drawing applicants from only heterosexual couples. I foresee the courts declaring this as discriminatory. Is this something you see that could possibly eventuate? In other words, could it result in our sources of adoption drying up?

Mr TUDEHOPE: There are two things I can say about that. First, there probably would be an inconsistency between Australia's obligations and The Hague convention in relation to that. Second, you are probably dead right: There would be circumstances in which two things would occur. Existing adoption agencies may move out of the field altogether because they would take the view, as they did in the United Kingdom, that they could no longer continue to operate in a field where it would be in breach of the law not to offer adoption services to homosexual couples or same sex couples.

The Hon. DAVID CLARKE: Particularly if their exemptions were withdrawn, as is proposed by the gay and lesbian lobby?

Mr TUDEHOPE: The United Kingdom certainly had that issue. The biggest provider of adoption services in the United Kingdom was the Catholic Church. In fact, the Catholic Church had to indicate that it would withdraw from offering adoption services in the United Kingdom because of that change to the law in circumstances where the Catholic Church was the biggest offerer of adoption services to the most difficult cases of children who needed adoption. That would be very serious if it related to, as suggested, Centrecare in Australia and New South Wales who do offer adoption services.

Another real concern is that there is already on the books a case involving the Wesley Mission where a discrimination action was brought against the Wesley Mission because it refused to accept a gay couple for the purpose of fostering a child. In those circumstances it ran completely contrary to the principles and religious convictions of the Wesley Mission to do that. They found themselves in contravention of the law. There are really complex issues that would have to be worked out in relation to how you would deal with the adoption providers.

The Hon. GREG DONNELLY: Thank you for coming today to provide additional information to this inquiry. At this stage I do not want to specifically question you on your submission, but I take you to a couple of statements I would like you to respond to because they deal with the issue that you were endeavouring to grapple with in your discussion with Ms Hale. I refer to some commentary by Dr William Pollock, the Assistant Clinical Professor of Psychiatry at Harvard Medical School. It is a secular university. This is not a case of religious ideology, religious perspective, coming to bear; this is a clinical professor at a secular university. His well-known book was published in 1999. Chapter 6 deals with the issue of fathers and sons and the relationship between the two. He started the chapter by referring to the special role of fathers, and the first words are:

Fathers are not male mothers. Interactions between fathers and sons are, as we know, crucially important in a boy's life.

Regarding the comment about fathers not being male mothers, or that fathers are not mothers, from your research does the phrase come up often that researchers comment on in relation to the nature of manhood and fatherhood compared to women and motherhood?

Mr TUDEHOPE: Absolutely. The objective studies relating to it relate to absent fathers arising as a result of breakdown of marriage. A lot of my experience relating to Family Law matters, where fathers become absent and then, in those circumstances, the impact on children arising from that, is that the material would seem to indicate that the effect on those children is that they suffer serious issues relating to their performance at school, there are serious delinquency issues relating to the absence of the father, and generally those children do not do nearly as well as families where the father is present.

The Hon. GREG DONNELLY: In the chapter "Real Boys", he deals with the issue, for example, of the nature of play and how fathers play with their children differently from the way in which mothers engage with their children.

Mr TUDEHOPE: Yes.

The Hon. GREG DONNELLY: It states that with respect to the fathers, play tends to be more vigorous with boys, and forces a boy to learn to read their father's emotions. It is through that exchange of watching how the father reacts to boisterous play that the son learns to understand human emotion. He gives some detail in examining that. Are these the types of subtle matters that you were alluding to in your discussion with Ms Hale? That these things are not completely measurable in specific time, distance or quantity, but rather go to the whole issue of human nature?

Mr TUDEHOPE: I tried to do it badly, I suppose, in relation to the way I read to my children. The example that you used in relation to play is an excellent example. There is no doubt that women play with their children, men play with their children, but they do it in different ways.

The Hon. GREG DONNELLY: Perhaps I will switch from that example to Dr Bruce Robinson. Once again I am talking about a secular university, the University of Western Australia [UWA]. Dr Robinson heads the Fathering Project at UWA. His book, released last year, was entitled *Daughters and their Dads*. In that book he looked through 2,000 published articles that deal with the issues of gender, fatherhood and daughters, and more than 40 books. He also conducted research that he converted into the book, including 400 interviews across 15 countries. He examined what came out of those sets of interviews. Under the heading "Why the father/daughter relationship is important" he wrote:

There is an incredible power in the father/daughter relationship, a power which strongly influences a woman's future for good or bad. Girls long for affection and affirmation from their fathers. The influence that fathers have on their daughters is profound and lasts for the whole of their lives and it creates a hole in their lives if it is absent ...

Many published studies have confirmed the powerful effect that fathers have on daughters with few dissenting voices.

The footnote gives 10 academic references. Would it be consistent with your submission that there is fundamentally a difference in the nature between manhood and womanhood and in terms of that nature when it comes to the rearing and nurturing of a child that really that is the optimal arrangement that the State should continue to honour as the arrangements for the adoption of children in this State?

Mr TUDEHOPE: Absolutely. If you accept that that is the optimal arrangement—and I submit that it is—the position of public policy in relation to the way we deal with and create legislation is that the onus is on us for the benefit of children to create the optimal situation. I put this to you: Assuming that there were competing couples, one a gay couple and one a heterosexual couple, both of whom sought to adopt a child, no one could tell me for one moment that there is not a difference between the two couples. There is a difference. If we are asking what is the difference, it is fundamentally observable that one provides a different model of family than the other. In the interests of the children the best one to choose, and what public policy ought to choose, is to say that the one we would support is the mother and the father role.

What I would like to say is this. I remember in 1975 when we were considering amendments to the Family Law Act all those that were suggesting that divorce had no impact on children, and there were lots of studies that showed that children cope overwhelmingly well with divorce. It was one of the reasons why government pushed a no-fault divorce scheme—it was an adult-centred arrangement. Since then the bulk of evidence has been that divorce is not good for the kids. If today we are saying we are going to amend adoption arrangements, are we going to go down the same track and say that same-sex adoptions have no impact on children? Because there is nothing that says that it does not have an impact on children.

The studies that seem to support no impact are flawed studies—and I have referred to those in our submission. The fact of the matter is if we go down the track of saying we want to adopt same-sex adoptions we are going down the track of saying we accept the evidence that it has no impact on children and I would say there is no evidence to support that position.

The Hon. AMANDA FAZIO: I want to ask you about the fact that other inquiry participants have referred to extensive research concluding that it is a family process, such as the quality of parenting and relationships within family, rather than family form that determines the well-being of children and their long-term outcomes. Are you saying that you believe the research that you are quoting in your submission refutes that?

Mr TUDEHOPE: Absolutely—well, let me just say this. There are lots of families. In every family there are processes which impact on the way children turn out as individuals. There are lots of heterosexual families where kids turn out and have dramas in their lives. What we are dealing with here is circumstances where we are dealing with parents who have the best interests of children but who want to adopt them. We want to choose the model that delivers the best outcome for children but once the child goes into the family impacting on that family are the processes to which you refer of the love and nurturing that is provided within the family. But before we get there we are making a decision about what is the best model for that child to go into. What we are arguing is that the best model is where there is a man and a woman.

The Hon. AMANDA FAZIO: In your opinion are there any circumstances where adoption by same-sex couples would be more acceptable and in the best interests of the child, such as where the couple are related to the child or have fostered the child over a lengthy period and/or where the child has indicated a desire to be adopted by that particular same-sex couple?

Mr TUDEHOPE: We are seeking here to deal with an amendment to the Adoption Act. We are saying this is an Act that provides for adoption. We are not seeking to deal with hard cases. Overwhelmingly I would say the nature of adoption is that it changes forever the parenting arrangement of that child. It says that the parents of the child are the adoptive parents. Now we would say that notwithstanding that there are hard cases where there has been, perhaps, a long-term fostering arrangement or a child expressing a desire to be adopted by same-sex couple, we would not say that is a legitimate reason to amend the Adoption Act.

The Hon. AMANDA FAZIO: In instances other than adoption by same-sex couples are there any other areas in legislation where you feel that same-sex couples or gay and lesbian people should not have equal rights with heterosexual people?

Mr TUDEHOPE: In one sense we are not here to discuss that but let me just say this. This Parliament has dealt with those issues over a period of time to the extent, for example, that property issues have had to be dealt with and the Parliament has dealt with them. If there is a specific issue where there has been discrimination that is unacceptable to the Parliament it has dealt with. What I would suggest to you is if there is one thing that you want to identify as impacting on the way we treat same-sex couples then we will deal with that as a specific issue. For the purposes of this inquiry I am saying that we should not move away in relation to adoption to say that it is preferable to allow same-sex couples to adopt children in the same way as we allow heterosexual couples to adopt children.

The Hon. AMANDA FAZIO: Do you have any comments on the ability of same-sex parents of foster children in New South Wales? We heard evidence this morning that same-sex and individual gay or lesbian foster carers are actually providing that service in New South Wales now. Do you support that or do you believe that is inappropriate?

Mr TUDEHOPE: If there is a heterosexual couple available to provide fostering services again, for all the same reasons that I have addressed in our submission, I believe the best model for fostering children are heterosexual couples. But let me say this. When you hear from couples, or from anyone in relation to this, you hear one-off instances and generally they are emotional stories. The fact of the matter is when they come to give evidence to this sort of inquiry they will tell you all the wonderful things they have been able to achieve in fostering children and I have no doubt that that is probably right. But how many of the damaged ones have we ever met? Do they ever come and give evidence? The fact of the matter is if this inquiry is seeking to obtain evidence from individuals relating to their experience of same-sex relationships and same-sex parenting then it is incumbent, in my view, to seek to obtain the same sort of evidence from perhaps children or couples.

CHAIR: Do not give your advice, thank you.

The Hon. AMANDA FAZIO: I would like to point out Mr Tudehope that the evidence I was referring to actually came from organisations that facilitate foster care. It was not from individual foster parents but from organisations with a wealth of experience in the administration of foster care in New South Wales.

(The witness withdrew)

MS VICKI JOANNE HARDING, Management Consultant,

MS JACQUELINE ROSE BRAW, Public Servant and

BRENNA ALLEN HARDING, Student, affirmed and examined:

CHAIR: Welcome to the first public hearing of the Standing Committee on Law and Justice inquiry into adoption by same sex couples in New South Wales. We have regulations in relation to broadcasting guidelines that can be found at the back of the room. If you wish to communicate with anyone in the room please indicate to the secretariat staff that will assist you.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to witnesses under parliamentary privilege should not be abused during these hearings. I, therefore, request witnesses to avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. Could everyone please turn off their mobile phones for the duration of the hearing. Are you conversant with the terms of reference for this inquiry?

Ms HARDING: Yes.

Ms BRAW: Yes.

BRENNA HARDING: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. I might tell you that we will consider your request but the Committee may vote for that not to be—that is important to know if you have some confidential information. If you do take questions on notice, the Committee would appreciate if your responses to those questions could be forwarded to the Secretariat by Friday 13 March 2009. Would anyone like to start by making a short statement?

Ms BRAW: Yes. I am a parent without legal and accompanying symbolic recognition. I have been parenting Brenna now for just over seven years, most of her life in fact—she is 13 now, sorry 12 years old. She deserves the right to have her relationship with both her parents legally recognised. She deserves to feel secure emotionally, socially, legally and financially. As a family we have gone through our ups and downs like every other family. We are not perfect.

Recently we endured a period where we were very concerned about Vic's health. All three of us were involved in doctor's appointments, a surgical procedure and waiting for test results. Thankfully Vic's results were positive, were good, and we all celebrated. Thankfully Vic's parents were very supportive of both the legitimacy of my relationship with her and acknowledge my role as Brenna's other parent. But there was at least one doctor and several staff that we had to deal with that were not overtly discriminatory, not deliberately nasty, but they were uncomfortable with recognising us as a real family. I think in most cases it is not deliberate and some of it is ignorance or confusion or lack of familiarity with families like ours. The symptoms of this are a lack of eye contact, a fumbling with titles, not using words like "partner" or "parent". Under normal circumstances I, as an adult, can endure but under stressful circumstances when we were really concerned—especially Brenna as a child really concerned about one of her parent's welfare—it made things a lot more stressful for us and it was really noticeable.

Why should families like ours have to endure that extra level of stress, especially in circumstances like that? If the law were clear about this issue we would have more chance of being recognised as a real family, I would have legal status and it would make things much less complicated. Most of the reason why I want to adopt Brenna is for her security, both now and in the longer term.

I have made a verbal commitment to her and to Vicki and I have also made provision in my will. We have a relationship agreement that is in draft form at the moment and that we will amend and finalise in the near future. These are convoluted and complicated mechanisms that we should not need to put in place to ensure Brenna's security.

There are some other reasons why I would like to be recognised as Brenna's legal parent and I referred to these in my written submission. They have to do with my biological family. Both my parents are now gone but I do have a sister and her family—my niece and nephew and of course her husband. Whilst my parents were always understanding and accepting of my sexuality and my relationship, they had trouble acknowledging easily my role as a parent. It was never in their eyes a fully legitimate role. My sister would get Mother's Day cards and flowers et cetera and I would be overlooked. More importantly, my niece and nephew would always get birthday gifts and a birthday phone call on time and routinely, but sometimes I would worry that Brenna would be forgotten. I took it upon myself to ring them religiously—Brenna knows all about this by the way—and forewarn them that it was Brenna's birthday. I would organise a gift and remind them to make a telephone call. They were old and they had their own traumas to deal with in their lives. They were immigrants in this country. I do not blame them at all. It was difficult but I can really understand their struggles.

Similarly, although my sister is a lot younger I can understand that it is not easy for her. Now my parents are gone and she is the only biological connection I have left in this country, so I rely on her and I ask her the favour to ring Brenna on her birthday and give her Christmas presents. I guess the point I am trying to make is that with the law the way it is it does not support the connection with my biological family that is Brenna's right. If the law recognised me as a legal parent I believe that behaviour would probably change. It would reinforce to people who perhaps are a little more conservative that I am Brenna's parent and that Brenna is their family too. I believe Brenna misses out on some really important family connections because of that. That is all I want to say by way of opening statement.

The Hon. AMANDA FAZIO: In some of the submissions we have received there have been a variety of statements about the type of family that is best suited to the developmental needs of children in the short and longer term. Would you like to comment on what you think are the most important factors in a family environment that promote the wellbeing of children in both the short and longer term?

Ms HARDING: For me it is about being children being loved unconditionally; about them being somebody's first focus and the security that gives them so they feel secure and supported; that they are supported in their learning and personal development; that they are given room to be individual, and that their basic needs such as food and shelter are met. For me it is much more the love and the feeling in the family that is important to the children than who the individuals are in the family. That sort of support can come from two women, two men, one woman, a whole variety, and of course heterosexual couples can give that support to a child.

The Hon. AMANDA FAZIO: It has been suggested to us in some submissions that it is not in the best interests of children to be adopted into gay and lesbian families because they are likely to face difficulties arising from prejudicial attitudes at school and in the community. Would you like to comment on this concern and tell us how it has impacted on your family's experiences and whether you think it is valid or not?

Ms BRAW: We are particularly lucky. We live in a local community that is really supportive. Brenna's school environments have been very supportive. I have been parenting Brenna now for just over seven years and seen her through three schools. She went to a primary school and then into an opportunity class at another primary school and she is now in first-year high school. So far so good in this new high school. It is a new school and we have had a lot of support from the principal. We have been to see the principal and talked to the principle about the anti-bullying strategies they have in place as a way of measuring how supportive we think that environment will be. We are particularly active on that level. For instance, we consider where we live, who we socialise with and our friendship networks, and we want to make sure as much as we can that environments are safe for Brenna. I do not want to speak for Brenna; I think she can speak for herself. In my view I think we have been pretty fortunate that we have not experienced a lot of prejudicial attitudes directly. We experience a lot indirectly and sometimes just by not acknowledging our family as a real family. That feels like prejudice to me but it is not the sort of overt bullying that I think some children probably do experience. An example of a situation where we are totally accepted, it seems to us, is that Brenna plays soccer. We are about to enter into a new season. I could almost guarantee that most of the other parents are heterosexual. I cannot prove that.

The Hon. AMANDA FAZIO: It is your suspicion!

Ms BRAW: It is my suspicion, yes. We live in a fairly multicultural area and it is my guess that they are probably mostly heterosexual. No one has ever asked us any questions. They have seen both of us at soccer. I think they all know that we are Brenna's parents. They love Brenna. She is a great goalie and a really good team player. I have never felt uncomfortable. I am a soccer mum. I am the mum that usually takes Brenna to training and watches most of the soccer games. I have been totally accepted by that community. As I said, I do

not know that it is necessarily true of other families who live in other parts of Sydney and perhaps regional areas. Certainly in our case I cannot say that we have experienced a lot of overt prejudice.

Ms HARDING: I have a slightly different take on that question. I think it is a really interesting question. I think lots of children get teased and bullied at schools, for all sorts of reasons. Forty years ago it may have been because they were from Italian backgrounds. Sometimes it is possibly because they are the only Asian or indigenous student in the school. For whatever reason, kids will find amazing reasons to tease other kids. My approach to the fact that children get bullied and teased in schools or anywhere else is to address the teasing. What is going on that causes children to do that to other children? We had a slight issue for Brenna in grade 3. All I could think of was that this boy had heard those teasing words from somewhere. He was eight years old; he had not just made that up. That had not come out of thin air, he had heard it at home or in his community somewhere. All I can think is that if parents were not saying it and there was not discrimination this situation would not arise. For me the question is not whether we should have children because they might be teased because anybody's children could be teased and nobody would have children. It is more a question of what we are doing about the fact that children can be so cruel to each other and schools sometimes do not address that issue.

CHAIR: Do you have a comment on this issue, Brenna?

BRENNA HARDING: Yes. There were a few times. There were probably two times that the kids in my grade have not taken it perfectly. They have either misunderstood or they have just never heard of it before. I think it is because they are confused about it. Most kids are totally accepting but there are some that are not as great.

Ms SYLVIA HALE: How do you deal with that?

BRENNA HARDING: I have only had to deal with it twice. One of the times the girl straightaway realised what she had said was totally irrelevant. I just had to explain to them what it is. When I say I have lesbian parents they are just confused. I explain to them that really it is just like any other family, it is just that I do not have a mum and dad but have two mums. Once they figure that out they are more accepting of it because they realise it is just like anyone else.

The Hon. GREG DONNELLY: Ms Harding, in your testimony I think you made the comment, or it might have been Ms Braw, about biological heritage—I think that forms part of your submission—and the issue of relationship with other family members. With regard to biological heritage, does Brenna know who her biological father is?

Ms HARDING: Brenna has a donor and she does know who he is. She does not legally have a father.

The Hon. GREG DONNELLY: No, a biological father.

Ms HARDING: The donor, yes.

The Hon. GREG DONNELLY: Who is her biological father.

Ms HARDING: Yes, she knows who he is.

The Hon. GREG DONNELLY: Brenna, you may wish to answer this question. Do you have contact with your biological father?

BRENNA HARDING: I see him every third Sunday and I spend the day with him, but that was my choice. My mum asked whether I wanted to see him and I said yes. To my friends I describe him as my father, but it is not a father like any other father. He is my donor. When I am describing who he actually is, he is my donor. He does not live with me, he has not raised me. I see him but he is not like Jackie. Jackie is there all the time.

The Hon. GREG DONNELLY: He does not live with you, obviously.

BRENNA HARDING: No.

The Hon. GREG DONNELLY: Did you say every third Sunday?

BRENNA HARDING: Yes.

The Hon. GREG DONNELLY: Do you mind just explaining for the benefit of the Committee what you do with [... Evidence suppressed by resolution of the Committee] on the Sunday?

BRENNA HARDING: Sometimes we go to picnics and sometimes we stay at home and play board games and sometimes we watch TV and sometimes we go swimming. Really whatever I want to do he is fine with that. Sometimes we hang at home. Sometimes he helps out with homework. Every third Sunday I am with him and his partner, [... Evidence suppressed by resolution of the Committee], and sometimes [... Evidence suppressed by resolution of the Committee] comes along to the picnics. He is always there and [... Evidence suppressed by resolution of the Committee] is always there.

The Hon. GREG DONNELLY: So it is a range of things that basically you are happy to do with [... Evidence suppressed by resolution of the Committee] and [... Evidence suppressed by resolution of the Committee] is happy to do with you and sometimes [... Evidence suppressed by resolution of the Committee] goes along. Are the things you do with [... Evidence suppressed by resolution of the Committee] the things that kids at school talk about doing with their fathers, like going for picnics and going to Luna Park?

BRENNA HARDING: Not really. When they are talking to me about it they say, "I went for a picnic with my family." They do not describe doing as much of that sort of stuff with just their dad. I do not really talk about what I do with him.

The Hon. GREG DONNELLY: Obviously there is a range of things you do.

BRENNA HARDING: Yes.

The Hon. GREG DONNELLY: How long have you been seeing him every third Sunday?

BRENNA HARDING: Since mum asked me whether I wanted to, which would have been maybe—

Ms HARDING: You have been doing it forever really.

The Hon. GREG DONNELLY: For a long time.

Ms HARDING: For 12 years.

The Hon. GREG DONNELLY: For 12 years—since you were a very small girl. Do you think that you want to see more of [... Evidence suppressed by resolution of the Committee]?

BRENNA HARDING: Not necessarily. I mean, he is a nice man, but I am happy to be at home. I would not care if it was every second, I would not care if it was every fourth. I am happy to see him, but I do value the time that I spend at home as well.

The Hon. GREG DONNELLY: Do you have feelings towards [... Evidence suppressed by resolution of the Committee]? Do you see [... Evidence suppressed by resolution of the Committee] as your father in any way?

BRENNA HARDING: Slightly. I mean, 97.9 per cent of my family is these guys, and the rest is my friends and [... Evidence suppressed by resolution of the Committee]—about half:half. He does not take up much of my family. He is there, but as maybe an auntie or an uncle would be there for another kid.

The Hon. GREG DONNELLY: Ms Braw and Ms Harding, on the issue of the nature of parenting and the gender nature of what mothers and fathers bring to the raising and rearing of children, Ms Harding I note in your submission you say, "All the credible research confirms that children are not disadvantaged by having lesbian and gay parents." Can I put it to you that there is a wealth of evidence in the public domain which raises what appear to be some serious issues associated with the difference in the nature of parenting between heterosexual couples and same-sex couples. Some of those matters do not go to talking about disadvantage—some do, I might say—but a number of the studies talk about the impacts on the wellbeing of the child.

I will cite the book by Dr Bruce Robinson, who co-leads the fathering project team at the University of Western Australia, which is a secular university. Last year he published his book *Daughters and Their Dads*. He conducted over 400 interviews for the purposes of this research. In his book he says on page 4:

All my interviews and reading have taught me that a daughter has special needs from her father, especially approval of her attractiveness as a person, her beauty, including acceptance of body shape, encouragement to make her confident to function in this world, including the confidence to say no to drugs and to think and to learn for herself; and, finally, understanding what she should expect in her relationships with men, including a healthy view of sexuality.

These are conclusions he has drawn from these extensive interviews, which are all footnoted. How do we as a Committee respond to research like this, which is not coming from, for example, a religious body that has an axe to grind, if I could use that phrase, and line that up with statements like yours? We have this divergence of opinion and it seems to be almost a gulf; what a lot of researchers are saying seems to be very different in comparison to statements such as you make. How do we reconcile that?

Ms HARDING: I am not an academic, so I am really not sure how you as a Committee are going to reconcile that. And I am here as an individual, obviously, not as an academic. But I have read some of the research that supports the sort of family that I have. The three points that the particular academic makes that you talk about there—about fathers impacting on acceptance and body shape, saying no to drugs, and what to expect in relationships with men—I do not know that they are the most important things in life but they are all things that—

The Hon. GREG DONNELLY: I do not think the author says that.

Ms HARDING: Okay. They are all things that kids can get from all different places. If they are in a family that has a value system that provides those sorts of messages, they will get those sorts of messages I suppose. There are plenty of families where there are fathers where those sorts of messages are not delivered to their daughters. I can say that absolutely, and I can say that from my own family. So I guess the proof is in the pudding, the children. That is all I can really say to that.

Ms BRAW: I would just add—and Brenna might want to add to this—that Brenna has plenty of role models in her life, really positive male role models of all different ages. We do not exclusively socialise just with gay and lesbian people; we have a very broad social network. Soccer, as I mentioned before, is a really good example. So I do not think we are preventing Brenna from learning about any of those things that you mentioned. I agree with Vicki. I am familiar with the research outcomes that actually say the opposite of that: that children who come from same-sex parented families have very good outcomes, perhaps even above average. But I am no expert, and I would not claim to be. When you listed those three areas, I am quite comfortable that Brenna has plenty of opportunity to learn positive messages about those areas.

BRENNA HARDING: And I have learnt about those areas. Even Jackie and mum have given me some stuff about all of those topics. I am not worried about any of them and I do not feel that I need any more information about them, from any one of any gender.

The Hon. GREG DONNELLY: It just does not matter?

BRENNA HARDING: It just does not matter. I feel that I have all the information that I need about those from these two and from school.

Ms HARDING: And you will probably learn more about them as you get older.

The Hon. GREG DONNELLY: And from [... Evidence suppressed by resolution of the Committee], in his role as a father, is that right?

BRENNA HARDING: He might, but it is not his place to.

Ms SYLVIA HALE: Earlier we had some discussion and heard some evidence about the things that men bring to a relationship as opposed to women. I think the examples given were the way in which men play with their children being inherently different to the way in which women play with their children. Would any of you like to comment as to whether you have found that in your relationship there have been things that you have

felt you have been unable to supply, or Brenna has felt that she has lacked in the relationship, because you do not have a man there on a 24-hour, seven-day-a-week basis?

BRENNA HARDING: You were saying that men and women play differently. When I go over to [... Evidence suppressed by resolution of the Committee]'s house and we play board games and watch TV and go for picnics and play around, it is almost exactly the same. So I do not really find that men and women play differently.

Ms SYLVIA HALE: What about rougher play? With young children, men might tend to throw them up in the air, whereas women might not. Possibly not for you, Brenna, because you really could not remember it. Did you ever find that those aspects were lacking in your relationship?

Ms BRAW: In amongst what I would call our extended family network, which is not necessarily biological, there are lots of aunts. There is one in particular, Aunty Nell, who has now moved to Melbourne. She was the aunt that would come around and generally throw Brenna around. I do not necessarily think it is gender related. I think it is the way you express your gender, perhaps, but I do not think it is because you are biologically male or female. We have different roles. I am the one that takes Brenna into the surf and swims; usually it is too cold for Vic to jump into the pool. It is not because I am a man; it is just because I like that. I am the one who is a bit more interested in soccer. It is just about parenting.

Ms SYLVIA HALE: Brenna, there have been reservations raised, more in the submissions than in evidence given, that children raised in gay or lesbian households are likely to be very much influenced by that in terms of their own preferences when they get older in the sorts of households they will establish and the relationships they will establish. Have you given any thought to what you would think or the way you would like to see your life progressing?

BRENNA HARDING: I know that I would love to have children. If I get older and I do not fall in love with a man, I will have children other ways. I am not sure of my sexuality yet.

Ms SYLVIA HALE: Because you are 12, I can appreciate that it is difficult.

BRENNA HARDING: Yes, but when I get older I do not think it really matters. I know I want to have children and I do not think much it will affect that. I just have a broader knowledge of different sexualities and another kid in another family might not have that same knowledge because they might have been protected from that sort of thing. I think from this family all I really have gained from that is that I have a wider knowledge of the sexualities that there can be. I do not think that it has influenced me at all.

Ms HARDING: She has had a reaction, however, to our family because she wants to have five or six children not just one. That is the difference. That is got nothing to do with sexuality obviously.

Ms SYLVIA HALE: That is the number of siblings, is it not?

Ms HARDING: Totally unrelated, sorry.

CHAIR: We have some questions specifically for Brenna in relation to Ms Jackie Braw's desire, indeed the whole family's desire to have a legal adoption. Brenna, do you think that Jackie should be able to adopt you?

BRENNA HARDING: Of course. I mean, it would be great if she was legally recognised. I already recognise her as my mum, but legally it would be really good because there are so many things that could be changed like inheritance and some medical things and I really do want to have her legally as my mum.

CHAIR: I feel a bit uncomfortable about this but this is part of the adoption process for somebody who is more than 12 so I am asking you questions. If you were actually in the adoption process a 12-year-old would actually be asked these sorts of questions and I apologise for that. However, we do need this information because Jackie's submission and the words have said that this would be an important process for your family and you would actually like it that way. Some people think that a young person's view should be taken into account in decisions about adoption. What do you think about that? Would all the people of your age in your school group be able to make those sorts of comments and decisions?

BRENNA HARDING: I am sure—as a child I think my view is quite important, just as important as either of the parents' views because it is going to be affecting me a lot. I think a child's view should be definitely taken into account.

The Hon. GREG DONNELLY: Can I ask if there is a parenting order or a parenting plan in place from the Family Law Court in terms of your relationship and Brenna's?

Ms BRAW: No. I mentioned before, we have a draft relationship agreement that includes provisions for Brenna if something should happen to Vic and just a general kind of agreement that we drafted a little while ago. We need to amend it because we have had some change in our financial circumstances and we will be finalising that as soon as possible. That is what we have got in place, plus our wills. We have not done a parenting plan yet.

CHAIR: Does that draft agreement have any legal status?

Ms BRAW: Our understanding is that it could get defeated or get challenged.

CHAIR: In court.

Ms BRAW: Yes, but we are doing it with a solicitor. We are not worried. We are particularly lucky. Vicki might add something to this, but, as I mentioned, I only have my sister and her family, and I do not believe she would challenge my right to be Brenna's parent if something should happen to Vic. I do not think she would be particularly interested. I think Vic's family, by and large, her parents particularly, are very supportive of my role, so we do not live in fear of that happening but we wanted to put something in place.

The Hon. GREG DONNELLY: In terms of dealing with some of these issues, for example medical-related matters, your solicitor has not drawn to your attention that you can get a parenting plan or a parenting order made by the Family Law Court which will address a number of these things?

Ms HARDING: We are aware of those things.

The Hon. GREG DONNELLY: But you have chosen not to go down that path?

Ms HARDING: It is just one of those things we have not managed to do yet.

CHAIR: We are very impressed that you came along to speak with us today. Thank you very much. Best wishes.

Ms HARDING: Thanks for your time.

(The witnesses withdrew)

(The Committee adjourned at 5.18 p.m.)