

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO ADOPTION BY SAME SEX COUPLES

At Sydney on Wednesday 25 February 2009

The Committee met at 9.00 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

JAMES DUNCAN McDOUGALL, Director, National Children's and Youth Law Centre, by teleconference, affirmed and examined:

CHAIR: I declare open the meeting of the Law and Justice Committee's hearing into adoption by same-sex couples. Mr McDougall, thank you very much for joining us today. Due to the fact that this is a teleconference, I will not go through all the formal processes, but I do very much welcome you and thank you for contributing to this inquiry in relation to adoption by same-sex couples.

Mr McDOUGALL: I am having a little difficulty hearing you.

CHAIR: Is it better if I project my voice?

Mr McDOUGALL: A little.

CHAIR: Okay. I will project my voice even more. I am welcoming you, and thanking you very much for contributing to our inquiry in relation to adoption by same-sex couples in New South Wales.

Mr McDOUGALL: Thank you.

CHAIR: We have the guidelines in relation to broadcasting and issues that I will not go through in detail this morning.

Mr McDOUGALL: No.

CHAIR: If you have a mobile phone nearby, it would be helpful if it did not click into the ear because it interferes with our recording process.

Mr McDOUGALL: Yes.

CHAIR: In what capacity are you appearing before the Committee? That is, are you appearing as an individual or as a representative of an organisation?

Mr McDOUGALL: I am appearing as a representative of the National Children's and Youth Law Centre.

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

Mr McDOUGALL: 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 fact and the Committee will consider your request. If you take questions on notice, the Committee would appreciate it if a response to those questions could be forwarded to the secretariat by 13 March.

Mr McDOUGALL: Yes, that is fine.

CHAIR: Would you like to begin by making a short statement? Before you do that, I think it is very important for you to know who is in the room with you. I am Christine Robertson from the upper House of the New South Wales Parliament, and I am the Chair of the Law and Justice Committee.

The Hon. DAVID CLARKE: I am David Clarke. I am the Deputy Chair of the Committee.

The Hon. JOHN AJAKA: I am John Ajarka. I am one of the members of the Committee.

Ms SYLVIA HALE: I am a Sylvia Hale, a member of the Committee.

The Hon. GREG DONNELLY: I am Greg Donnelly, a Government member of the Committee.

CHAIR: Did you hear all that, Mr McDougall?

Mr McDOUGALL: I did.

CHAIR: That is excellent. Would you like to begin by making a short statement?

Mr McDOUGALL: I will make a very short statement. I will refer to the submission that I hope you have which sets out, in what I hope is fairly clear and succinct language, the position of the centre. The approach that we normally take to issues such as these is that we seek to take a child's rights approach to looking at particular issues, and that is what we have sought to do in respect of the subject of this inquiry into adoption by same-sex couples.

By a "child's rights approach" I mean that we use the United Nations Convention on the Rights of the Child as a framework for considering an issue or a piece of legislation. We use that as a guide to assess whether or not the interests of children have been effectively protected or implemented. We look to see whether they have been adversely affected in relation to the issue under consideration. That is the approach we have taken here. In that respect, we have come to the conclusion that we support amendment of the laws to provide for same-sex couples to be given the opportunity to adopt children.

CHAIR: Is that the end of your statement, or did you wish to say something more?

Mr McDOUGALL: No, that is fine.

CHAIR: Would you be able to help us and go into a bit more depth about the United Nations Convention on the Rights of the Child? One of the reasons for that is that this Committee has been given evidence in submissions from people from different perspectives who are claiming that they are working from the position of the rights of the child. Would you be able to give us more in-depth information about your organisation's perceptions in relation to those rights?

Mr McDOUGALL: I think it is fair to say that this is generally a reasonably new approach. The convention has only been around since the early 1990s. I think there is a growing body of knowledge around what the approach is and what is the best way or what is involved. I think that is still evolving. What we draw on as much as is possible is the international thinking in the area. That is also influenced pretty much by the United Nations Committee on the Rights of the Child, which is the governing body for measuring countries' performance against the convention. Also we look at academic work that considers the convention and how it is used.

One of the things that happened in those early days was that people took a piecemeal approach to the convention. That is, they looked at it and, having seen that it is quite a comprehensive document, they have seen particular aspects of it that they think are important and favour their particular approach. That is fine as an approach, but increasingly it has been recognised that it is not a document to which you can take a piecemeal approach for it to be as effective as it should be. That means that you have to consider pretty much everything in the convention and use it almost as a checklist to consider what evidence you have around the experience of children. That will obviously vary in different circumstances. You should use it as a guide.

One of the reasons that approach is taken is because, looking at issues from a national or even a local perspective, children's experiences will be different, and there will be different issues that have different weight that needs to be attached to them. A general example of that is children in developing countries who will be much more concerned about basic survival rights, such as the right to water, the right to a proper standard of living, and the right to appropriate health and housing. Obviously that is also still an issue for us in respect of the experience of some of our indigenous children, but it just generally gives you an indication that there will be different parts of the convention that resonate.

Coming back to what we see to be an overall approach, you look at the convention as something which is pretty much accepted as covering pretty much all of the experience of childhood. It is a guide that you can look at to see that you have covered most of the rights-based issues and most of the issues that are ultimately going to provide appropriate protection for children, and measure it against that. From a legalistic point of view, that is consistent with measures of statutory construction. When you look at a piece of legislation, you do not just look at a particular section but at all the measures that are in the piece of legislation that apply particularly to that situation. There may be provisions that can solve a problem without reference to other parts of the Act, or there may be other provisions which interrelate.

CHAIR: We might extend that question on notice, but I am sorry, because we have such limited time and all the participants of this Committee wish to ask questions, I will have to move on. Thank you very much, that information was very informative.

The Hon. DAVID CLARKE: We have to take into account the best interests of the child—the adoption laws take into account the best interests of the child—and as a committee we have a whole array of scientific, medical and psychological research papers referred to us, which say that same sex adoption is not in the best interests of the child. There is a lot of material the other way, but why should we not come down on the side of caution? You have a legal background, do you?

Mr McDOUGALL: Yes.

The Hon. DAVID CLARKE: You have to satisfy the onus, or the standard, and in your submission I do not think—I might be wrong—you referred to any medical or scientific research at all. I may have overlooked it, but I could not see anything referred to, or very much at all.

Mr McDOUGALL: At the conclusion of the paper we have referred to the work of the Victorian Law Reform Commission, which summarises some of the American evidence that was presented, so we do not present it directly, but we basically look to the conclusions that were reached by the Victorian Law Reform Commission in assessing—

The Hon. DAVID CLARKE: You are aware though that there are scientists or medical researchers who have assessed the research papers that the Victorian Law Reform Commission selectively relied upon and have found that they are very flawed in how their conclusions have been arrived at. Are you aware of the research papers that have found flaws in those papers; have you referred to those at all?

Mr McDOUGALL: No, we have only looked at the Victorian Law Reform Commission report. We did a general search in terms of other research material, but we were not approaching this from a scientific point of view in any event, so we do not purport to be experts in terms of that area. It is more a question of using it as a tool for assessing those considerations, and I accept that the Committee has to weigh that material as well.

The Hon. DAVID CLARKE: The research material is very important—the scientific material is very important—in relation to what is in the interests of the child. I must say I am a bit taken back that you seem to have relied upon just a very selective amount of material. Have you read the research of Dr Lerner, Dr Nagai, Professor Stacey or Professor Biblarz?

Mr McDOUGALL: No, I have already said I have not looked at any of the scientific evidence directly myself.

The Hon. DAVID CLARKE: Do you not think that would be a very good starting point?

Mr McDOUGALL: No, because I am not an expert in assessing that sort of scientific evidence.

The Hon. DAVID CLARKE: You have assessed that it is in the best interests of the child to be able to be put up for adoption by same sex parents yet you have not looked at this at all. You have taken an academic and legal point of view, but you have not looked at the scientific research. With great respect, that disturbs me very greatly, Mr McDougall.

Mr McDOUGALL: I am sorry to hear that. I am happy to say that the evidence or the material that we have relied upon is that which has been used by Law Reform Commission bodies around Australia. There is one other issue that I think I should probably raise in that context because there is also for us a piece of evidence that we will look to in using a child rights approach as much as possible and that is to try to assess what it is that are the views of the children. I suppose there are two levels at which that operates here. One is that we would always say that as much as possible in the circumstances, and given the age and development of the child in making decisions about adoption, the views of the children should be sought and should be taken into consideration. Then stepping back from it, in the place where we are currently at, what we have tried to do is to have a look at what children say to us on a regular basis about their experience. That might be applicable in these circumstances and I think in that context once again there is no Australian research that we have been able to identify that has looked at that issue, but what we have looked at is what children say to us very clearly about

their experience of family and that is that it is those people who care for them on a day-to-day basis that constitute their family.

The Hon. DAVID CLARKE: With great respect, Mr McDougall—

CHAIR: Is this your question?

The Hon. DAVID CLARKE: Yes, a comment and a question. I do not know that that is a very solid base to be proceeding on—what children tell you—but you refer to a growing body of knowledge to support your contention as to the way you interpret the United Nations Convention. When you say it is a growing body of knowledge, the fact is it is a minority body of knowledge, isn't it?

Mr McDOUGALL: No.

The Hon. DAVID CLARKE: It is the minority point of view. According to my studies, the interpretation that you are putting on it is not the majority point of view at all. You say it is a growing body, but it is a minority point of view. Could you comment on that?

Mr McDOUGALL: No, I can't agree with that at all. The United Nations Committee on the Rights of the Child represents experts that have been appointed by nation states for their expertise in children. They constitute a range of professional backgrounds—legal, paediatrician, education, health—and they are a body of I think up to 40 members. I think they represent a body of incredible authority and—

The Hon. DAVID CLARKE: Do you say that they have recommended same sex adoptions?

CHAIR: I am sorry, we have to move to Ms Hale.

The Hon. GREG DONNELLY: Can we get the answer to the last question?

CHAIR: It is part of your questions.

The Hon. GREG DONNELLY: No, it is not.

CHAIR: It is; it is half an hour.

The Hon. DAVID CLARKE: Are you saying that the committee has recommended same sex adoptions?

Mr McDOUGALL: No, I am not. I thought you were suggesting that the Convention itself represented the minority view.

The Hon. DAVID CLARKE: No, I thought you were suggesting that the committee had recommended same sex adoptions.

Ms SYLVIA HALE: Mr McDougall, I am interested in your approach insofar as you are saying that the New South Wales adoption laws impede the ability of parents to discharge their responsibilities to a child. Would you care to expand on that?

Mr McDOUGALL: This is about, I suppose, what it is that are the legal responsibilities that fall to a parent and I think that there are a range of situations. I think one of the things that we do see is that those people who are performing the functions of parenthood will often make do with the situation they have. They clearly already have moral authority in respect of their relationship with their child, but increasingly in situations where there is a need for a legal recognition of their status—and that, I have to say, is usually when dealing with third parties—that is where it is found to be an obstacle. That obviously can be in terms of legal processes itself, but also there are some practical decisions that often bodies will look for some evidence that someone has that status. It is a bit of a fraught area, it is already an area where we see family law courts struggle to deal with it in some circumstances where there are changing roles, but also at a practical level, particularly looking at it from a child's perspective, there are decisions that are made in respect of gaining passports, gaining permission slips at school, which may not sound like an important feature but for kids is an incredibly important part of their lives, and having a recognised parent who can assume that role and be recognised in that role is something that does

seem to be quite important to children. There is also I suppose the more amorphous issue of identity—who am I—and I want to be identified with those people who I consider to be members of my family. That is obviously another background process where the adoption laws will assist but will not always solve those problems comprehensively, and I would not be suggesting that changes to these laws are necessarily going to make everything perfect, but our sense is, looking at the experience that children are having and recognising the reality of families, it does seem to be a sensible step.

The Hon. GREG DONNELLY: Good morning, Mr McDougall, how are you?

Mr McDOUGALL: Good, thank you.

The Hon. GREG DONNELLY: In terms of the organisation that you represent, the National Children's and Youth Law Centre, can you explain to the Committee the membership of the organisation and the funding of the organisation?

Mr McDOUGALL: Sure. We are a community legal centre, which means we are funded under the Community Legal Centres Program, which is ordinarily a joint program between State and Federal Governments. In our case we do not actually receive any State Government funding other than on a project basis, so what recurrent funding we have comes from the Federal Attorney General's Department. It being a community legal centre, we are part of that broader movement across the country of I think about 200 centres that are either regionally based or have some specialty focus.

The Centre was established in about 1993. It was a joint venture at that time between the institutions of—which is perhaps a little bit unusual for community legal centres—the University of Sydney, the University of New South Wales, the Public Interest Advocacy Centre and what was then the Australian Youth Foundation but is now the Foundation for Young Australians, that basically got together and established the organisation.

The Hon. GREG DONNELLY: Thank you for that overview. I take you to point 4.4 of your submission where you say, "In our experience children link their experience of family to those people ..." and you then note a number of dot points that I will not read. Are you familiar with that part of your submission?

Mr McDOUGALL: Yes.

The Hon. GREG DONNELLY: Presumably you would be aware, notwithstanding your primary focus is from a legal perspective, that in terms of social science—and we are talking about contemporary social science, not the social science from years ago—there is clearly an understanding amongst the social science, whether we are talking about psychological, psychiatric or sociological, that mothers and fathers bring very fundamentally different features to the parenting of children. Would you agree with that?

Mr McDOUGALL: The role of a mother and a father is different from that of parenting.

The Hon. GREG DONNELLY: No, in the rearing of children the social science demonstrates unequivocally that men and women bring demonstrably different aspects?

Mr McDOUGALL: Yes, I follow you.

The Hon. GREG DONNELLY: You would be aware of that research?

Mr McDOUGALL: Yes.

The Hon. GREG DONNELLY: That research emanates from not church-based organisations or religious organisations, or others or which one might argue have an axe to grind, but from the likes of various secular universities both in Australia and overseas. In looking at our decision as to whether to amend the Adoption Act are you saying that the Committee should not be placing significant weight on that social science compared with the legal position which is essentially the key element of your submission?

Mr McDOUGALL: I suppose you are talking about role modelling there. I think it is correct that there is a value that is provided to children through role modelling from male and female role models. I think that is something that is definitely an important part of the development of a child.

The Hon. GREG DONNELLY: Sorry to interrupt. Are you asserting that the only impact of mothers and fathers on a child is role modelling?

Mr McDOUGALL: No, not at all.

The Hon. GREG DONNELLY: What are you saying?

Mr McDOUGALL: I think it is an important part of development that there be exposure to those role models. I do not suggest that that represents the bulk of what is important in a child's life; it plays a part. Yet I think basically our submission is focusing on the legal status and seeing that in some circumstances the legal recognition of those people who are in the best position to be supporting and guiding a child is appropriate. I would hope that this is a measure that would not seek to narrow down the opportunities that the child has for a broad range of experiences and exposure to role models during the course of their development.

The Hon. GREG DONNELLY: I take you to an example that the Committee was given yesterday in testimony. I will not name the particular witnesses involved but the Committee members know them because they were present at the time. Two lesbian women and their daughter, who is now 12-years old, gave evidence. What I am struggling to come to terms with, and understand, is the phrase you have used on a number of occasions of "child rights" and the "child's right" approach which runs throughout your submission, and you link that to the United Nations Charter on the Rights of the Child—and can I say with respect to your interpretation of how that is developing, I think that is quite a contested area. How is it the case that a young girl who was conceived through donor insemination has any say, in terms of rights, for her to be brought into this world and reared and raised by a mother and father in that circumstance?

Mr McDOUGALL: I am not quite sure. I think you are right but that that is not something a child can choose—

The Hon. GREG DONNELLY: You are saying that the approach is that the emphasis to be given and the overarching focus should be on the rights of the child?

Mr McDOUGALL: Yes.

The Hon. GREG DONNELLY: What I am putting to you is that in this particular case that young girl has not been able to exercise any right to have a mother and a father?

Mr McDOUGALL: I do not know enough about the circumstances.

The Hon. GREG DONNELLY: I have explained the circumstances. It is two lesbian women. One of the women is the biological mother of the girl and she received artificial insemination from a sperm donor?

Mr McDOUGALL: Yes.

The Hon. GREG DONNELLY: Whom the woman knew, I might add, 12 years ago?

Mr McDOUGALL: Yes.

The Hon. GREG DONNELLY: My question is how has that young girl had any say in terms of her right to have a mother and a father?

Mr McDOUGALL: I presume that she has not, but I presume that she has also had some rights to know who her father is from a biological perspective?

The Hon. GREG DONNELLY: She has no right. Her knowledge of the donor father, whom she sees every third Sunday, has only arisen because her biological mother has told her voluntarily?

Mr McDOUGALL: I think I will take a step back from this and say that a child's right approach is not an approach that provides rights that are absolute. I do not actually think that. There are only a limited number of human rights where that approach can be taken as well. We are constrained by the nature of childhood and the fact that the child's right approach needs to take into account the evolving nature of childhood. At birth a

child has no way of effectively implementing its own right—I accept that. It then becomes a question of how we deal with the particular circumstances that that child faces.

In the situation you have described, yes, that seems to be the case but that is not that dissimilar from the circumstances that a range of children are born into. It is about seeking to make the best of the opportunities that are available to them. Children in western developed countries obviously have significantly greater experiences and, hopefully, a great opportunity to actualise their rights during the course of their development but we are all constrained by the reality that we have to deal with. My view is that the Convention recognises that—it is a contextual document. It is about how we look at the particular circumstances that the child is in and how to put the best effect to that for that particular child.

It is absolutely clear that there is a range of rights that are provided under the Convention but that at various times in their lives that child will be unable to completely affect the rights to express views. That is clearly something that is not available to a child until they have developed hopefully with the guidance of their family and teachers. Many children born with disabilities do not actually have that capacity yet still the Convention gives us a framework for having a look at how we can best implement those rights. In the circumstances in which you describe the child has been born into, the test is to look at what other particular rights can be best effected.

As far as I am aware the Convention does not create a right to have a mother and a father. It tries to enshrine the right to a family and recognises that that too is contextual—not everyone, for a range of reasons, can actualise that right—and the very best we can do is try and find something which is going to best express those opportunities for that particular child.

The Hon. GREG DONNELLY: I conclude by saying that that seems to contradict humanity and humanity's experience down the millennium about the right of a child to actually come into this world and be raised by a mother and father.

CHAIR: Mr Donnelly, the timetable expired sometime ago. Mr McDougall, thank you for taking time out of your day in Melbourne to contribute to this inquiry. I recognise that teleconferences are not the greatest thing in the world but it has been good to hear your evidence. Obviously half an hour was far too short a time for the information you had to share and the Committee may have supplementary questions that it would like you to answer. The secretariat will contact with any such questions and your answers should be returned by 14 March 2009.

Mr McDOUGALL: There is something I would like to provide, perhaps by way of an answer to a question on notice, that elaborates the answer I have been giving to Mr Donnelly. I am pretty sure some work has been done that looks at the rights of family versus the rights of a mother and a father. I will take that on notice.

CHAIR: The Committee would be grateful to receive that information.

(Teleconference with Mr McDougall concluded)

CHAIR: I would ask all members of the public to leave the room whilst the Committee holds a deliberative discussion.

(Short adjournment)

CHAIR: Welcome, Dr Riggs, and thank you very much for participating in this inquiry of the Law and Justice Committee into adoption by same-sex couples in New South Wales. I will not go through the regulatory processes because it will take up valuable time. 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. If you have a mobile phone in your pocket please turn it off as it interferes with the recording.

DAMIEN WAYNE RIGGS, lecturer at Flinders University, research fellow at the University of Adelaide and a counsellor for Relationships Australia, by teleconference, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Dr RIGGS: I am speaking as one of the authors of the Australian Psychological Society's literature review on lesbian, gay, bisexual and transgender parented families, and I speak with their permission.

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

Dr RIGGS: Yes.

CHAIR: If you 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 indicate that fact and the Committee will consider your request. Because of the complexity of this issue the Committee is putting together questions on notice and sending them to witnesses. We would be grateful if they could be returned by Friday 13 March. Would you like to make a short statement?

Dr RIGGS: No thank you.

The Hon. GREG DONNELLY: Dr Riggs, are you trained in the area of social psychology?

Dr RIGGS: Yes, that is one of the areas.

The Hon. GREG DONNELLY: Are you able to give the Committee an explanation of the scientific methodology that utilises the hypothesis theory and the .05 confidence level in assessing the validity of research?

Dr RIGGS: My primary research areas are qualitative research and I certainly would be hesitant to make broad statements about the empirical basis of quantitative research but I can comment on the scientific credentials of the research under question in the literature review that I have conducted.

The Hon. GREG DONNELLY: But with respect to research methodology, the method that I have described is understood as the gold standard, is it not, in terms of looking at how one creates a hypothesis and tests one opinion against another?

Dr RIGGS: I think in the framework of positivist research in which the search for knowledge is based upon the testing of hypotheses then certainly you are correct, but as a lecturer in research methods I am aware of a very broad range of different research approaches that are used to answer particular hypotheses, particularly in regard to this topic. It is very hard to test a hypothesis or even generate a hypothesis if you do not have a research base. A great body of research in this area we are talking about today has been premised upon having to do exploratory work and develop research hypotheses from interviews, focus groups, and qualitative research approaches, which are equally valid and as important as positivist research approaches.

The Hon. GREG DONNELLY: So, much of the research that you have examined and considered is qualitative research that comes about through going out and asking questions or probing and finding answers to questions or dealing with examples where participants select themselves in terms of the research?

Dr RIGGS: I am not sure that that is the case. I think it is more that researchers have gone out and rigorously found samples of the people that they are looking to assess. I think also it is worthwhile pointing out that system hypothesis testing and using significant testing tends to be used more poignantly when we are doing experimental research. A lot of this research, like a lot of the research on families and parenting, is not experimental research; it is administering questionnaires, both by participants and independently by researchers. In that sense it is very rigorous and certainly very valid research. It is just less about experimental design per se and more about finding out what people's attitudes and awareness and parenting practices are.

The Hon. GREG DONNELLY: Please do not misunderstand me. I am not demeaning or discounting the value of the research. This Committee through its terms of reference has to challenge the status quo position with respect to adoption and the current arrangements and look at alternate possible arrangements. We want to inform ourselves that the research we are looking at is very solidly based and rigorous.

Dr RIGGS: I definitely think that is the case. In the review we conducted, we looked at more than 250 authors' work from across 20 years and across many, many countries. As a researcher myself, and as someone with a fair track record in this area, I would find it very hard to believe, as I think anyone would, that such a humongous body of research evidence could have been fabricated, could have been made to tell a particular story other than the story that was actually in the data.

The Hon. GREG DONNELLY: I am not suggesting it is fabricated. But if you ask people who have a particular opinion, for example, whether they, in effect, support or agree with a position, it is almost self-evident that they are going to answer yes to that, because that is their position.

Dr RIGGS: Definitely. To expand a little bit more about the qualitative measures that have been used, it is interviewing and focus groups but also questionnaires and survey measures. We do not simply take a participant's word and say yes, that is the truth. We actually rigorously analyse, whether that be through a semantic analysis or a contents analysis—there are many different rigorous analytical tools for examining really broad patterns. We would not say one person has said this, and that is the truth. We would be looking for those patterns across a really large number of interviews or focus groups.

Those questionnaires or surveys or other measures, whether they be self-completed or completed by the researcher—many of which are rigorous, longstanding child development and family development measures developed across the discipline of psychology and beyond—have been applied to this population of people and they are well-established measures. There has certainly been a mix of quantitative and qualitative research. I guess my point was to say that it has not perhaps been experimental but it certainly has been rigorous in its nature and founded upon what researchers are finding from the data rather than being driven by what participants are trying to get their point across.

The Hon. GREG DONNELLY: I guess what I am struggling with is that, in the context of what is a contestable area in terms of views, opinions and attitudes—and I acknowledge the size of the document and the amount of research that is being done—is that there is no comparison in terms of child outcomes being raised in a heterosexual family, by which I mean a mother, a father and a child, vis-a-vis a child being raised in a homosexual family, be it lesbian or gay.

In other words, if we are actually going to make some assessment about outcomes with respect to children in this area, which would inform us in terms of whether we should or should not amend the laws in this State with respect to adoption, it seems to me that we have to be able to compare the two groups and the outcomes and see what those outcomes are.

Dr RIGGS: And that is certainly what we have: a large body of research that does that. Almost all of the early research on primarily lesbian families was comparative. It compared lesbian mothers with their heterosexual sisters, and it compared general population heterosexual mothers with lesbian mothers. That is the primary research base of the area: comparative research. It has only been much more recently that people have gone out and solely talked to lesbian mothers, or interviewed or surveyed or "questionnaired" or assessed lesbian mothers or gay fathers. The primary body of research, or the most significant longitudinal research that we have, is comparative.

The Hon. GREG DONNELLY: With respect to that early research, the situation is—and you may or may not know this—that various work has been done by social scientists who do not have an interest in this area but, rather, have independently examined the methodology and they have completely debunked this research. I

specifically draw your attention to the work done with a publication in 2001 by Robert Lerner and Althea Nagai in the United States in which they examine a whole range of this research. I quote from the executive summary:

Some major problems uncovered in the studies include the following:

- Unclear hypotheses and research designs
- Missing or inadequate comparison groups
- Self-constructed, unreliable and invalid measurements
- Non-random samples, including participants who recruit other participants
- Samples too small to yield meaningful results
- Missing or inadequate statistical analysis.

They are fundamental flaws in methodology that basically undermine the integrity of this research.

Dr RIGGS: I think I would be very wary of taking their report on face value. From my awareness of that particular report, it was commissioned by a particular group of people looking to make a particular point about lesbian and gay parents. So I would question their integrity as authors to produce an unbiased set of findings about that research.

The Hon. GREG DONNELLY: Can I follow that question up. You are questioning the integrity of their research and you are not even familiar with it?

Dr RIGGS: With their report?

The Hon. GREG DONNELLY: Yes, with their report.

Dr RIGGS: Yes, I am.

The Hon. GREG DONNELLY: Why would you be doing that?

Dr RIGGS: Be familiar with their report?

The Hon. GREG DONNELLY: I understand that you have not even read their report and you are accusing them of being biased.

Dr RIGGS: No, I have read their report.

The Hon. GREG DONNELLY: You have?

Dr RIGGS: Yes.

The Hon. GREG DONNELLY: I have the report in front of me and it is almost 150 pages long. I do not like reading big documents, but I forced myself to do it last week. Where is the flaw in their report?

Dr RIGGS: My statement was not that there is a flaw in the report. My statement was that from my understanding the group of people who commissioned that report had a particular position that they were looking to advocate in relation to lesbian and gay parenting. Thus, I think, the same as your very valid point about questioning the motives of anyone who does research, we have to also question the motives of the people who published that report.

The Hon. GREG DONNELLY: Let us be clear about this. I do not know who commissioned this; I do not have a clue. But I have read the report. Are you asserting that this 150-page report, which critiques a large number of these research projects, is flawed?

Dr RIGGS: I am just asserting that—the same as your valid point about being cynical, about having a degree of critique or scepticism about the body of research on lesbian and gay parenting—the same scepticism or critique is deserved of any body of research, and I think the same is true of that report. I do not think we can take that on face value any more than we can take any other report on face value. It deserves the same degree of interrogation or scepticism.

The Hon. GREG DONNELLY: If we follow your logic through—and you have just said one should be potentially cynical or sceptical of this report because of who commissioned it—why it would one not be equally able to assert that same position in regard to the report that you have put together?

Dr RIGGS: Because I think what we would take as important is the population under study, and I think the population under study has not questioned the integrity of our report. The population under study has in fact questioned the integrity of the report that you are referring to.

The Hon. GREG DONNELLY: Can I say to you that I have read this report, and there is nothing in this report by these two social scientists which attacks or undermines or questions the integrity of the research itself in terms of the motivation behind it; they are simply bringing very objective eyes to looking at the research that was done.

Dr RIGGS: I think what I would want to do in order to make an assessment of that would be to read every single research paper that they refer to and check the research methods and whether or not the claims they are making are accurate. It is very easy to go through a body of research and say this is all inaccurate, but we would have to actually read every single method section and every single analysis to ensure that those claims are fair and true.

The Hon. JOHN AJAKA: If I may deviate a little, to alleviate some of my concerns. As I see it—and please correct me if I am wrong—there are really two separate areas of possible adoption. We have one area in which the child is already well known to the person or persons, perhaps in a foster care situation, or the child is the child of one of the parents and the second person wishes to adopt that child. I call that for, my own benefit, a familiar situation. Then we have what I call a gay and lesbian couple who wish to be certified to adopt a child, a complete stranger, to then go on the waiting list with other persons and be in the same position of adopting a child. Is that a fair summation?

Dr RIGGS: Yes.

The Hon. JOHN AJAKA: Do you see any difference in those situations? Is it fair to argue that may be adoption should be permitted in situation number one but not permitted in situation number two because in the best interests of the child, the child already knows the person, the child's views are already taken but in the second situation, as Greg Donnelly already pointed out, the child has absolutely no say?

Dr RIGGS: I think that your point is fair, that certainly in the first situation if a child has an existing relation with someone supporting that relationship long-term, in whatever form that comes, whether that be long-term foster care or adoption, it would be the most appropriate thing for that child, but if a child comes into someone's foster care the percentages in Australia are that more children come into care to strangers than they do to kinship carers so it is likely that many children who come into care do not know the person they come in to care to. I am not quite sure whether the argument that having adoption by a stranger or people who are strange to the child is any more inappropriate than having a child come into foster care that they have not adopted prior to that.

The Hon. JOHN AJAKA: If I take it one step further. What would be your views in relation to the situation again if one were looking at adopting an eight-year-old child, a nine-year-old child, a 10-year-old child or a 15-year-old child where clearly the views of the child can be taken into account and where the circumstances of the child are already known, as opposed to adopting a baby where because of the surrogacy arrangement or going on to a waiting list to adopt a child where the child clearly has no possibility of expressing a view and no-one really knows the circumstances of the child at that early age? Would you see any difference in those circumstances?

Dr RIGGS: That is a fair point. Obviously this is a very contested topic under examination today but if we can possibly look beyond what any of our views are about non-heterosexual people because there is a big body of research far beyond lesbian and gay parenting research, all of the parenting psychology research says that what children need are safe, stable and secure environments in which they are loved, cared and nurtured. If any individuals are assessed as able to provide that environment, it does not really matter what their sexuality is and what our particular opinions are on different sexual identities; it is whether those people are deemed to have those capacities to provide for children. You are 100 per cent correct. We do not know what a two-year-old wants for their life but what we know the children need is stability, nurturing, loving homes and caring parents. The research and evidence holds out that lesbian or gays and other non-heterosexual parents can do that.

The Hon. JOHN AJAKA: Please be assured that I am not in any way prejudiced in relation to whether it is a heterosexual couple, a gay couple or a lesbian couple. My paramount consideration is the child. I am a lawyer by occupation, not a scientist or a researcher. I have real difficulty because one group or person talks about one body of evidence that says one complete extreme and then another group or body of evidence gives the other complete extreme; each attacks the other on the basis that their evidence or scientific research is flawed. You are in this area and clearly this is your specialty. Where does someone like me go with this? How do I distinguish between your evidence compared to someone else's?

Dr RIGGS: Thank you, I think it is a wonderful question. I am sorry that we got embroiled earlier talking about scientific methods and scrutiny because that takes us away from the point you raise, which is essentially about the welfare of children. If we look at this as a battle over the ideological positions of two different parties, we need to look at who has the power to have their voice heard the most. The reality is that the dominant position or perhaps the current legislation is the one that is most likely to be holding sway at the moment.

If we look at the disbenefits of that, the disbenefits are: fine, if that continues to hold out, non-heterosexual people do not adopt, that will not hurt non-heterosexual people per se but it is going to hurt a wide range of placement options for children being placed for adoption and we cannot know what those best needs are for children until we see the children in front of us and if it happens to be the case that a particular couple, regardless of their gender or sexuality, are the best couple on the books to match that child, that is who we want to go with. We do not want to ever narrowed down the option available to child placement. The opposite is that if the ideology being promoted by those who would oppose adoption by non-heterosexual people comes about, then non-heterosexual people will not have the right to do that and they will cope, but children will not have those options.

When we weigh that up, even though I am a social scientist and do research in this field, I am less interested in defending my body of research or my scientific rigour. I am more interested in saying who is going to miss out if we kick one of these sides, and who will miss out if we fail to allow for a wider range of couples to adopt as possible is children.

Ms SYLVIA HALE: Dr Riggs, I think everyone would agree that the safety, stability and security of the environment in which children are raised are paramount. However, evidence has been given to the Committee that that can only be provided by a man and a woman, whether you look at the historical context or whatever; to suggest that those qualities can be present in the same degree in non-heterosexual couples is wrong, mistaken. I find it interesting that there is a notion that there is a quintessential man and a quintessential woman. I know you deal with it in your submission in disposing of varying myths or stereotypes. Would you like to comment further upon whether a man and woman are the best way of providing for the interests of the child?

Dr RIGGS: Again I am loath to get bogged down in discussions about evidence but I recognise that legislative inquiries are about evidence but what other groups have referred to as evidence is actually a mislabelling of evidence. I think historical fact is different to evidence. I think we can observe a whole lot of things and of course the mother and family unit, and whenever we might say that has been labelled as heterosexual over the century, that has been the predominant family form. I do not think anyone is questioning that but whether that has always been the best thing is an entirely different matter.

I think we can accept that as an empirical fact but I do not think that we can accept it as evidence as being the best family form and there is always a flipside to every story and we can look at a bit of research historically to find very positive outcomes for children raised in heterosexual families but that is because that body of evidence primarily did not look at any other family form so it was not comparative research. We can also look at what are the incidences of social issues such as domestic violence and child abuse within the family situation and what are the current statistics in Australia and the particularly negative family events within heterosexual families. I would imagine many people would be aware of the high incidence of domestic violence in heterosexual families comparatively to lesbian and gay families. The research body that I am aware of makes it very clear that there is a longitudinal large sample of United Kingdom research recently completed in 2005 and the quote from the authors was a strikingly low incidence of sexual abuse—and the actual number was zero—of sexual abuse in lesbian-headed families.

If we look at some of those things and do not, per se, discuss the characteristics of individual men and women but just look at what we know about heterosexual-headed families, we know that the vast majority of

them are fantastic places to raise children but we also know that a significant minority of them involve domestic violence and sexual abuse of children and when we compare that to what we know about non-heterosexual-headed families we do not have any evidence of high incidences or even comparative incidences of domestic violence or sexual abuse of children.

Ms SYLVIA HALE: On the bottom of page 1 your submission states, "It is important to consider how the enforcement of normative gender roles by any parents may be considered an abuse of the rights of children to choose their own gender expression". Would you like to elaborate on that?

Dr RIGGS: Certainly. There are certainly people doing research or planning to do research across the world that support the idea that non-heterosexual people should not be parents. Some of those people, who are still practising today, are not sanctioned by the ATA or the ATS, the American Sociological Society. They have been kicked out of those societies. They are people trying to do things like force young boys to act in a particular way; young boys should not put their hands on their hips, young boys should not walk around in a feminine fashion. These are the practices that go on with them and the "therapeutic" work that goes on, trying to enforce particular gender normative behaviours.

Lesbian mothers do not enforce that behaviour. They do not encourage girls to wear pants and play with trucks or boys to play with dolls. The research does say that the mothers are willing to let the children do what they want to do with their lives and explore their own identities on their own terms. If we compare those two approaches: an approach that says children have the right to be what they want to be, an approach that says, "Boys must act like this and if they don't do it we will make them act like it" to a range of varying negative behaviour modification techniques, we can have a respect for the parenting skills of lesbian mothers in particular.

Ms SYLVIA HALE: You talked about divisions and people being kicked out of psychological societies. Was there a major split? Can you give some background to that? How does that bear on some of the evidence that we have been provided with?

Dr RIGGS: That is a wonderful question and I am happy to provide at a later date that information. I am very aware of listing actual names here in this inquiry because we have been directed not to but there are submissions from the Canadian Psychological Society, the American Psychological Association and the American Sociological Association formally dissociating themselves with particular people who have produced some of this research.

Their claims are the direct counter to some of the claims raised earlier today about improper research practices. In fact, the reason why these significant psychological societies and other organisations have distanced themselves from these people is that they do not conduct proper research. They manipulate findings. They publish in journals that are not peer reviewed or that you pay to publish in, which clearly immensely discredits their findings.

If you have to pay to have your work published, you are controlling what your findings are. You are not being subjected to the views and reviews of your peers. There are many reasons why we need to be suspicious of that evidence but primarily because, if a large organisation distances itself from an individual, that is a significant act to undertake. I think we need to be wary of taking those people's evidence at face value. In fact we should put them in that context. I would be happy to provide, on advisement, that information, if the Committee is looking to that.

Ms SYLVIA HALE: Thank you. That would be very useful.

The Hon. DAVID CLARKE: Dr Riggs, I wish to take up the matter that was raised by the Hon. Greg Donnelly, and that is the research carried out by Dr Robert Lerner and Dr Nagai, which is not even referred to in the paper of the Australian Psychological Society among the many references given. I was a bit concerned that when you raised this 150-page report, you referred to those who commissioned the research. Some people could draw an inference from that that it was flawed simply for that reason. The inference some could draw is that the report was in some way tainted simply to suit those who commissioned the report.

I am just a bit concerned that that does not seem to be a very scientific approach. I am also a bit concerned that a whole series of other people who are experts in these areas have not been referred to in this document published by the Australian Psychological Society—for instance, people like Professor Lynn Wardle,

Professor Judith Stacey, Professor George Rekers who I think in some ways contradicts something that you have put down as myth number one, Professor Wilcox, and Professor Stephen Nock, and so forth. First of all, could you comment on my comments about the report of Dr Nagai and Dr Lerner? That does concern me. Could you also comment on why there appears to be an absence of all of the other experts in this field?

Dr RIGGS: Yes, and thank you for the opportunity to clarify what I have said. I think my point is not that we must be inherently suspicious of that report on its own but that, rightly so, research on lesbian and gay parenting is held up to scrutiny. I think any report on lesbian and gay parenting must be held up to scrutiny. As much as I welcome, and any researcher in the field would welcome, scrutiny of analytical approaches that are used in lesbian and gay psychology, I certainly think that people like Judith Stacey, who works with each side and who in 2001 wrote a significant paper that is widely published and was co-authored with Timothy Biblarz, will naturally go very honestly into looking at what are some of the issues and what were some of the methodological concerns of this research, as someone who researches in the field.

I would seriously feel confident in saying that researchers in the field have been very honest about the limitations of their research and very open and willing to except that the drive and the direction of the field should be towards more rigorous research, larger sample sizes and greater levels of analytical scrutiny. I certainly think that that has been all along an agenda for people who are working in that field. I certainly think that people like Judith Stacey have kept that on the table as a matter of concern. I am certainly not suggesting that any report should be given more scrutiny than any other, but that I think they all should be given scrutiny.

The Hon. DAVID CLARKE: I think you said that you had read Dr Nagai's and Dr Lerner's report.

Dr RIGGS: Yes.

The Hon. DAVID CLARKE: Did you find any flawed approach? Did you find anything deficient in the findings from a scientific point of view?

Dr RIGGS: As I said, I would want to go through—and I confess honestly that I have not—and compare every single paper that they cite with every single claim that they make about it. But certainly there are some that immediately I was aware of the research for. I was immediately aware that the claims that they were making were inaccurate claims. I am happy to provide specific examples of that, on advisement, if you like, of them making an extrapolation from a research finding that was actually incorrect.

When you look at it, you can see why they have made that extrapolation. I would not accuse it of being underhand; I would just say I think that it is a misinterpretation of that data. If you misinterpret someone else's data, you miss interpret someone else's methodological approach. If you, for example, are highly trained and skilled in quantitative research and have no awareness of qualitative research, you will not be able to understand qualitative research methods. They are quite different. I certainly have not one interest in accusing that report of being underhand. I think it just needs perhaps to be held up to scrutiny to check out all the findings they summarise. It is not a body of research. It is a summary of findings, in the same way as ours is a summary of findings.

The Hon. DAVID CLARKE: Are you saying that that report is flawed, or you have not come to a conclusion, or do you not know?

Dr RIGGS: I am saying that I have seen at least some instances where they summarise previous research and I believe the summary is incorrect.

The Hon. DAVID CLARKE: But you would not be suggesting in any way that they have tailored their findings and their research to suit the convenience of those who commissioned the report.

Dr RIGGS: I think my point about that was less that they tailored it to suit a political agenda per se, but that, if you are given a particular brief and are paid to write a particular report from a particular angle, that is how you will view the data. That does not mean you are being underhand. That does not mean you are producing false evidence. It means that you are reading it through a particular lens.

The Hon. DAVID CLARKE: Do you believe that the research of Professor George Rekers is skewed or flawed in any major respect?

Dr RIGGS: I think that all researchers review their research and other people's research through their own lenses. I think that we need to be critical of all the lenses that all researchers bring to their findings.

The Hon. DAVID CLARKE: Including, presumably, those who have been referred to in the report of the Australian Psychological Society.

Dr RIGGS: Definitely. I definitely think that, for all research. As I said, the 2001 paper by Judith Stacey and Timothy Biblarz did exactly that from a position that markedly said, "We are in support of this body of research. We are in support of the rights or the strengths of lesbian and gay parents, but nonetheless, we will go through and examine and critique the methodology of this field of research." I certainly think that the research field has been held to account by its own members, and I think that it stands up against that critique.

The Hon. DAVID CLARKE: The problem I have is that, for instance, you say in your submission that myth no. 1 is that lesbian and gay parents cannot provide gender role models for their children whereas Professor Rekers does not say that they cannot. He says that on average they cannot do it as well as can male and female parents as a mother and father. With respect, you are taking a broad-brush approach. What you say may be true, and Professor Rekers may not be contradicting that. He is simply saying, yes, they may be able to do that, but they cannot do it as well as can a mother and a father.

Dr RIGGS: That is a wonderful point. My submission was very clearly not positioned as scientific research. It was just a way of going through some of those myths. I am not looking at busting those myths but I am looking at what are the assumptions in forming those myths. For example, if the professor had said those points, then perhaps it is true that lesbian and gay parents do not enforce a particular style of gender behaviour on children. That was the point I made earlier to the last speaker. To me, that is a positive thing. If particular children are being forced to act in particular ways—and we have ongoing evidence of children being taken away from their families and forced to undergo conversion therapy to change them from gay to heterosexual because of the wishes of their heterosexual parents—these things are invasions of children's human rights.

If we look at it in those terms, the idea that heterosexual parents of a particular belief system can teach their children how to act in a particular range of gender ways for some children is 100 per cent appropriate; for other children, that is 100 per cent inappropriate. Whether lesbian, gay or other non-heterosexual parents match up to that model to me is not the point. The point is more about what are the consequences of assuming that it is the best way for parents to make children match up to a particular model of gender behaviour.

The Hon. DAVID CLARKE: You refer to the human rights of children, and I guess one of the human rights of children would be to expect, where possible, to be brought up in a home that has a mother and father, and to be adopted into a home that has a mother and father. How would you respond to that?

Dr RIGGS: I am not aware of any human rights document that states that children have the right to be raised by a mother and a father. As far as I am aware the statements are that children have a right to be raised in a supportive and caring environment. I think it would be a very difficult argument to make that it could be a human right for children to be raised by a heterosexual mother and father.

The Hon. DAVID CLARKE: Is it an advantage for a child on the whole to be raised by a mother and a father?

Dr RIGGS: No.

The Hon. DAVID CLARKE: You do not accept that?

Dr RIGGS: I think that children should be raised by loving parents or even a loving parent who can provide a nurturing and safe environment. I do not think it is the gender. I think the structure of the family is the important point.

The Hon. DAVID CLARKE: I just want to clarify this and make it very clear.

Dr RIGGS: Yes.

The Hon. DAVID CLARKE: You do not believe that on the whole it is preferable for a child to be brought up in a home that has a mother and a father?

Dr RIGGS: I am not particularly interested in making a point about my belief. I am more concerned with the fact that the research evidence states to me clearly that children benefit the most from the processes within the family rather than the structure of the family. I do not think the structure of the family should be open to that sort of questioning, per se. I think if we look at the processes, the evidence suggests that the processes are as positive in lesbian and gay families as they are in heterosexual families.

The Hon. DAVID CLARKE: That is why want to clarify this. I will say again that I want to be very clear in my mind about what you are getting at. You do not think that it is an advantage on the whole for children to be raised in a household where there is a mother or a father. I took you to say that, no, you do not think it is particularly an advantage at all.

Dr RIGGS: No, I do not think so. I do not think that the research evidence suggests that children raised in heterosexual households are at an advantage over and above children raised in lesbian and gay households, no.

The Hon. DAVID CLARKE: The problem that we have is that we have to look at what is in the best interests of the child. I know that you talk about the human rights of children, but what is in the best interest of a child who may be only six months old. That has to be determined by other authorities who look at what is in their best interests. We find we are confronted with evidence in the report of the Australian Psychological Society, and then we are confronted with a lot of other medical and scientific evidence, much of which is not referred to by the Australian Psychological Society in its report, and often there is a completely different thing. Why would we not come down on the side of caution in a situation like this, particularly when we are dealing with children and the security and upbringing of children? That is a very important responsibility.

Dr RIGGS: If we are being cautious, what we want to do in our caution is ensure that children have the widest range of placement options available. To me, that is a cautious approach. To make as many placement options available to children as is possible, if we are focusing on children's needs, that would be a cautious approach. But excluding some people to me is not being cautious. It is actually failing to provide a wide range of placement options for children. I think that making a cautious decision based on discrepancies in findings is not really a cautious approach. I think it is just saying, "This is the status quo. Let us stick with the status quo." I do not think we have evidence that the status quo is a cautious approach. I think the status quo is at the very heart of this inquiry: What should the status quo be?

The Hon. DAVID CLARKE: Thank you very much, Dr Riggs.

CHAIR: Dr Riggs, I thank you very much for giving us your evidence today.

Dr RIGGS: Thank you.

CHAIR: I am quite sure that the Committee will have some further questions that they would like to ask you, and of course we did not get to the formal questions we sent you in the first place. The secretariat will be contacting you and we would be really grateful if you could get back to us with the answers to questions by 14 March, if you can.

Dr RIGGS: Certainly.

CHAIR: I recognise the commitment of time that you have made, and I thank you very much for informing this inquiry.

Dr RIGGS: Thank you.

(Teleconference with Dr Rigs concluded)

(Short adjournment)

CHAIR: Good morning and welcome. Thank you very much for participating in this inquiry and coming to tell us the information that you have. I will not go through all of the information in relation to process here. We have broadcasting guidelines and the persons dealing with the media know about those. If you want to give anything to the Committee or deliver messages, the secretariat 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. Some mobile telephones interfere with the recording system, so if you have a mobile phone we would prefer you to turn it off please.

PAUL MICHAEL BOERS, Solicitor and Director of Inner City Legal Centre, affirmed and examined:

YASMIN CAROLINE HUNTER, Solicitor, Inner City Legal Centre, sworn and examined:

CHAIR: Mr Boers, in what capacity are you appearing before the Committee, that is, are you appearing as an individual or as a representative of an organisation?

Mr BOERS: I am appearing as a director of the Inner City Legal Centre.

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

Mr BOERS: Yes, I am.

CHAIR: Ms Hunter, in what capacity are you appearing before the Committee, that is, are you appearing as an individual or as a representative of an organisation?

Ms HUNTER: I am appearing as a representative of the Inner City Legal Centre.

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

Ms HUNTER: 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 fact and the Committee will consider your request. Would you like to make an opening statement?

Mr BOERS: I thought it might be useful if we gave you an introduction about ourselves and what the Inner City Legal Centre does, which might give you a bit of an idea of where we are coming from with respect to our views, and that might neatly lead into the early questions.

CHAIR: That would be very useful, thank you.

Ms HUNTER: The Inner City Legal Centre is a community legal centre. Our offices are in Kings Cross. We are funded by the Commonwealth and State governments to provide legal services to disadvantaged communities. The area that we cover is the inner city area of Sydney and the eastern suburbs and we also provide a legal advice service to gay, lesbian and trans-gender people from across New South Wales. As part of that we have volunteer solicitors—Paul is one of them—who come in on Wednesday evenings to provide free legal advice to people on a range of issues. For people in the gay and lesbian communities a popular topic has been family law, parenting and issues like that.

Mr BOERS: I have been a volunteer at the Inner City Legal Centre on and off for about the last ten years and I have been a director for about three years. I come in on Wednesday nights for its volunteer service. The centre provides advice to a wide cross-section of the local community, but it has speciality in gay and lesbian issues. On Wednesday nights we provide the family law service. I suppose we are at the coalface of what is happening out there in society and we have a fairly good window of what is going on.

We have seen many same-sex couples—it is not a recent phenomenon, if you want to call it that—wishing to start their own families through various means, most commonly through IVF or donor insemination. One issue that arises, which I think is relevant to some of the issues that this inquiry is looking at, is who is a parent and therefore who has parental responsibility. That is a huge issue for lesbian couples in particular having children through donor insemination where you would have, for instance, a birth mother who has the status of legal parent whilst her partner, who is acting as a parent, does not have that authority or responsibility.

I guess where we are coming from is what kind of solutions do we offer these clients? What kind of advice do we give? For many years we have been advising lesbian couples in that situation, where the co-mother is in a legal vacuum: "Seek parenting orders under the Family Law Act conferring parental responsibility upon you. It does not make you a legal parent, but it is the next best thing." I suppose that is the most common kind of advice that we have given lesbian couples.

We have clients seeking advice about other family configurations where you may have the sperm donor having a parenting role of one sort or another, whether he exercises parental responsibility or not. What is his status? The kind of advice that we have given, particularly about seeking parenting orders, has recently changed. You may or may not be aware that there was legislative change in New South Wales last year under the Status of Children Act and the Births, Deaths and Marriages Act, and after that there was amendment to section 60H of the Family Law Act. That talks about presumption of parentage arising out of artificial conception procedures. So that has had the effect that a co-mother of a lesbian couple having a child by donor insemination now has the status of legal parent.

The Hon. GREG DONNELLY: Which section was it of the Family Law Act?

Mr BOERS: It is section 60H, and in particular section 60H(1), which talks about where you have a woman undergoing an artificial conception procedure, her married or de facto partner is presumed a parent of the child regardless of whether the child has his or her DNA, but the definition of "de facto" was changed to include same-sex couples. In respect of the adoption issue, that is also a significant issue, that is, we do occasionally get cases where, for instance, a woman with a child from a previous relationship forms a relationship with another woman and the question is whether her new partner can adopt the child.

I will give you one case study. About 10 years ago or so I worked for the Legal Aid Commission at Burwood and one of my functions was to attend at Burwood Local Court on family law days and assist people who were not legally represented. I was consulted by a lesbian couple, a woman who had a 13-year-old daughter from a previous marriage—her husband had passed away many years ago and she formed a relationship with another woman—and she was about to travel overseas and wanted to make provision for her daughter in the event that something happened to her. The question there was: What is the solution? The daughter was very supportive of her mother's new relationship. I advised, "Well, you cannot adopt", because same-sex adoption was not available. So if the birth mother had passed away, her partner would have been left in a legal vacuum in terms of exercising parental responsibility in caring for the child.

The Hon. JOHN AJAKA: Wouldn't a will fix that?

Mr BOERS: No, it does not. The answer was: "Seek a parenting order under the Family Law Act conferring parental responsibility on your partner." That is what they did and the Local Court at Burwood made those orders, but the difficulty is that—and I guess this comes to the paramount consideration of best interests of the child—that does not or did not create the status of legal parent for the client's partner. What consequences would flow from that? If the birth mother and her partner had separated, for instance, what provision would be made for the financial support of the child? I think that is a very significant issue relevant to the best interests principle. There would not have been any child support liability on the part of the partner because she does not have that status of legal parent and did not come within the definition of "parent" under the Child Support Assessment Act. So I would see curing that deficiency in the law, making adoption available in a circumstance such as that, would confer the status of legal parent and from that would flow all the responsibilities and authorities that come with being a legal parent.

The Hon. JOHN AJAKA: Could you explain why, for example, a provision in a will appointing a person to be the guardian of a child if something happens would not be some remedy or solution to the problem?

Mr BOERS: It cannot override the provisions of the Family Law Act. It may be a consideration. In the Family Law Act there is a legislative pathway to determine the best interests of the child and if there is a dispute

after a parent passes away as to who is going to be the primary carer of the child, whether it is the surviving parent or somebody else, the family court is required to look at who is a parent, do you apply the provisions of equal share parental responsibility—that does not apply any more because one has passed away—and when determining what is in the best interests of the child you look at the factors under section 60C(c), none of which refer to the provisions of a will. Now a will might be evidence of intention of the parent who passed away, but whether that is going to be given any weight by a court is another matter. I think there would be far more compelling factors when determining the best interests.

The Hon. JOHN AJAKA: Which is the paramount consideration as far as the court is concerned.

Mr BOERS: Yes, and I had a look at the Adoption Act—I think it was section 8(2)—and the factors set out there when determining the best interests of the child almost mirror those factors in the Family Law Act, so it is interesting.

The Hon. JOHN AJAKA: I am interested to look at these matters, because of your expertise, from a purely legal point of view. We hear of situations—and much of this evidence was also given in the surrogacy inquiry—such as the one you related where we have a child being unprotected, if I can use that word, from the point of view of maintenance, et cetera, from the other partner. Your view is that the only way to remedy those defects is by changes to the Adoption Act as opposed to guardianship orders, parental orders or any other order?

Mr BOERS: The legislation is terribly complicated and an absolute mess. I was looking at the relevant legislation on the Family Court website yesterday. To trigger a show of support liability under the Child Support Assessment Act you have to look at if the person is entitled to seek child-support—that would include the carer of a child and a parent—and the person who is liable is a parent of a child. You then look at the definition of "parent" in section 5 of the Child Support Assessment Act where it talks about if a child is conceived by way of an artificial conception procedure, then a person deemed to be a parent under section 60H and also an adoptive parent.

When you are looking at the situation I described before, for an order for the birth mother's partner to have child support liability, in the event that their relationship broke down, she would need to be deemed a "parent" under the Child Support Assessment Act and adoption would achieve that. Provisions in a will or otherwise would not trigger a liability under the Child Support Assessment Act. Under the Family Law Act there are still some provisions for child maintenance, which are largely outdated and would only come into play in very rare situations, but to be captured by those provisions you would need to be a legal parent of the child.

The Hon. JOHN AJAKA: The reality is if a person, or a couple, intends to adopt a child that there are still severe restrictions to ensure that the child's interests are best served?

Mr BOERS: Scrutinised, yes.

The Hon. JOHN AJAKA: Simply changing the law to allow same-sex couples to adopt is not, as some fear, going to open up a door and all of a sudden these children are going to be unprotected. The reality is that each case will be judged on its merits and its circumstances, with judges looking very carefully at all the circumstances to ensure all the requirements are met and noting all objections that are taken in each individual case?

Mr BOERS: That is absolutely right. It is interesting that adoption comes under such greater scrutiny than other parenting arrangements except, of course, for those contested matters in the Family Court. Regardless of what your views are, I think with adoptive parents regardless of what their background, sexuality or whatever, whether you are dealing with opposite sex couples or same-sex couples they are going to undergo the same scrutiny when determining the best interests of a child in order to satisfy the court.

The Hon. JOHN AJAKA: I find it rather ironic or strange, if they are the words to use, that you can have gay couples in foster care situations, you can have a single gay or lesbian person adopting a child and yet there appears to be all of this fear, if I can use that word, or concern in relation to a gay or lesbian couple adopting a child; notwithstanding that that child could have been living with them for years in a foster care situation. I see the requirements of adopting, as they currently stand, as far stricter than the requirements for foster care. There would be a lot more scrutiny?

Mr BOERS: Presumably, and I agree with your point that it is ironic in a way that I cannot explain the distinction as to why foster care is available to same-sex couples and adoption is not. You cannot legislate against people becoming parents, whether through artificial conception procedures or by whatever means—that is never going to happen. I do not think that adoption by same-sex couples or by opposite sex couples for a couple wishing to start a family is necessarily going to be the first choice. I would have thought it is going to be fairly uncommon and I would have thought most couples would rather conceive the children themselves by whatever means. But there are still situations, such as I described, where it can cure a defect and confer parental responsibility and all the authorities and responsibilities that flow from that, including financial.

Ms SYLVIA HALE: You talked about the possibility now of a co-mother being legally recognised as a co-parent?

Mr BOERS: Yes.

Ms SYLVIA HALE: Mr Ajaka has talked about single gay people being able to foster?

Mr BOERS: Yes.

Ms SYLVIA HALE: Clearly the whole thrust of the law is to confer upon people an equality of status regardless of their sexual orientation?

Mr BOERS: Yes.

Ms SYLVIA HALE: If the law is going to be consistent and coherent then the laws relating to adoption should also be changed?

Mr BOERS: I agree with that. I would qualify it by saying that the views I express are not based on any so-called adult's rights or equality in the law perspective. The reality of what is happening out there in society is that in one form or another gay and lesbian couples are starting their own families. How do we deal with the issue of parental responsibility? Adoption is just one aspect in that whole spectrum, I guess.

Ms SYLVIA HALE: Going back to the instance you gave 10 years ago at Burwood. You had the position there where both parents had died?

Mr BOERS: The father had died.

Ms SYLVIA HALE: The father had died and the possibility of the mother but let us assume that the mother had died as well. You then have a 13-year-old child and the question as to whose responsibility she would be, who would take care of her, and to which family she would be allocated. There I suppose the problem would be that there could have been a mother's partner with whom presumably the girl had had a sustained relationship and the alternative of the grandparents of the mother's family or even the father's family saying, "We want the child because we think it is inappropriate for her to be brought up by—"

Mr BOERS: It is a common concern.

Ms SYLVIA HALE: Because there may have been an antagonistic relationship between the birth families and how the offspring's lead their lives. By amending the Act presumably one would be able to give greater weight to the child's wishes in this instance?

Mr BOERS: I think the child's wishes would be given significant weight regardless of whether adoption was available. If the client's partner were able to adopt the child she would become the legal parent, she would have the sole parental responsibility upon the birth mother's passing away. That in itself would not prevent the grandparents from seeking to intervene. They could bring an application under the Family Law Act for parenting orders but they would have to satisfy the court that they were entitled to bring the application being concerned for the care, welfare and development of the child—they would need to overcome that threshold.

In a situation where there is no adoption and just parenting orders conferring parental responsibility on the partner, regardless of how an application would come before the Family Court the child's wishes would be given significant weight given her age. She had very, very definite wishes. Quite inappropriately what happened

in that situation was—it is quite a funny story actually—the magistrate adjourned the matter and asked for the 13-year old to come to court and give evidence in the witness box. I thought that was really inappropriate but she was only too willing to help her mum. The magistrate asked her, "Why is your mum going away?" She answered, "She is going to Amsterdam." He then asked, "What is she going to be doing in Amsterdam?" He was probing her and obviously thinking that mum is going to be doing something inappropriate. The answer was, "She is ballroom dancing in the Gay Games." Quite an unexpected answer but he made the orders.

Ms HUNTER: Just to follow up from that. Some of the people we have seen at the Centre have talked about situations similar, where the natural father has died or where the child was conceived through donor insemination and there is no natural father around. These children are being raised by couples in homes and are quite clearly expressing their wishes to be adopted by their other parent. Not necessarily for any legal reason but because they see this person as their parent and they feel less than in some way because they are not recognised.

Ms SYLVIA HALE: We heard evidence yesterday that in Western Australia, where adoptions are permitted, there has only been one incident of a couple applying in the last five years for adoption. If the law were changed in New South Wales would you expect there would be a greater incidence of people applying?

Mr BOERS: Not necessarily. As I said before, I think for any couple whether it is opposite sex or same-sex wishing to start a family—I do not purport to speak on behalf of society—but I would have thought the first preference would be to conceive your own child, whether it is through conventional means or IVF, and if that was not available then you would look to adoption. I guess where you have two women involved it is probably going to be less likely to occur but still there are those instances with stepparent adoption cases where I think that is the more likely situation.

Ms SYLVIA HALE: Do you have experience more generally in family law?

Mr BOERS: I am an accredited specialist.

Ms SYLVIA HALE: Evidence has also been given that whilst there is a distressingly high incidence of domestic violence in heterosexual families, this is not a common phenomenon in same-sex couples. Does your experience bear that out?

Mr BOERS: Ms Hunter could better answer that question.

Ms HUNTER: There has been an interagency group meeting around the issue of same-sex domestic violence over the last 10 years. It is quite difficult to get research in this area but some of the research indicates that domestic violence occurs in same-sex relationships to a similar level to opposite sex relationships. This is not child abuse or child sexual assault but domestic violence between partners and some of the difficulties around that. There are additional difficulties particularly for gay men not being able to seek support because a lot of the support services are for women or for lesbians not being sure if they can access support services. I believe it is occurring at a similar level.

Ms SYLVIA HALE: Is it a feature of gay couples where there is a child or is it just where there are two adults who are unhappy?

Ms HUNTER: It is once again difficult to say because the samples are quite small but in all of my casework in all of the situations involving domestic offences there were no children involved—they were all couples without children.

Mr BOERS: None of the same-sex parenting cases that I have dealt with have had any features about domestic violence.

Ms SYLVIA HALE: Or sexual violence?

Mr BOERS: No.

The Hon. DAVID CLARKE: On the whole do you believe it is preferable for a child to be adopted by a mother and a father?

Mr BOERS: I do not think the identity of the parents is really the issue that is going to result in better parenting or better development for the child. I think it is the quality of parenting that is going to determine whether a child better develops.

The Hon. DAVID CLARKE: All other factors being equal, do you believe it preferable then that a mother and a father adopt a child? You do not believe that is something that in any way particularly benefits the child? You believe there are other factors rather than it being a mother and father? You do not believe there is any particular benefit to be gained by a child being adopted by a mother and a father? Is that what you are saying?

Mr BOERS: I am not saying there is no benefit. I am saying that it is not the identity of the gender of the parents but the quality of the parenting that is going to be the more relevant factor.

The Hon. DAVID CLARKE: If there were equal parenting skills and all the other factors were equal between a same-sex couple seeking to adopt and a mother and father seeking to adopt, what do you say in that situation?

Mr BOERS: Are there not a heap of other factors under section 8(2) when determining the best interests of the child?

The Hon. DAVID CLARKE: All those other things being equal.

Mr BOERS: So if I was a judge determining in the unlikely circumstance where you have a same-sex couple and an opposite-sex couple competing for a child—

The Hon. DAVID CLARKE: And all factors are the same.

Mr BOERS: I just think that is an unlikely hypothetical—

The Hon. DAVID CLARKE: It may be unlikely but it is possible. Do you believe therefore there should be preference with all the factors being equal between the two couples?

Mr BOERS: I do not think there should be preference one way or another.

The Hon. DAVID CLARKE: So even with all the factors being equal you do not believe that it should be taken into consideration?

Mr BOERS: I think I have answered your question.

The Hon. DAVID CLARKE: No, I am saying with all other factors being equal.

Mr BOERS: I answered your question. I do not think there should be preference one way or another.

The Hon. DAVID CLARKE: Alright. You say in your submission, "We believe in extending adoption to same-sex couples. It will ensure equal treatment of children regardless of sexuality and gender of parents." Keeping in mind that the great majority of children live in households where there is a mother and father, do you not believe that it is ensuring equal treatment if preference is given to putting children into homes where there is a mother and father? You do not believe that it is seeking equality for those children?

Mr BOERS: I think equal treatment comes from the rest of society and if sections of society have these views that children of same-sex parents ought not be given equal treatment, is that not a problem with the sections of society having those views?

The Hon. DAVID CLARKE: No, what I am putting to you is that the great majority of children are living in a household with a mother and father and you are talking about ensuring equal treatment of children. Is that not extending equal treatment to children that they also have the opportunity to go into the homes—

Mr BOERS: We are talking about equal treatment in terms of those people acting as parents and I think it is irrelevant whether it is same-sex or opposite-sex, but people who are acting as parents, and in the

reality of that child's life the equal treatment comes in the capacity at law to exercise parental responsibility and have responsibility for financial support. That is what we mean by equal treatment.

The Hon. DAVID CLARKE: I would like to go into it further with you but unfortunately time is moving on, so I will turn to something else. You say in your submission that your organisation seeks to ensure that the adoption laws and practices comply with Australia's obligations under treaties and other international agreements. Are you aware that all the countries we have agreements with regarding adoption, that is adopting their children into Australia, are opposed to those children being placed in households with same-sex couples? A change in the law in New South Wales would mean we would not be able to comply with all those international agreements with all those countries that have that as a requirement for adoption to take place. Were you aware that that is the situation?

Mr BOERS: No, I was not.

The Hon. DAVID CLARKE: Is that a factor to be taken into account as well? We would not be complying with any agreement with all of these countries that we have these adoption agreements with because they all ban their children going into same-sex—

Mr BOERS: Are you talking about inter-country adoptions?

The Hon. DAVID CLARKE: Yes. You are not aware of it?

Mr BOERS: Are we not talking about adoptions within New South Wales?

The Hon. DAVID CLARKE: Yes, that is right, agreements between New South Wales and other countries. You are not familiar with the situation?

Mr BOERS: I am trying to work out what the question is.

The Hon. DAVID CLARKE: The question is you are talking about ensuring that adoption law and practice complies with Australian's obligations under treaties and other international agreements and I am saying we have international agreements with a whole series of countries that specifically ban same-sex adoptions. I will move on.

Mr BOERS: Perhaps I can look at that and provide you with a more informed answer.

The Hon. DAVID CLARKE: Thank you. You also say in your submission that all of the available research indicates that children raised by same-sex couples do as well developmentally as children raised by opposite-sex couples. Do you not think that is rather a broad, sweeping statement in view of the fact that there is an enormous amount of research out there that says otherwise? I think you have referred to the Australian Psychology Association, but are you aware of the work of Dr Nagai, for instance, in this area? Does that name ring a bell?

Ms HUNTER: No.

The Hon. DAVID CLARKE: Of Dr Lerner? Are you aware of his work?

Ms HUNTER: No.

The Hon. DAVID CLARKE: Are you aware of the work of Professor Sarantakos?

Mr BOERS: We are lawyers, not social scientists.

The Hon. DAVID CLARKE: No, but you have referred to it. You are lawyers but you have said, "the available research indicates", so you have taken it upon yourselves—

Mr BOERS: I would accept that the research would probably have differing views—

The Hon. DAVID CLARKE: You do not say that. You say that the available research indicates that children raised by same-sex couples do as well. I will mention some more names: Professor David Popenoe, Professor Stacey, Professor Biblarz. Are you aware of any of those?

Mr BOERS: I can answer that question by saying that I think whether a child's best interest is going to be met will be dealt with on a case-by-case basis under the adoption processes.

The Hon. DAVID CLARKE: I understand what you are getting at but you say you are lawyers and you cannot answer that, so would you not have been a bit more circumspect not to have made the statement that "the available research indicates" because you are not in a position to say that at all? I have just referred to six or seven internationally renowned experts in this field and you are not aware of any of them. In view of that do you not think that you have made a sweeping statement? You admit that in a general sense you understand there is research from the other side as well, but you make this sweeping statement. As you say, you are lawyers, not scientists.

Mr BOERS: I guess our observations, too—

The Hon. DAVID CLARKE: Not your observations, the research. We are not talking about your observations. You did not say, "Our observations indicate", you are saying the available research indicates.

CHAIR: You are haranguing him actually and the time is up.

Mr BOERS: I think I am well placed to make observations having practised in the Family Court and having worked as a registrar in the Family Court and seen the spectacular failures that other people have made on behalf of their children.

The Hon. DAVID CLARKE: That is your research, is it? That is what you are referring to?

CHAIR: I call the Hon. Greg Donnelly.

The Hon. GREG DONNELLY: Thank you for coming along this morning. Of which board are you a member, Mr Boers?

Mr BOERS: Of the Inner City Legal Centre.

The Hon. GREG DONNELLY: Is your submission, which you and Ms Hunter are speaking to today, on behalf of the centre?

Mr BOERS: That is correct.

The Hon. GREG DONNELLY: I will take you to pages 7 and 8 of your submission, which deal with your proposed changes with respect to the dictionary definition? I am looking at this in light of a statement you made at least two or three times in your evidence about the need to legislate to reflect reality. I think that is something you have driven home pretty strongly with your submission today. If you have a pen with you perhaps you could make these amendments. Delete the word "couple" at the bottom of the page and in lieu thereof put the word "relationship". After the word "two" include the words "or more". Go over the page to point number (2) and after the fifth word, "two", insert the words "or more", and at the end of that same line delete the words "as a couple". It would read, "The relationship between two or more adult persons who live together on a bona fide domestic basis although not married to one another or related by family". Point (3) would stay as it is. With those amendments—and I am not being flippant about this, I am quite serious—would that not better reflect the legal reality today with respect to many family and domestic relationships you deal with?

Mr BOERS: The co-parenting arrangements?

The Hon. GREG DONNELLY: Yes, families and domestic relationships that you deal with in the homosexual community. Would that not better reflect the situation in terms of picking up possibilities with respect to those families?

Mr BOERS: Yes, it would, but—you are making me think on my feet here—that would be inconsistent with other provisions of the Family Law Act and I wonder what impact that would have. When the Family Law Act talks about parental responsibility it talks about both parents.

The Hon. GREG DONNELLY: Sure. Let me follow this through.

Mr BOERS: In principle I agree that that reflects what is happening out there.

The Hon. GREG DONNELLY: That is right. What we need to then do, which would not be inconsistent with your submission thus far in terms of reflecting reality, is it would be appropriate to amend the Family Law Act accordingly so we did not have lack of compatibility between the legislation. The Family Law Act would reflect that and the Adoption Act would reflect this. That would be a better reflection of reality, would it not?

Mr BOERS: I will qualify my answer. I agree that that would reflect arrangements that people are making in society. However, I would have some reservations about inconsistencies with the Family Law Act or possibly even the Child Support Assessment Act. That is something I would have to examine to give you a better view about that.

The Hon. GREG DONNELLY: No, I am assuming for a moment that those inconsistencies are ironed out, so what we would have is a definition in the dictionary that provides for multiple adults in a relationship to be defined as the adult relationship. Those sorts of arrangements exist now as a reality, do they not in Sydney, New South Wales and around Australia?

Mr BOERS: Yes.

The Hon. GREG DONNELLY: The point I guess I am coming to is that logically following through your submission today and picking up your change to the dictionary, it does not go as far as you need it to go to deal with the issues that you as practitioners deal with on a day-to-day, week-to-week basis with respect to family issues in the homosexual community in Sydney, New South Wales.

Ms HUNTER: From the casework we have seen at the centre where there are three or four-parent families, I do not think I have seen anywhere that the three or four people are all in a relationship together. It is usually, say, a lesbian couple and a gay male sperm donor who are all parents of the child but not necessarily in a relationship. The other thing is that probably the majority of people we have seen, a small majority, are two parents parenting a child. I imagine any amendments like that would need to provide some clarity about how many people are considered parents even though they are not in a relationship.

The Hon. GREG DONNELLY: Why cannot three adults in New South Wales come together in a unit or a house and describe themselves as being on a domestic basis and that not be acknowledged by the law? What is wrong with that?

Mr BOERS: It can in a way but in what I described as the second-best scenario, if you like.

The Hon. GREG DONNELLY: That is your opinion.

Mr BOERS: I will give you an example.

The Hon. GREG DONNELLY: Hang on, that is second best—you speak for yourself—but these two women and this man want to live in a bona fide domestic relationship under the one roof.

Mr BOERS: I have not explained what I meant by the second best scenario. And I think I used that characterisation previously. Prior to the changes to section 60H of the Family Law Act the only way to confer parental responsibility upon a person in a legal vacuum was with parenting orders. The parenting orders is what I mean by the second best offering. It gives you the parental responsibility; it does not make you a legal parent. In cases of the co-parenting arrangement, which you have described, the advice I give is to apply for parenting orders.

I have had situations where I have assessed people in three-way parenting arrangements. Most recently through the legal centre, I had a gay male couple and a single woman, and the three of them agreed to co-parent.

They achieved the parental responsibility between the three of them through consent orders made in the Family Court. That was a relatively straightforward process. I would agree, from a legal, technical perspective, with what you are saying with the amendments that you have proposed to the definition. That would confer the status of legal parent amongst all three parties—

The Hon. GREG DONNELLY: Which would be important for that family?

Mr BOERS: Yes.

The Hon. JOHN AJAKA: To what age—18 only, or forever?

Mr BOERS: The parental responsibility is exercised until age 18. When a child becomes an adult the parents cease to have authority over the child. The only reservation—maybe that is not the right word—the advice that I give for couples coming to us, or with a donor proposing a three-way arrangement, one thing I always ask is, "Have you had any discussions about how you are going to make the parenting arrangements work? How are you going to exercise that parental responsibility between you? How are you going to make the decisions? I always think it is a good idea that people get counselling to work out all these issues before they go through with a three-way parenting arrangement, because I would imagine that it can get a bit awkward.

The Hon. GREG DONNELLY: It seems to me that your definition does not go far enough. If what you are saying is that we need to legislate reality, the reality could be two men wanting to live in a domestic relationship with a woman. Why should not that relationship be recognised in law, if that is the reality?

Mr BOERS: I agree. I must confess, I was not expecting this angle. But I do not disagree with what you are saying.

The Hon. GREG DONNELLY: That is consistent with the legal positivist view you put forward: that we legislate to reflect the reality? That is essentially your submission, is it not?

Mr BOERS: That is right.

The Hon. GREG DONNELLY: That being the case—that the notion of best interest debate and paramountcy is superfluous in some sense, in that arguably that debate should happen before we look at this issue—what you are doing is that you are taking a positivist view of saying we should reflect reality in the law and superimposing on that the discussion about the best interest, so you get a fit. In effect, that is what you are doing. The best interest debate should be taking place prior to, and looking at properly and objectively, the competing views about what is in the best interests of the child: looking at the laws, looking at sociology, looking at psychology, looking at psychiatry—the very best information we can get to establish what is in the best interests of the child.

Mr BOERS: But is that not always going to be dealt with on a case-by-case basis?

The Hon. GREG DONNELLY: But as members of Parliament what we are challenged to do in this inquiry is to look not at individual cases but at the law of the State, which applies to the whole of New South Wales. So we are not legislating for individuals.

CHAIR: While you are considering that—and perhaps we could put that issue on notice for your consideration—could you please consider that question in relation to heterosexual couples, because there are exactly those situations amongst the heterosexual community in relation to parental issues.

Mr BOERS: Yes. I think they apply equally.

CHAIR: There will be questions on notice, and 13 March is the return date if that is possible. If you would like to provide supplementary submissions, please feel free to do so. Thank you for your attendance today.

(The witnesses withdrew)

LYLE GAVIN SHELTON, Chief of Staff, Australian Christian Lobby, 4 Campion Street, Deakin, and

BENJAMIN PETER WILLIAMS, Research Officer, Australian Christian Lobby, Deakin, sworn and examined:

CHAIR: Thank you for your attendance at the second public hearing day of the Standing Committee on Law and Justice inquiry into adoption by same-sex couples in New South Wales. We have broadcasting guidelines, which are at the back of the room if you would like to read them. If you have messages that you wish to deliver to the Committee, the Secretariat will assist you with that. 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. If you have a mobile phone would you please turn it off during the hearing as it interferes with the recording equipment. Are you conversant with the terms of reference for this inquiry?

Mr SHELTON: Yes.

Mr WILLIAMS: 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. If you take questions on notice, would you please provide the responses by 13 March. Would either or both of you like to make a brief opening statement?

Mr SHELTON: Yes, I would like to make an opening statement. Madam Chair and members, thank you for the opportunity to address you today. Today's society goes to great lengths to protect the natural environmental order. We rightly seek to ensure that humankind's activity and great technological achievement does not impact on the natural order in a way that jeopardises the ability of us to sustain life on the planet. Similarly, a natural social order of human relations exists, and to deny this is to be a denier of the truth, no matter how inconvenient.

This social order of raising children within opposite sex marriage has been faithfully practised by diverse cultures for millennia. Not only is it natural law, it is humanity's social heritage. Nature—some might say God—has decreed that it takes a male and a female to create a baby. This is self-evident in natural law. It is also self-evident that male and female are different. And while men of my generation, unlike my father's generation, changed our kids' nappies, our ability to perform in non-traditional gender roles around the home has not caused us to morph into genderless beings whose father-love does not influence our kids in ways vastly different from but complementary to our female partners. And while women like my wife work, her ability to provide unique mother-love to our children does not change just because she is not at home cleaning.

I do not say the following in a boastful or judgemental way, but I know that our kids benefit because they have a mother and a father—one of which is sadly lacking in the lives of too many children in New South Wales today. I repeat: I am not wishing to be judgemental of single parents—the vast majority of whom would have as a first preference a partner to share the load and ideally to do so with the biological partner who helped them produce their child.

We in society curb our selfish consumerist desires to protect our natural environmental heritage. We even inconvenience ourselves to protect our built cultural heritage. Why do we trash our social heritage? Late last year the Wood inquiry handed down its damning findings into the failure of the State of New South Wales to protect children through the Department of Community Services. DOCS is having enough trouble coping with the fallout of extreme social dysfunction which has sadly resulted in the neglect, abuse and often death of children. For the New South Wales Government to embark on social experimentation of children through same-sex adoption at a time when the priority of government and the valuable time of a committee such as this should really be focused on more urgent priorities is indulgent to say the least.

I would like to point out that the Australian Christian Lobby [ACL] has supported the removal of unjustified discrimination of same-sex couples and that of children that might be in their care. We did not oppose a raft of same-sex law reform passed by the Federal Parliament last year to this effect. For all intents and purposes, under Commonwealth law same-sex people who care for children have the practical rights and

responsibilities of parents. The very concessions that were won, particularly the acknowledgement of the term "parent" as including same-sex parents, in same-sex families, exposes this whole exercise as unnecessary. It is simply the pursuit of a political agenda with children as trophies. For lesbians, one of whom has a biological child, there is no practical reason to pursue adoption—only the symbolic reason of redefining the natural order.

ACL opposes same-sex adoptions for three fundamental reasons. Social science research, common sense and the natural law point to male and female parenting as in the best interests of the child. Same-sex relationships are inherently more unstable and unfaithful than those of heterosexual de facto couples, especially married heterosexual couples. There were only 125 adoptions in New South Wales last year, and most of these children came from overseas. Childless heterosexual couples wait in line for years to adopt. Why should the queue be lengthened to provide an outcome to serve this self-centred agenda of adults that cannot be achieved naturally?

The State has a duty to act in the best interests of the child notwithstanding the desires of adults. While children are brought up in different family constructs, the State has a duty to ensure that every child adopted out has the chance of a mother and a father figure. This inquiry has heard claim and counterclaim about the social science research surrounding homosexual parenting. While the research we cite is certainly in line with commonsense and the natural order, strong critique has been made by people with a very strong activist bias towards same-sex parenting.

In a democracy such as ours they are welcome to argue their case just as we are, however the burden of proof must be upon those advocating experimenting with children in unnatural family constructs to prove that it is in the best interests of children. It is acknowledged that there is very little long-term evidence to support the idea of normalising same sex parenting. A vast body of research supports opposite sex parenting, as intuitively we all know.

This Committee should not be making recommendations for the care of children that defy commonsense, nature and the overwhelming body of credible research that shows the importance to a child's development of having both a mother and a father. It should particularly not be allowing this very transparent tactic by homosexual activists of using the situation of children already caught in homosexual relations as the lever to achieve something already delivered by the Federal Government in response to the same sex same entitlements report last year. Thank you.

CHAIR: I picked up the issue you had about the basis for the inquiry, the work that the Department of Community Services has to deliver and the discussion. I want to place on record that this Committee has no work within the implementation of the recommendations from the Wood report and will definitely not inquire into those issues. We are disconnected from that process.

Mr SHELTON: My comments were more in relation to the work of the Parliament.

CHAIR: I acknowledge that, but restate that we are disconnected from that process.

Ms SYLVIA HALE: Would you not concede that the fact there has been in excess of 225 submissions, many in great detail, indicates that the issue is of great interest right across the community, and that this is not merely a sideline diversion from the real stuff of politics?

Mr SHELTON: I have not had the chance to look at all the submissions so it is not possible for me to comment on that. I do note that some obviously have come from people who have a strong activist bias and some have come from groups like ourselves who are concerned about the best interests of children. We would be concerned—and our concern does stand—that this is very much a very radical social agenda that the New South Wales Parliament Government is allowing to be inquired into at the moment and we would submit that there are very much other urgent priorities that the Government should turn its attention to.

Ms SYLVIA HALE: You said that this is a radical social agenda but given that the law in this State already allows for same sex couples to foster children and allows a single gay person to adopt a child and in fact, in the case of lesbians, it enables the non-birth partner of the birth mother to be given co-parent recognition, to amend the adoption laws is hardly a radical social innovation?

Mr SHELTON: I would argue the opposite. I was not around when some of those other changes were made. Last year our organisation spoke out very vigorously against the changes that allowed fathers to be

dismissed from birth certificates. That was a radical move. Many of these things that you have cited have happened over time as a way to move towards what some activists will see as their inevitable goal, and that is completely normalising that which is unnatural in the social order.

Ms SYLVIA HALE: It seems to me that you use fairly weighted and emotive terms like "commonsense", "natural" "intuitive". I just wonder how great a weight should be given to commonsense. For example, it is commonsense to walk outside and look at the world and say that it is clearly flat. When you take into account other factors and advances in knowledge, clearly the commonsense approach is not so commonsense after all.

Mr SHELTON: I think it is very sad that often commonsense is unfortunately uncommon. We heard a previous witness suggesting that we should legislate things because it is reality. There are many things that are negative in our society that are a reality, such as domestic violence, which we do not seek to legislate just because that is reality. This highlights to our organisation just how ludicrous some of the arguments are that have been put forward to advance something that is inherently against commonsense. I am sorry if commonsense and intuition are emotive terms. They certainly were not when I grew up.

Ms SYLVIA HALE: We do not attempt to legislate domestic violence, but surely what we endeavour to do is to legislate to deal with those situations from which domestic violence emerges and to legislate as to how that violence will be dealt with itself. Presumably, what we are trying to do here is to examine ways in which we may legislate to deal with the fact that there are 4,000 children of gay couple relationships. I am asking your opinion here; you think it is not appropriate to attempt to legislate to give those children some sort of certainty?

Mr SHELTON: We certainly legislate to prevent social harm and that is why we legislate in the area of domestic violence. You mention the children currently in the care of same sex parents?

Ms SYLVIA HALE: Yes.

Mr SHELTON: As I mentioned in my opening remarks, certainly great lengths were gone to last year by the Commonwealth Government in amending some 100 laws—and I know that laws have been amended at the State level—to give children in those family constructs the same benefits that would apply to children in a heterosexual construct. In terms of areas of discrimination, practical ways for them to conduct their lives and do all that is necessary for the wellbeing of those children, that is already being done. Our organisation did not oppose that. We could see that children were caught up in those relationships and they should not be discriminated against, but we certainly believe that a clear line should be drawn at the issue of marriage and obviously the issue of adoption.

Ms SYLVIA HALE: You say in your submission that it is commonsense that the ideal family consists of a male and a female parent. Could you comment on the fact that the ideal family is something that has changed over time? For example, it was common in Victorian times for parents not to see their children and to have nannies, for children to be sent out to boarding school. In fact, it was considered ill mannered to comment on a person's likeness to other people because of the possibility of the child being conceived out of wedlock. In fact, the nuclear family, as you specified, is very much a creature of the industrial revolution and that the family as a model has changed enormously over time and as contemporary legislators we have to acknowledge the changes that have taken place and that the nuclear family may indeed be an aberration rather than the model?

Mr SHELTON: I went to university as well and had them vilify the Victorian era, and obviously there may well have been faults there but we know from millennia of human history that the social relationships that children have been brought up in, in cultures right across the board, have been the marriage and children given the care and love of a mother and a father. Your job, with respect, as contemporary legislators, is to look at the social research.

There is a vast body of social research, particularly since the 1960s sexual revolution where we have embarked as a society on a whole range of social experimentation we have seen massive family breakdown and the evidence of that in society, upon children and young people in particular. Social research has been done in response to that, not just by Christian organisations but also by many dispassionate academics shows huge harm has been caused and that there are benefits to a mother and father family, particularly where the biological parents are involved in bringing up children.

There has been some terrific research done in the United Kingdom by the Centre for Social Justice that shows that family breakdown is a key pathway to poverty. That is being recognised right across the board. We know from the social research that is available that a mum and a dad construct is the best way. We all know because we have all been brought up, mostly, in that sort of an environment that no family is perfect but in general terms the research supports that a mum and a dad, particularly the biological parents, is the best environment to nurture children and for their formation.

The Hon. GREG DONNELLY: Thank you for coming along today and for your submission to this inquiry. I take you to the second last paragraph on page 3 of your submission where you say, "The desires of adults to become parents regardless of their living arrangements are always secondary to the best interests of the child. It is perfectly legitimate and indeed essential to discriminate in favour of the child to ensure that the child's social and emotional wellbeing ..." and it does not finish. I guess it should be "is best managed or looked after" or something like that. Could you elaborate on that paragraph and what is behind your thinking there?

Mr SHELTON: We believe that obviously to ensure the best interests of the child it does necessitate some positive discrimination. Already adoption laws discriminate as they are. A 70-year-old is not allowed to adopt no matter how passionately a 70-year-old might feel about wanting to start a family or have children in their life. A positive discrimination is made. We do this every day in society. Where there are competing rights of adults and children, the rights of the children should come first.

The Hon. GREG DONNELLY: That statement is consistent with the current provisions in the New South Wales Adoption Act. The current provisions in section 7 are, firstly, to emphasise the best interests of the child concerned both in childhood and later life must be the paramount consideration in adoption law and practice and, second, to make it clear that adoption is to be regarded as a service for the child concerned. What you are submitting there is consistent with the provisions in the current Act, is that right?

Mr SHELTON: That would be our understanding.

The Hon. GREG DONNELLY: One of the witnesses earlier today in reflecting on the past about the fundamental nature of the configuration of a heterosexual family was a mother and a father and any offspring that might flow from that. That obviously is a predominant arrangement that has been around for a long time and that that arrangement is not best seen as what is best for society and indeed the children that flow as offspring but simply an historical fact. In other words, we are all looking at this the wrong way: that the real way of looking at the family and what is in the best interests of particularly the children is not to be drawn from looking at history but just making the observation that we are just looking back at an historical fact. What would be your response to that?

Mr SHELTON: I think it is important that we learn the lessons of history and we see through history and through human practice the importance of family and here we are in the early part of the twenty-first century seeking to embark on radical changes to what has been in practice by human history over millennia. I do not think that is something we should embark on lightly. Some of the changes that Ms Hale alluded to earlier are very recent things. We have to take into account the whole span of history and we should not tinker with our social heritage lightly, just like we are respectful of our environmental heritage.

Mr WILLIAMS: May I just add that there has been no evidence to prove that there is anything defective in the ideal of a mother and a father raising their children and that progress necessarily towards the same sex parenting in and of itself is not necessarily positive. We can learn from our history, like Mr Shelton suggests.

The Hon. GREG DONNELLY: Is it your submission—and forgive me if it is stated in here somewhere but I want to clarify it—that with respect to the best interests of the child and the configuration of the family based on the ultimate arrangement of a mother and a father, that there is in fact something fundamentally different in the nature of women and men in terms of what they bring to and their capacity to bring to the parenting of children? Are you making the assertion that there is something fundamentally different and complementary between those two?

Mr SHELTON: Absolutely. I think that is common sense and it is self-evident. One of the concerns we have with the homosexual activists' agenda is the assertion that there is no difference between the genders. I think that is ridiculous. Men and women are different. A male brings a different love to a child than does a female, but together the two are complementary. Together the two give the child something very precious,

which allows that child to grow and to be formed in a very balanced way. I think most people would prefer that. Even people who are in single-parent relationships would prefer that there was that complementary gender influence on their child's life and development.

The Hon. GREG DONNELLY: Just so that we are clear about this, are you limiting this difference between the contribution of men and women to the question of love, or are you submitting that there are other things that they bring by their very nature in addition to this issue of love? I ask that because I do not think anyone around this table is suggesting that homosexual men, gays, a pair of men, or a pair of women lesbians do not love their child. I do not think we are suggesting that.

Mr SHELTON: No, and I would not suggest that, either. But the type of love that comes from a different gender is different from that which comes from, say, two men. There is plenty of good social research out there that shows the benefits of a father, in particular, in a child's life. Not every child has that opportunity, and that is understood in society: But where the state is involved in the placement of children, the state has an obligation to make sure that that child is given every opportunity to have what is optimum for that child's life and development. We know that social research supports the complementarity of the genders in the development of a child.

The Hon. GREG DONNELLY: If I have further questions, I will place them on notice.

The Hon. JOHN AJAKA: I will direct my questions to either of you. I note that we are limited as to time. Is it not a fact that the reality—and I note your comments on reality—is that not all children today are raised by a mother and father? For example, many are raised by one parent only, and many are raised by a grandmother or a grandfather. Many are raised by an uncle or an aunt, et cetera. I will not go through the extensive list because we are well aware of those. On the basis of that already existing, you also have the current law whereby you have children raised in foster care by one party. You have children raised to have been adopted by a single person, and that person may be gay or lesbian. You then have the children who are in that situation. How do you put that together with your concept that the normal family, the appropriate family, is a man and a woman in a loving relationship when really that does not exist today in that situation only?

Mr SHELTON: I think it certainly does exist for the vast majority of children, notwithstanding the tremendous social breakdown that we have seen in the last couple of generations. We still have a majority of children living in a heterosexual family environment.

The Hon. JOHN AJAKA: Do you have any statistics? I must say that I have not seen any statistics.

Mr SHELTON: I am happy to take that on notice.

The Hon. JOHN AJAKA: That would help us enormously.

Mr SHELTON: I have no trouble with the assertion. Just because aberrations exist because the circumstances exist, that does not mean that we as a society should not advocate what we know to be the ideal. Again, the social science research is very much there. The burden of proof, as we have said, is on those who wish to experiment with children in the manner that is being inquired into by this Committee. The burden of proof is upon them. I just do not accept that there is a body of social research out there that shares that view. The idea of same-sex parenting is a relatively novel concept. There just have not been the longitudinal studies done. I will let Ben address some of that.

Mr WILLIAMS: I would just add also that same-sex parenting is still very much in the minority, regardless of some of the statistics that might be presented to suggest that the homosexual population might be as much as 10 per cent. I certainly believe that it is not that large. Most studies have estimated between 0.5 and 2 to 3 per cent. Societal and legal presumption remains that a child has one father and one mother. Same-sex parenting is an exception to this rule and should be treated as an exception to the rule. We should treat this exceptional family type in an exceptional way and not change the rule itself. I would just like to say that exceptions do not make the rule.

The Hon. JOHN AJAKA: As I indicated earlier, we currently have adoption by a single person, gay or heterosexual, and we do have a situation where a parent with a child is currently living in a relationship with a same-sex partner. They exist. I can speak on my own behalf and say that I am faced with two very clear conflicting statements from witnesses, such as yourself, whereby one body of research says one thing, and the

other body of research says the exact opposite. Witnesses are saying that we really have to accept this body of research because it is more accurate whereas the other one is a little bit flawed. When I look at it, the paramount consideration is the best interests of the child, full stop. I am not interested in anything else but the best interests of the child.

Surely we are better to regulate for the protection of a child's best interests by allowing the adoption by same-sex couples to meet the strict criteria to protect the child rather than simply allowing what is clearly existing now anyway, but not having it subject to the protections, the legal rights and entitlements of that child. Are we simply burying our heads in the sand and saying that the reality does exist, but we should do absolutely nothing about it?

Mr SHELTON: No, not at all—to the contrary. As we said in our opening remarks and also in answer to questions here, there was a raft of same-sex law reform passed last year at a Commonwealth level which in effect gives parenting rights for all intents and purposes to same-sex couples, recognising that there are children in these relationships at this moment. As Ben has pointed out, it is a very, very small minority, and it is an exception. But not wanting to see those children disadvantaged in any way, our organisation supported some of those areas of discrimination being removed. From a practical point of view, there is no discrimination there.

The Hon. JOHN AJAKA: Parenting rights do not give a child the same protection, as far as I can see to date, that adoption would give a child. Many of the parenting rights cease when the child turns 18. We have had evidence about what occurs in intestacy and wills. We have had evidence about what can occur in child support. There is still a shortcoming with parental orders and parental legislation.

Mr SHELTON: The changes to section 60H last year dealt with that issue because it was seen that there was a deficiency in parenting orders. But notwithstanding all that, I think it is important that we do not change the natural order to accommodate these circumstances. We have removed the discrimination. Why should we send a message to society and to future generations that we, as a contemporary group of people who have control over legislation, are saying that suddenly this form of social construct, which is against the natural order, is now somehow normal?

The Hon. JOHN AJAKA: But that is very much a belief-based proposition. That is your belief, that is your value, and that is your organisation's value.

Mr SHELTON: I think the natural order is clear that it takes a man and a woman to create a child. That is not an ideological position. It is a biological position that is reflected in the natural Law.

The Hon. JOHN AJAKA: I am sorry I do not have the answer to my next question, but can you explain how your lobby group is comprised, whom it represents, and how it was formed?

Mr SHELTON: The ACL represents a broad constituency of grassroots Christians right across the country. We have a supporter base that follows our material and responds to our campaigns.

The Hon. JOHN AJAKA: Can you tell me roughly the membership?

Mr SHELTON: We do not have a formal membership, as such, but we have supporters.

The Hon. JOHN AJAKA: Does it include—

Mr SHELTON: There would be many thousands of people. I do not propose to disclose that here.

The Hon. JOHN AJAKA: Okay. On that basis, thank you.

The Hon. DAVID CLARKE: Mr Shelton, following up that last question, I think the Australian Christian Lobby is a body that frequently has leading members of all political parties or at least the major parties appear at its functions, including the presence of the current Prime Minister, Kevin Rudd, and the previous Prime Minister, John Howard.

Mr SHELTON: That is right.

The Hon. DAVID CLARKE: It is a body that you would contend is respected by both sides of politics. Would that be the case?

Mr SHELTON: Yes, we would make that contention. I probably should have—

The Hon. JOHN AJAKA: I never implied to the contrary.

The Hon. DAVID CLARKE: I know.

Mr SHELTON: We certainly work in a cross-party way. We are non-party partisan. We strictly a non-party partisan group.

The Hon. DAVID CLARKE: In a submission that your organisation made to this inquiry, you refer to Supreme Court Judge James Wood's three-volume report into child protection services in New South Wales. This is what you state:

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

Later you refer to the pursuit of an ideological agenda ahead of the interests of children. Can you elaborate on why, in respect to the issue of same-sex adoption, you see that issue being raised putting ideology ahead of the interests of children?

Mr SHELTON: I think it is fairly self-evident from the inquiry last year. We have all seen the media reports of the horrendous abuse of children that has been occurring for many years in this State, and also in other States. Obviously, we think that is a tragedy. We cannot understand, when there are urgent priorities in looking after children, that suddenly the New South Wales Government sees that it has time to pursue a contentious agenda of social engineering.

The Hon. DAVID CLARKE: I am actually talking about ideology being put ahead of the interests of children in respect of this inquiry.

Mr SHELTON: We would very much see this as ideologically driven by homosexual activists who, not content with having discrimination removed, are now pursuing symbolic aims and are holding up children as trophies for their own agenda. Children are not pets. They are not there to satisfy the whims of adult lifestyles. They should be given the proper care and attention where the state is needed to get involved in that. The state has an obligation to ensure that those children have a mother and a father figure in their lives.

The Hon. DAVID CLARKE: Some people who have appeared before this inquiry contend that the Convention on the Rights of the Child in some way supports the concept of same-sex adoptions. Would you have a view on that?

Mr SHELTON: Our reading of that convention is that it does not support that. It makes reference to a child having the right to be raised by his or her parents, full stop, where you would understand that to mean parents in the traditional form of the word. I understand that convention was drafted some years ago, probably before homosexual activism came to the fore, and the word "parents" used there would refer to heterosexual parents. That would be our understanding of the UN convention.

The Hon. DAVID CLARKE: As you may be aware, half of the adoptions that take place in New South Wales are of children from overseas, and Australia has agreements with all the countries involved. All of them do not recognise same-sex adoptions. If the law is changed to allow same-sex adoptions here in New South Wales, how do believe that will impact on adoptions of overseas children from those countries?

Mr SHELTON: I think it is fairly obvious. They will not want to be a party to allowing their children to be released into Australia, if that is the case.

The Hon. AMANDA FAZIO: Earlier in answer to a question you said that we should be respectful of our social heritage. You refer to that as being families composed of a mother, father and children. If we should be respectful of our social heritage, what are your views on some of the other aspects of social heritage that we no longer adopt—things like arranged marriages for children, and wives being regarded as a chattel of their

husband? We have changed all of those sorts of social understandings as society has developed. Why draw the line at the composition of families?

Mr SHELTON: Because with those examples that you have enunciated, there is clear injustice. People of Christian faith, such as our organisation, have been very much to the fore in supporting the removal of injustice. But there is no injustice in the notion of a child being brought up by its mother and father. Where we have had issues in our social heritage, such as the support of slavery and other sorts of social issues, they have been dealt with, and often Christian people have been to the fore in addressing those social evils—certainly the issues surrounding women that you have mentioned. So where there are positive aspects of our heritage obviously we retain those, where it needs to be adjusted we do so, and I see no compelling case to make an adjustment in the case of children being placed into the care of same-sex partners.

The Hon. AMANDA FAZIO: Your submission focuses on the concept that if adoption by same-sex couples were to be legalised they would somehow be in competition with heterosexual couples for the pool of available children for adoption, but that is an incorrect assumption to start with because the majority of people agitating to have same-sex adoption legalised are same-sex couples who are seeking to have the other parent legally recognised as a parent of the child. I see it as being a clear injustice to the child that they cannot have proper legal recognition of two parents. What is your response to that?

Mr SHELTON: That is one aspect of what is proposed in changing the law, but if you are going to change the law to allow same-sex adoption you are also making that available to homosexual men and we know from research from the National Centre in HIV Social Research that 57 per cent of male homosexuals are highly promiscuous. That is hardly a stable environment in which to place a child. In terms of the issue of lesbian couples where one might be the biological mother, which I think is being emotionally used to gain leverage for this agenda to normalise same-sex parenting, as I have said before, all the practical areas of discrimination, or most of those, have been dealt with through the same sex law reform that occurred last year at a Commonwealth level.

The Hon. AMANDA FAZIO: You have focused on the issue of promiscuity among gay men. What is your response to the research that shows that up to one-quarter of children in marriages are not fathered by the husband of the wife, and that only becomes apparent when there is a contest about child support payments or some other medical issue comes up? If you are going to use promiscuity as a basis for denying people the right to adoption, how are you going to apply that across the board, across the community, to heterosexual couples as well as to homosexual couples? It seems to me that that is just an attempt to smear gay men in their attempt to gain the right to adopt.

Mr SHELTON: Promiscuity is a bad thing for any child to have to live with in an environment where that takes place, but again the research shows that the most stable relationship is actually the married heterosexual relationship and that is where there is the least promiscuity—I am not saying there is none, but that is definitely the most stable environment. All I am saying is that the research shows that male homosexual relationships are notoriously unstable, they are not generally monogamous, and this is not in the best interests of children. We are talking about legalising same-sex adoption. I think we need to think very carefully about the type of environment and lifestyle that currently occurs in these communities and whether that is an appropriate environment in which to place children, particularly when there are other alternatives available.

CHAIR: I would like to thank both of you for assisting us with our inquiry. The work that you have put into your submission is obvious, so thank you. It is possible that the Committee will make a decision to send you some further questions and we would be hopeful that you would reply by 13 March.

Mr SHELTON: Thank you very much.

(The witnesses withdrew)

(Luncheon adjournment)

MS GILLIAN ELIZABETH CALVERT, Commissioner, Commission for Children and Young People, affirmed and examined:

CHAIR: Welcome to the second hearing of the Standing Committee on Law and Justice inquiry into adoption by same-sex couples in New South Wales. I will not read the entire document. The Committee has broadcasting guidelines that you are aware of. If you have any messages or documents for the Committee please give them to the secretariat. 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 that witnesses avoid the mention of other individuals unless it is absolutely essential to address the terms of reference. If you have a mobile phone, please turn it off. Are you conversant with the terms of reference for this inquiry?

Ms CALVERT: I am.

CHAIR: If you 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 indicate that fact and the Committee will consider your request. If the Committee asks you to take any questions on notice—that has been a fairly common occurrence in this inquiry—the date for return is 13 March 2009 but the secretariat will provide you with information about that. Would you like to make an opening statement on this issue?

Ms CALVERT: I would. I am pleased to appear before the hearing today. I want to acknowledge the presence in the audience of Steven Stifo, a young policy trainee who has started this week with the Commission in keeping with our commitment to try to provide opportunities for young people. The Commission has a broad mandate to promote the wellbeing and to represent the interests of all children and young people in New South Wales. The Adoption Act 2000 makes it clear that the focus of adoption is on the child, not on the parents. At the core of the legislation, in its principles and decision-making process, the main consideration is the best interests of the child. As an advocate for children I am pleased to be able to provide a child-centred response to the Committee's term of reference.

I would like to begin by providing you with an understanding of the way in which the Commission operates, and how a child-centred focus informs the work that we do in advocating for children and young people. We are unique. There is no other agency in New South Wales that has a mandate from Parliament to advocate solely and exclusively for the interests of children and young people. This mandate, which is inscribed in our legislation, keeps us free from the conflicts of interests that might arise if we also advocated for parents, families, communities or professional interests. Our core work is for the children and young people in New South Wales. What that means in terms of this hearing is that my focus is on the child, not on the parents or other stakeholders. As I have said, this reflects the Adoption Act itself.

Adoption is clearly for the benefit of children, not for parents. The legislation is also clear that we have a responsibility towards children: the decisions made about them are in their best interests. The legislation is also clear that children have a right to participate in decisions about adoption, having regard to their development, and that their wishes are an important factor in adoption decisions. Adoption is clearly important to children because it is providing them with families and stability for life. I know from my many conversations with children and young people over the past 10 years that families are central to children and young people's wellbeing. Families are the basis on which a child's life sits. It is where kids have experiences of being loved and cared for. Children have told me that feeling safe and secure is important to them and their families provide this for them.

Recently I spoke with some young people from our young people's reference group to get their views on what they thought were important rights to them. We asked them to nominate what rights were important to them and we then asked them to prioritise them. The young people's reference group is made up of 12 young people aged between 12 and 18 years to advise us on our work. It is made up of young people of diverse backgrounds from across New South Wales. They identified the rights that were important to them in this order: rights to a safe and loving environment; right to shelter and food; right to health care; right to education; and the right to be heard. You can see from a child's point of view families are the basic foundation for their lives. They are also the basic foundation for providing these rights to children and young people. Children trust that their families, particularly their parents, will provide them with emotional love and physical protection. Kids need to have a sense of belonging and enjoyment in their family and to be nurtured so that they can grow and develop.

At that same meeting where I asked about rights I also asked the young people's reference group about their views on same-sex adoption. They had a very positive view about same-sex adoption. They told me that they thought the most important thing was for children and young people to have a safe and loving home. The sexuality of the parents was not important to them. I think we see that reflected in that list of rights that the children identified in a separate exercise at that same meeting. What they did think was important about adoption was the motivation of the parent—whether they were going to provide a stable, safe and loving environment that that children could grow up in. They also thought that matching children with potential parents was important and that children should have a say about how they were matched with their parents if they were old enough to do so.

They also thought that the adoptive parents should be people that the children could connect with and who understood their background and culture. They identified that a positive thing about having same-sex parents was that it could make children more diverse and appreciative of diversity. They also thought it was important that adopted children be able to find out about their biological parents or family for health and cultural reasons and maintain relationships with them if they chose to. The young people finished that part of the meeting by saying to me that they thought, given that society has changed and we now have families with two mums and two dads in them, that the law needed to catch up with where we are now. My focus here today is on children and their wellbeing. I support the principles and objectives of the Adoption Act and when the best interests of the child are met then they are met without prejudice. Thank you.

The Hon. AMANDA FAZIO: What issues do you think need to be weighed when considering the best interests of children in the issue of adoption by same-sex couples? That is generally, as well as in the framework of those comments made by the group of young people you alluded to.

Ms CALVERT: I think the same issues are weighed when considering any adoptive parents. I do not think issues change depending upon whether it is same-sex or heterosexual parents. The sorts of things that the young people identified, and are already present in the legislation, are the important issues: the ability to provide a safe and loving environment for the child; the motivation for adoption; the match between the adoptive child and the adoptive parent; and, if able, the child's wishes. I think the best interests of children are the paramount consideration regardless of the sexuality issues.

The Hon. AMANDA FAZIO: In New South Wales we have a situation where a single gay person can adopt a child but a gay couple cannot and there are now a lot of gay and lesbian families in New South Wales. Do you have any information on how the inability of the legal system to recognise that they have two parents has impacted on children?

Ms CALVERT: I do not have any evidence-based or research information but based on what children have told me, and from my discussion with the young people's reference group, from the child's point of view they see both those people as their parents and therefore they would argue—I imagine—that both of those parents should be recognised in law. I think you see that in a day-to-day way when you think about the way children live their lives. Children go to school and if the other parent in the child's life does not have any legal rights to make decisions on behalf of that child then it potentially disrupts the relationship between the child and the parent and somewhat restricts that adult's ability to fulfil what the child would see as the parental role. I think we are putting barriers between children and whom the children see as their parents in an unnecessary way.

The Hon. AMANDA FAZIO: We have heard a lot of evidence from previous witnesses both today and yesterday where both sides of the argument have come in with a raft of research that says, "We are right: you are wrong." Are you aware of any research on the impact of same-sex parenting on children? If so, could you make the references available to the Committee?

Ms CALVERT: I am happy to make those references available.

The Hon. JOHN AJAKA: You mentioned that the law needs to catch up, if I can use that phrase. The reality is that children are being adopted by single persons, whether they are gay, lesbian or heterosexual, and are living with persons who are in a gay or lesbian relationship—the numbers are there. My concern is that we have put these children in a situation where we are not affording them the protection that the law would afford a child born to a married couple, for example, or a child born to a de facto couple. What are your views in relation to the law catching up?

Ms CALVERT: The kids I was speaking with were saying that there were a number of children who had two mums—they were a lesbian couple and one of them had had a child. Under the recent changes to the law the other mother can now be on the birth certificate, so they had two parents and they saw themselves as a nuclear family, with an extended family hopefully. The young people were saying that it was odd that you could have that situation but you could not have a situation where a lesbian or gay couple could adopt a child. They felt that was out of step and out of date and that given that, in the view of the children I was speaking with, there is community acceptance of families with two mums or two dads they could not understand why the law did not catch up. They thought the law should catch up with what they perceived as being acceptable current circumstances and reality in the community.

The Hon. JOHN AJAKA: In relation to adoption, and I asked an earlier witness about this, I see two distinct areas. I would be grateful if you would correct me if I am wrong. I see an area where in effect the child is already well known to, or is the child of one member of, the couple and there is an attempted adoption process or attempted parental orders, or something of that nature. There is a completely distinct situation where a couple decide they want to adopt child who is not known to them and go through the process, get on a waiting list and wait their turn as part of a pool to be able to adopt. Do you see any difference in those circumstances, because in the first circumstance the child is known to the parties and the child may be old enough to express a view, which is one of the issues you have raised. In the other circumstance we are talking about a gay or lesbian couple wishing to adopt a baby that is not known to them and where there is no real input from the child.

Ms CALVERT: The view of the young people and children would be that the primary thing is that children have families who love them and keep them safe. That is the primary thing that they are concerned about. So in relation to the first example they would be asking why the legal world is not keeping up to date with the child's emotional reality, if you like, and developmental reality. They would probably say the same thing in relation to the second situation that you talked about, that what that baby needs is a safe and loving family, and whether the parents are able to give the baby what it needs to grow up and develop and contribute to the world.

The Hon. JOHN AJAKA: You do not believe they would differentiate, so that if there were a heterosexual couple and a gay or lesbian couple and all other factors were equal would the young persons' group believe that no priority should be given to the heterosexual couple based on the fact that they are heterosexual?

Ms CALVERT: I did not ask them that specific question, so this is my interpretation of what I think they would say. Reflecting on the discussion and the way they work, I think they would again say it is the safe and loving family that is the critical issue; that is the thing you need to take into account. If a lesbian or gay couple can do that in the same way as a heterosexual couple, then both provide an opportunity for that child to have its needs met.

The Hon. GREG DONNELLY: Following up Mr Ajaka's line of questioning just so that I am clear, did you speak to the reference group about the two scenarios where a child was already part of a family relationship, such as with a lesbian couple, and the other arrangement where a homosexual couple were desirous of having a child?

Ms CALVERT: No, we did not compare those two scenarios. Both scenarios were referenced by the young people when I was talking with them but they did not compare the two or weight the two or say that one had a higher priority than the other.

The Hon. GREG DONNELLY: Just so that I am clear, was a report produced in regard to this meeting with the young children?

Ms CALVERT: No, minutes of the meeting were, or are, being produced—we only had the meeting on Saturday.

The Hon. GREG DONNELLY: Sure. Can they be provided to the Committee?

Ms CALVERT: I would be happy to provide them to the Committee. Could I suggest, with the Committee's permission, that I take those minutes back to the young people for them to agree that they are a correct record of the meeting before I forward them?

The Hon. GREG DONNELLY: I think we would like a full and accurate record of the meeting with the children.

Ms CALVERT: I could if you like pose that question to the young people, if you are interested in their answer, comparing the two situations and whether they think one has a higher priority.

CHAIR: Thank you. The Committee would be very grateful.

The Hon. GREG DONNELLY: Just for completeness, if we are going to do that I think we have to talk to the children about the scenario of having a mother and a father and the alternate situation of having two mothers or two fathers. I think it has to be clearly expressed to them that that is what we are talking about. Is that the way they have been engaged?

Ms CALVERT: We have just been talking about adoption with same-sex parents and they have spoken about a range of combinations and ways in which children might be adopted. I would be happy to run the question that we are going to put to the children through the Committee. We could probably get it to you if you wanted to comment on the question and the way it was framed. They will then take it in whatever way or direction they want.

CHAIR: This Committee communicates very well on those sorts of issues.

The Hon. GREG DONNELLY: I think the important thing is that the children understand what the scenarios are. We are talking about a child in a situation where they have a mother and father versus the alternate arrangement where they have two mums—

CHAIR: We will have this debate later. We will talk about the word "versus".

The Hon. GREG DONNELLY:—so the alternates are clear in the child's mind.

Ms CALVERT: The range of options.

The Hon. GREG DONNELLY: Yes. In informing yourself about the issue of the child's best interests—obviously your letter to us on 13 January confirms your and the commission's understanding of the issue—you looked at part 7 of the Adoption Act, specifically objects (a) and (b), which deal with the paramountcy principle and that adoption is regarded as a service for the child. Just to confirm it, adoption is child-centred in New South Wales, is it not? The interest of the potential parents, whoever they may be, in no way interferes with this primary objective, does it?

Ms CALVERT: It takes second place to the primary objective, which is the best interests of the child. Adoption is a service for parents but it is first and foremost a service for children.

The Hon. GREG DONNELLY: In all cases.

Ms CALVERT: Yes, in my view in all cases it is the child who is to benefit from the adoption.

CHAIR: Mr Donnelly, we have run out of time. Do you mind putting your questions on notice, unless it is not a long one?

The Hon. GREG DONNELLY: I will be very quick. In terms of the issue of the child's best interests, have you taken the opportunity to inform yourself of the social science that has existed for some decades now around the significance of mothering and fathering with respect to the raising of children?

Ms CALVERT: I have some information and knowledge, yes, about parenting.

The Hon. GREG DONNELLY: When you provide us with that list that you agreed to provide earlier can you also provide to the Committee a separate list of the material you have relied as Commissioner on by way of references that outline the details of the importance of a mother and a father with respect to the raising of children?

Ms CALVERT: I will take that on notice.

The Hon. GREG DONNELLY: And provide us with that list?

Ms CALVERT: Yes.

Ms SYLVIA HALE: I do not think we have had one submission or one witness who has not professed to have the best interests of the child first and foremost. The difficulty seems to be in agreeing what those best interests are. You have enumerated the things that the reference group thought were important, such as motivation of the parent, matching child to parent, love and whatever. When someone applies to adopt a child, regardless of their sexuality, are those the issues that the court or the adoption agency looks at? Is there a match-up between what the children see as important and what the agencies see as important?

Ms CALVERT: The agencies are guided by what is in section 8 (2) of the Adoption Act. It lists what they are to have regard to: the wishes expressed by the child, the child's age, maturity, level of understanding, gender, background and so on, family relationships and characteristics of the child that the decision maker thinks are relevant—presumably that deals a bit with the matching issue—the child's physical, emotional and educational needs and sense of identity, and any disability the child has. It also includes the attitude of each adoptive parent, so again that is the motivation issue, if you like. I think the nature of the relationship of the child with each proposed adoptive parent again goes to the loving, safe family life. I think that section reflects the issues that the young people raised as being important when thinking about adoption.

Ms SYLVIA HALE: It has been put to the Committee that it is not the structure of the family that is important but the processes that take place within the family, and that seems to be reflected both in what the children want and the procedures that are followed.

Ms CALVERT: I would absolutely support that. In some other work we did, which I am happy to reference for you, called the inquiry into children who have no-one to turn to, where I personally listened to over 200 children and young people across New South Wales from 4 to 18 years of age, the critical thing that emerged from that conversation was that it is the relationships that prevent a child from becoming vulnerable and that assist the child most when they are vulnerable. The most critical relationships are those within the family.

Ms SYLVIA HALE: If you could supply that to the Committee it would be very valuable. In that context, given that everyone is trying to make sure that children are happy with the choice, as well as that all other considerations are met, to some extent it is counterproductive to remove people from the pool of possible adopting families solely on the basis of some criteria that is not relevant to the assessment process. Is that correct?

Ms CALVERT: Yes, I would agree with that. We have seen that happen in the past where previously there was an age limit of 40 on adoption and weight was another issue. They have been removed from the criteria, so I think again it comes back to that critical relationship within the safe and loving family that is the issue.

Ms SYLVIA HALE: How representative do you think your panel of 12 children is of children across New South Wales?

Ms CALVERT: I do not think any 12 people, and I include adults in this, can be representative of over four or five million people. I guess you could ask the same question about Parliament's makeup. How representative is it of the makeup of the New South Wales population?

Ms SYLVIA HALE: There would be a few surprises, I would suggest. I would say, however, that we have diversity in the group in terms of age, where they are located from, gender, cultural background and religious views. I would also say that while I certainly have relied on the conversation with the young people, to talk with you there is a whole lot of other work that is being done that is helping to inform me, like my conversations with the 250 children and young people as the inquiry goes on.

I would also like to take the opportunity to table a research study we did on children's wellbeing, which again is another more representative piece of research into how children understand what is in their best interests, to assist the Committee.

The Hon. GREG DONNELLY: Could we get the details of who is on the committee, their children, their names, and all that sort of stuff?

Ms CALVERT: I would be happy to do that.

The Hon. JOHN AJAKA: It is a public record?

Ms CALVERT: Yes, it is a public record. We tend to talk about them using their first names, for protection reasons. If you could not publish that.

CHAIR: We will accept it as a confidential document, if you could so mark it.

The Hon. DAVID CLARKE: Commissioner, if I could summarise the situation in this way. From your point of view, you are guided first and foremost by what is in the interests of the child?

Ms CALVERT: My Act requires me to do that.

The Hon. DAVID CLARKE: In fact, that is what the law requires when the issue of adoption is considered?

Ms CALVERT: Yes.

The Hon. DAVID CLARKE: Of course, that begs the question of whether same-sex adoption is in the best interests of the child. So we have to look at all the evidence, the research, anecdotal evidence and all of those things, and that is a very complex and detailed process. It is not a simple process. Would you agree with me on that?

Ms CALVERT: Yes.

The Hon. DAVID CLARKE: As I understand your position, as a commissioner you are not making any recommendation on this question of same-sex adoptions, but you are guided by what is in the best interests of the child? Is that the situation?

Ms CALVERT: Yes. I am guided by the best interests of the child, but I have formed an opinion about what is in the best interests of the child.

The Hon. DAVID CLARKE: And that opinion has been formulated on what research you have been able to lay your hands upon and also what your reference group of young people has indicated to you?

Ms CALVERT: And my experience of working with children and families over 25 years, as well as the research that we ourselves have conducted about the wellbeing of children.

The Hon. DAVID CLARKE: If you could take it on notice to supply us with the research you have over your 25 years, so that we can assess the information upon which you came to the view that have on the issue.

Ms CALVERT: Perhaps I could not provide you with 25 years worth of research, but I will reference—

The Hon. DAVID CLARKE: You understand what I mean, do you not?

Ms CALVERT: I do.

The Hon. DAVID CLARKE: You would understand that a group of 12 young people might be representative and it might not be. There might be a lot of groups of 12 people around the State who will have varying views on this, and we should take into account, would you not agree, a whole lot of other things than that very narrow basis of what a dozen people in this reference group have indicated to you?

Ms CALVERT: Just as I have relied on more than the 12 young people in the reference group, I would think it would be appropriate that you do as well.

The Hon. DAVID CLARKE: If we could get some substantial material from you so we could understand what it is that has led you along the pathway to come to the view that you have on that issue, that would be very useful. But you do agree that what is in the best interests of the child begs the question of whether same-sex adoption is in the best interests of the child? There is a lot of research by experts, including psychologists, psychiatrists, scientists, medical people and so forth on that.

Ms CALVERT: I do not know that there is a lot of research on that, but there is some research on that.

The Hon. DAVID CLARKE: Can I indicate to you that we have had referred from both sides an abundance of research from experts.

Ms CALVERT: I will try to add to that pile, if you like.

CHAIR: Thank you for your attendance today. The Secretariat will contact you in relation to the further material to be provided to the inquiry.

(The witness withdrew)

(Evidence continued in camera)

(Public hearing resumed)

CHAIR: Good afternoon and welcome. Thank you very much for assisting us with the second public hearing day of the Standing Committee on Law and Justice inquiry into adoption by same-sex couples in New South Wales. You have heard the guidelines for broadcasting before. If you want to ask or give the Committee anything, the secretariat 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. If you have a mobile phone, would you please turn it off because some interfere with the recording mechanism of proceedings.

ANDREW LEIGH FORD, Lecturer and Member of Social Issues Executive, Anglican Church, sworn and examined:

CHAIR: What is your occupation?

Reverend Dr FORD: I lecture ethics and Christian thought at Moore College and I am a member of the social issues executive of the Anglican diocese of Sydney.

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

Reverend Dr FORD: As a representative of the Anglican Church, Sydney diocese.

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

Reverend Dr FORD: Yes, 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 indicate that fact and the Committee will consider your request. Because of the complexity of the questions we are asking, quite often there are questions taken on notice, so if you would prefer to do that please do not hesitate to let us know that is what you would like to do. We would ask please that those answers be returned by 13 March. The secretariat will be in contact with you if there are any questions. Would you like to make an opening statement?

Reverend Dr FORD: Yes. I would firstly like to thank the Committee for the opportunity to contribute to the inquiry and to speak at this hearing to discuss these issues together and to present to you our views on this matter before you, particularly as you seek to represent the wider community as you examine and frame any new legislation that might come from this hearing. We recognise that the issue of adoption by same-sex couples for some might simply be a legal issue or a policy matter, but for others it is a deeply personal matter.

We also recognise that in a sense there are two aspects to this whole discussion. Society is a dynamic thing and legislation needs to be adapted to ensure that it achieves the purposes for which it was intended as society changes. This is one of those areas where society has changed. There have been many changes in family structure and form. There has been recognition of different types of relationships that contribute to those structures and forms. Alongside of this there are already, we know, same-sex families in existence with children in them through various ways and means, and we recognise that this gives rise to a need put before you to legislate potentially for the appropriate needs of those children in their best interests, so we do recognise that that is the context in which you are opening this inquiry.

The way the law changes, secondly, will have long-term consequences for good or for ill for society and, more importantly in this discussion, for good or for ill for the children involved in adoption, so we want to present to you today some of the issues surrounding that to ensure that you have the resources available to make decisions based on the best interests of the child. We regard the first aspect of the discussion as clearly a presenting issue before you and some legal means may need to be brought to bear to ensure legal security for those children within same-sex homes already, which we recognise. It is a complex matter that must be resolved again in the best interests of those children. But we want to contend that adoption may be the wrong category for you to address that matter. Maybe there are other ways within the law that exist already to address that problem

and maybe by changing the Adoption Act you actually will open up a different thing. By solving one problem you may be inadvertently creating a whole series of problems down the track.

Independent of that, our particular interest and an area where I think we can contribute is that of long-term consequences. In essence we believe that the best interest of any child with respect to parenting and nurture is to be welcomed into the world and cared for in the context of a mother and a father. Keeping the Adoption Act as it is reinforces the right of children to have a mother and a father as the societal norm and the most optimal condition for children within our society.

Ms SYLVIA HALE: You say at page 5 that should the law change in New South Wales it would place non-government agencies who have been providing caring and professional adoption services for many years in an unenviable and possibly untenable situation. Are you suggesting, assuming there were no religious exemption granted to organisations such as Anglicare, that rather than being required to countenance or facilitate the adoption of a child by a same-sex couple you would prefer to withdraw from the provision of adoption services altogether?

Reverend Dr FORD: Yes.

Ms SYLVIA HALE: Could you explain how that is in the best interests of the child?

Reverend Dr FORD: The first thing to say is that Anglicare and the social issues executive are two separate but related entities, so I cannot speak with any authority on the practical outworking. That really is something that Anglicare and its organisational structure would need to deal with. Of course, the Anglican Church, more widely speaking, would have something to say in relation to that. Given that, back to your question, I think what it would do for Anglicare and for those who are involved in the adoption services that it provides, would be to put them in a position where they would have to act contrary to the Act either way. Let me explain: Either they would have to act contrary to the new Act that allowed for same-sex adoption in saying, "No, we won't. We will risk whatever that risk will be and we will say 'No'", so they would have to act contrary to the Act in that way, or they would have to act contrary to the Act in the sense that they would have to be within their organisation, their thinking, their ethos, their practice for many years going against what they believe is the best interest of the child. Anglicare and other service providers of adoption have some latitude and scope for determining what the best interest of the child is at the moment, so if they were forced to allow for same-sex adoption they may have to go contrary to the Act in the sense that they would not be in their thinking giving the child what is best in that context. That is the unenviable position. I cannot speak as to what they would do in practice, how they would react to changes.

Ms SYLVIA HALE: Leaving aside Anglicare's position, if you were an adoption agency facilitating adoption and you were obliged by the law to accept applications from same-sex couples, from your perspective, would you withdraw from the provision of those services or consider it would be in the greater interests of the child to see that child adopted into a same-sex family, assuming it met all the criteria required of adopting families?

Reverend Dr FORD: As you would know, adoption is not just one thing, it actually is a dynamic thing in the sense that if you are asking me to speculate on adoption of an infant given up at birth by a mother, that may be one thing. If you are asking me to speculate on whether adoption could be applied to a step-parent arrangement where a lesbian mother has a co-parent in the home—there are going to be different complex issues brought to bear on each of those. I cannot give you a blanket answer. I cannot say, "No, never", because that really would be nonsensical in the best interest of the child, but our fundamental position is that for all sorts of reasons, and not just sort of religious belief reasons, for all sorts of reasons we contend that the optimal conditions where a child is welcomed into the world is an environment where they have a mother and a father providing their care, so that would guide my decision.

Ms SYLVIA HALE: It is good to talk about optimal conditions, but we live in a very imperfect world.

Reverend Dr FORD: Absolutely.

Ms SYLVIA HALE: And by not amending the law are we not giving one blanket answer or response to situations, which you have said are very complex and differ from one to the other, and saying we are closing the door on those situations regardless because we are failing to amend the law?

Reverend Dr FORD: I do not think so. As I said in my opening statement, I think that maybe adoption is not the way to address the issues, say, of legal recognition of a step-parent in that kind of role. Maybe adoption is not the way to do that. Maybe there are other avenues by which it could be without changing adoption as the way we have seen in society.

Ms SYLVIA HALE: Do you have any idea what those avenues are?

Reverend Dr FORD: I am not an expert on all of the issues to do with the legalities of, say, parenting orders and those sorts of things, but it seems to me that firstly the number of changes that happened fairly recently in New South Wales and other jurisdictions around Australia have meant that there will be great benefits for same-sex families that may in part address some of the presenting issues. So that is the first thing to say. We cannot speak about this in isolation from the changes that have happened in legislation previously. The first thing to ask is: What is the real issue? Are there ways to get at that real issue without changing our fundamental perspective on adoption? If the issues are that at 18 a parenting order, for instance, may cease and so that leaves no legal connection with the adoptee, maybe we could consider as a society some mutual consent for continuation of that parenting order, so that as an adult child they could decide that they will enter into a legally binding parental relationship with the co-mother in the scenario.

Ms SYLVIA HALE: We were given an instance this morning of a 13-year-old girl whose birth father had died and whose mother had entered into a relationship, which had been of some duration, with another woman. The mother wanted to go overseas but was concerned if she died what might happen to her daughter. If we took the assumption that she did die, this 13-year-old would have no formal legal relationship with the surviving partner and the relatives of the mother may be so disapproving of that relationship that they intervene and go to court and say, "We want custody of this child" or "We want to adopt this child", regardless of the child's wishes. Do you concede that in the absence of an appropriate legal framework to deal with those issues in a very fair way the law is lacking and we are not dealing with real problems that exist, and the amendment that is proposed is one way of attempting to deal with those problems given that in the adopting process, to be approved, you have to be acceptable on so many levels?

Reverend Dr FORD: As you have said, and I completely agree, the world is a messy, complicated and complex place. That situation is one that I can resonate with. I can say that there do seem to be some very real issues— particularly for that young 13-year-old woman—and the possibilities. But is it good law to change a fundamental principle without good reason? Not that that is not a very real situation where that child has potential for detrimental effects, I am not denying that at all. But is it good law to change everything about the underlying principles of how adoption has happened on that principle? Would it make the situation less complex? I want to say to you that adoption is a complex process. It is not a simple process, as you would know. It is not a quick and easy fix to the problem. Would it actually solve the problem? I am not sure that it necessarily would solve the problem in a timely manner. Because what you are talking about is not waiting five years or four years or three years, or however long the adoption may take, but getting it done this week so they can go overseas.

Ms SYLVIA HALE: No, it takes about nine months I understand.

Reverend Dr FORD: It can take longer, but nine months would be great. I know people who have been appropriate for adoption who have waited a lot longer.

Ms SYLVIA HALE: Yes, but there is a difference between being a partner and those of the child?

Reverend Dr FORD: I am not sure that it could be done with other legal frameworks already in place without changing the principles that are embedded in the Adoption Act for the optimal condition for the children, particularly infants, in the State's care being given up to the State to have a mother and a father. That is a major concern of ours. We do not want to fix a problem over here and undermine a principle that has stood our society in good stead for many years.

The Hon. JOHN AJAKA: In a nutshell your concern is that while we are trying to solve a problem, in doing so we could be creating different or further problems?

Reverend Dr FORD: That is always the challenge before you as legislators, yes.

The Hon. JOHN AJAKA: You either leave the status quo, you leave what are the existing problems—and you have canvassed many of them—or we seriously try and find a resolution and hopefully get it right and not create more problems. That is what we are faced with?

Reverend Dr FORD: Absolutely.

The Hon. JOHN AJAKA: You indicated that maybe rather than adoption we seek other avenues. But in trying to get close to all the protections that adoption applies, do we find that what we are doing is adoption but simply giving it another name so that we do not offend those who see adoption as exclusively for a man and a woman? Is that not also a risk in that respect?

Reverend Dr FORD: If the intention was to have a whole new raft of legislation that did what adoption does without offending those who hold that underlying principle that I have outlined to you, whether it be for religious or other reasons, I do not think that would be a good thing. There are other issues with adoption that have not necessarily been raised in Ms Hale's example. In the example given here there was no other parent—the father had died. Adoption by its very nature means that there is a complete severing of the legal parental rights of any other parties. That may also be another issue that is presented.

The Hon. JOHN AJAKA: One of the aspects that appeal to me about adoption is that it is clear and the criteria are very strict. The requirements to be satisfied by the parties to comply to be certified are very strict. Ultimately you still have the judicial system overseeing it and if all of the appropriate checks and balances are not there then the adoption will not occur?

Reverend Dr FORD: Yes.

The Hon. JOHN AJAKA: So you do have that ultimate safeguard with the children's interests being paramount?

Reverend Dr FORD: As I have already said, adoption is a multifaceted thing but let us just stick with the two types of adoption that I have put before you. The stepparent type adoption is—I might be wrong and you can tell me if I am wrong—but that is one of the key presenting issues to you.

The Hon. JOHN AJAKA: I am glad you have raised it. To my mind there are two separate types of situations with adoptions. One is where the child has known or has had some life with a person either in foster care or one of the parents and then the partner comes into the relationship—one complete and distinct situation. Then there is the situation where a couple decides they want to adopt a child, they go through the process and become part of the pool and wait for the next child.

Reverend Dr FORD: Yes. In those two situations there are quite related but different issues at hand.

The Hon. JOHN AJAKA: Your view is that they should be treated separately as opposed to one blanket?

Reverend Dr FORD: No, what I am saying is that you do not want to apply adoption to the stepparent, for want of a better term, thing because it will impact on the other type of adoption radically. In terms of the stepparent thing, for want of a better term—

CHAIR: The word is "known".

Reverend Dr FORD: We will call it "known". Anecdotally we are being told not just by Anglicare but also by others who are involved in adoption services that we are moving away from these kinds of adoptions within heterosexual relationships. What people are finding is that children who may at one point in their life, early teenage years or 8, 9, 10-years old or whatever say, "That seems like a good idea" and therefore go through the process of known adoption, relinquished all of that connection legally speaking with the absent parent—assuming they are not dead—and there have been a number of cases that come back where the child, having reached majority and now become an adult, is going, "Hang on a tick. I am not really sure that is what I wanted." You can see how difficult that might be for a child.

In these cases I assume that the adults will initiate to some extent this conversation. If the child says, "No, I do not want that" they are not just saying, "No, I do not think that is a good idea" but they are actually

rejecting their mother or their father's choice. There are a whole lot of other issues going on. There is a power dynamic that I think is unhelpful. For those reasons known adoptions I think are becoming less and less. So why would we put adoption into the same-sex couples to fix that problem when we are already seeing issues in the other.

The Hon. JOHN AJAKA: You have raised an interesting point that I do not think anyone else has raised, which I noted as "staged" adoption. You raised the concept that if a child is adopted then that child is adopted to a certain age—say for argument sake to 16 or 18 years of age—but once the child reaches that stage are you saying that the child only then has the option to say, "Hang on, I do not want to go on with this anymore. I want this adoption revoked."?

Reverend Dr FORD: No.

The Hon. JOHN AJAKA: Or are you saying the parent or the child can do this?

Reverend Dr FORD: No. This is the problem with messing with adoption. Adoption has to be very clear, particularly from the adopting parents point of view. You are entering something that you cannot later decide is a wrong idea because a child is running around a supermarket and causing all sorts of grief. You cannot then say, "We do not want this child anymore." That has to remain.

What I am saying is, rather than having staged adoption maybe there are other legal avenues by which legal parental rights and responsibilities can be bestowed on a parent without revoking completely those connections legally speaking with others. Then the child on majority—when they have reached 18 years of age—can say, "Yes, I want to formalise this process. Having now become an adult and responsible for my decisions I am able to make those decisions and know all of the consequences. I want to formalise that relationship with my parental carers."

The Hon. JOHN AJAKA: If in that situation the 18-year-old suddenly said, "I want it formalised. I want to be adopted." So we have the situation of the same-sex couple and the child—if you can call him a child at 18 years of age—or the adult saying, "I want to now be adopted", you would have no problem with that?

Reverend Dr FORD: I do not think adoption is the right category in that situation because adoption really is a means by which the State can take protective control and provide a caring environment for someone who is unable to provide that for him or herself. Again, adoption is not the right category. We live in a society where people can choose to make their relationships as they see them, so I do not think it is my place to say they should not do that. But we would still want to say that does not take away from the fact that the optimal conditions are a mother and a father. Particularly with infants, that is what we should be aiming for. There is no shortage, as far as I am aware, of heterosexual parents who would adopt infants.

The Hon. GREG DONNELLY: I want to change tact a little bit and enter into some questioning of you on something rather specific and technical. If you were not sure of an answer I would hope that you would simply say you were not sure of the answer because that in some sense is an answer for me. I take you to point two of your submission on page one. I note that we had witnesses from Anglicare—in fact four witnesses yesterday—that provided testimony. Those witnesses provided two recommendations on half of Anglicare. You have probably read their submission, although I am not sure of that. Certainly in regard to the recommendations the wording is the same—which comes as no surprise to me nor I guess to others around this table— but if we look at your point number two, which is equivalent to their point 11 and point 9 on page 4, you say as they do:

Should the Parliament choose to amend the Act so as to permit adoptions by same-sex couples, legislation should also be enacted—

So this is additional legislation—

... so a decision made in good faith by a religious institution providing adoption services to reject such applications be protected from any claim of unlawful discrimination.

Yesterday morning we had the Director of Legal Services of the Department of Community Services, Mr Rod Best, assert before the Committee that existing provision section 56 of the Anti-Discrimination Act—that is the State Act—provided protection for, if I could use that phrase, organisations like Anglicare, CatholicCare and many other similar type organisations which are church or faith-based, from any prosecution in terms of breaches of legislation if, in fact, the Adoption Act was changed to provide for same-sex adoption by virtue of

what is the religious exemption provision—section 56. A couple of questions flow from that. First of all I note that you are here representing the Anglican Archdiocese of Sydney?

Reverend Dr FORD: Yes.

The Hon. GREG DONNELLY: The people here yesterday were representing Anglicare?

Reverend Dr FORD: Yes.

The Hon. GREG DONNELLY: With respect to the exemption provision under section 56—which I have not actually had a chance to go back and read—is it not the case that we are talking about separate organisations? You have got the Anglican Archdiocese of Sydney, which you are here today representing, and you have got Anglicare, which I presume is some registered organisation in terms of corporate status or something else?

Reverend Dr FORD: Yes.

The Hon. GREG DONNELLY: So to use the phrase "the Anglican Church" in reality we are talking about separate entities. Can you answer that?

Reverend Dr FORD: I cannot tell you the corporate governance structure of Anglicare and some of those technical things but what I can say is even if it is an independent entity with regard to that aspect of things, it is very much the welfare arm of the Anglican Church. Its policies and practices are guided from the decision-making that happens within the Anglican Church of Sydney through the Synod. What I am saying is if Anglicare made a decision with regard to changes then the Synod may have a problem. I cannot say one way or another. They may be separate organisations but they are intricately related in regard to their principles and outworking of practice in this regard.

The Hon. GREG DONNELLY: I understand the point you are making and I am not going in that direction; I am going in another direction. With respect to the issue of exemption status in New South Wales, we understand from evidence from other witnesses yesterday there is currently a live case subject to appeal in this State involving the Wesley Mission.

Reverend Dr FORD: I know of the case, but I do not know the details.

The Hon. GREG DONNELLY: Nor do I, but as I understand it from some of the testimony yesterday and some of the submissions, Wesley Mission has been successfully prosecuted for a breach of the Anti-Discrimination Act with respect to religious exemption on this very same issue. That may involve fostering, I am not sure because I am not familiar with the case, but Wesley Mission claim church status. The prosecution may not have been against Wesley Mission for acts as a church-based organisation but rather against the corporate entity responsible for adoption services in this State.

Reverend Dr FORD: Yes.

The Hon. GREG DONNELLY: The point I am getting at is, looking at your point number (2)—I am not sure whether Mr Best was cognisant of this when he gave his answer—you may find a prosecution being taken against an agency of the church that could be successful on the basis that that agency is not the church. In fact, the agency is just that—an agency of the church.

Reverend Dr FORD: I think it has to be that with regard to funding from bodies—

The Hon. GREG DONNELLY: That being the case, in terms of exemption it needs to be quite clear we are not just talking about the church but the church and its respective agencies that deal with adoption-related matters. Is that what you are submitting?

Reverend Dr FORD: Yes, absolutely. There is another issue. As you will probably be aware be the anti-discrimination legislation is being reviewed at the moment, which is appropriate and a good thing, and we think there could be some changes to the law that would be very beneficial to our society and to moving forward in this regard. The reason we have called for a specific change to the Adoption Act is that in the future, even independently of the scenario you have painted, which is probably right, it would be good to be assured as a

church organisation that they could continue to operate in good faith and do what they have always done with regard to the best interests of the child and therefore fulfil the requirements and principles of the Act, which is to place children with heterosexual couples.

The Hon. GREG DONNELLY: Is it your submission that with respect to the existing exemption, which I understand is contained in section 56 of the New South Wales Anti-Discrimination Act, there is at least a question mark about whether that would provide protection for the Anglican Church and its agencies with respect to claimants against respective organisations for breaches of the Anti-Discrimination Act?

Reverend Dr FORD: I am not a lawyer and I am not fully aware of all of the ins and outs of those pieces of legislation so I cannot give you an expert opinion on that, but as a layman looking at the law from the outside and at some of the things that have happened around us as we speak—

The Hon. GREG DONNELLY: Like the Wesley Mission case.

Reverend Dr FORD: Like that case, which I know a little bit about— but only enough to be dangerous, not the technical details. You could easily form the view that you have put.

The Hon. GREG DONNELLY: More importantly, is that your view and the Anglican Church's view, and the basis of point number (2) in your submission, that there is some doubt?

Reverend Dr FORD: I think that there is some doubt. We do not have legal opinion on how strong— we have not sought legal opinion within on that point, but there is at least some potential there for it.

The Hon. GREG DONNELLY: You have some reason for doubt?

Reverend Dr FORD: Yes, some reservations that the changes to the Act may leave the Anglicare organisation in an invidious, maybe untenable, position.

The Hon. AMANDA FAZIO: I have just one question. You have stated that the Anglican Diocese of Sydney supports adoption by heterosexual couples. Do you mean people who are legally married or does that acceptance also include people living in de facto relationships?

Reverend Dr FORD: That is a really good question. We recognise that we live in a complex society, as I have already said, where things have changed. Our position would be that the optimal would be a stable marriage relationship. Without opening the door to the whole of the evidence there is some evidence that says that marriage does have some benefits with regard to children in that respect. With regard to the terms of the inquiry before us, the thing we are most concerned about is the underlying principle, which can be approached not just from a religious point of view but from all sorts of points of view, that the optimal conditions for a child are in an environment where they have a mother and a father. On that point a stable de facto relationship and a more traditional marriage that is recognised by the State in that way would fulfil those requirements. The church has had a longstanding position that says that marriage being recognised in the presence of God before witnesses and by the State is the optimal place for children to be welcomed into the world.

The Hon. DAVID CLARKE: Dr Ford, I have a couple of questions. Are you aware of how many children the Anglican Church and its affiliates place by way of adoption each year?

Reverend Dr FORD: I am not aware of the specific numbers, sorry.

The Hon. DAVID CLARKE: Could you take that on notice?

Reverend Dr FORD: That is a question that would be better directed specifically to Anglicare as the organisation—

The Hon. DAVID CLARKE: Any adoptions that the Anglican Church does in New South Wales are through Anglicare, are they? Is that the only organisation?

Reverend Dr FORD: Yes, that is my understanding.

The Hon. DAVID CLARKE: Getting back to this issue that you do not want to fix a problem and undermine the principle, you spoke of there being possibly other models. Have you ever applied your mind to this or are you aware of others who have applied their mind to this and given some thought to what other models there could be?

Reverend Dr FORD: I am not aware of others who have applied their mind to it and I would say the application I have done is fairly limited in that I am not sure exactly what the legal difficulties are. I do not have enough information before me to understand the problem in itself. What is it exactly that is deficient within the existing relationships where adoption is sought by a co-mother? With all the raft of legislation that has happened in the last couple of years I do not know what the problem is that needs to be addressed. I do know that there is at least an ideological problem; I understand that. Why is it as a society we should exclude this couple from at least entering into the process? I understand that, but what are the legal problems? I do not know that, so I cannot really speak about that and I do not know the answer to your question.

The Hon. JOHN AJAKA: Ultimately one of my major concerns is that we know that in reality we have children that live with one parent, gay or lesbian, and children that can be adopted legally by one gay person. We have children living in situations where, for example, they are with the biological mother or father who have been formed a relationship with a same-sex partner and have basically formed a family unit. What concerns me is that it is almost a situation where I see the other partner, the adult, obtaining in one sense the benefits of that relationship without the responsibility. It concerns me that that person can, for as long as that adult wants to, have all the benefit but not the responsibility of being the parent of a child. We do not seem to be doing something to overcome that at a time when we should.

Reverend Dr FORD: I agree in part with what you have said. We would want to help people to establish good relationships and if that is in the context of a same-sex partnership—of course we might think differently on those things—then anything that can help them establish a good relationship, particularly if children are involved, will be beneficial to the child. There should be responsibilities for those who have care of those children. I recognise that. I understand the nub of the issue, but changing the Adoption Act to fix that will affect the other type of adoption we have spoken about. It will open up for infants that are given up for various reasons the possibility of their not even being asked whether they want a mother or father but the State by decree saying, "You will only have two mothers or two fathers." That is the rub, if you like. I think children should have the possibility of finding themselves in the optimal conditions, which are not just care by two parents but care by a mother and a father. I do not think the State should take away that possibility to fix the real problems out there that you have identified and more that we have not spoken of today.

The Hon. GREG DONNELLY: Following that up, in informing yourself about this whole issue and what you bring today in terms of your submission and comment, I take it it is more than you just running the Anglican line, to put it crudely, in front of this inquiry. It is a doctrinal position, religiously based, that informs you, and that can be presented. We understand that. In the same way the Catholic Church and the Baptists can run their line, right down the list. I take it though that what you bring to this Committee and are putting forward is that this best interest notion goes to the fundamental nature of human beings, which is beyond a discussion on religion, and looking at the nature of human beings and of a woman and a man and what they can bring to the parenting of their offspring, that is the child. Is that also what your submission is getting at?

Reverend Dr FORD: Yes, I think that would be fair. Much of our submission and much of what I have said today could be said by all sorts of people who have no religious beliefs at all, for the reasons you have given. I think that would be a fair point.

The Hon. GREG DONNELLY: Can I go further and say that in fact there is quite a body of social science in the area of psychology, psychiatry, sociology and a range of others in which highly regarded academics from secular universities, without any religious motivation or influence, talk about the significance and importance of a mother and a father in terms of their specific complementary influences over the raising of children. Are you aware of such research?

Reverend Dr FORD: I am not completely on top of such research, but I do know that it exists. I also know that there is a body of evidence on the other side, so I understand that.

The Hon. GREG DONNELLY: And that is part of the debate?

Reverend Dr FORD: That is part of the debate. What I want to say about the evidence is that you need to be examining the evidence that is before you; you cannot be hand-waving about it. But I think that as a society where there is no consensus in the evidence we should err on the side of caution. We should err on the side of what has been working. We have not been shown that there is a problem with the system as it is now. We have seen some situations out here that need to be fixed, but we have not actually been shown by any evidence that there is a problem with adoption as it is now, apart from these cases here—which are important and should be dealt with, and they cause a real pain, and they are really important for those children. But when there is no consensus on it, and there is such ideology that surrounds it, and there are such valued judgements, and it depends on what question you asked at the beginning, and all those kinds of things, I think you need to err on the side of caution.

The Hon. GREG DONNELLY: And with the best interests and the paramountcy principle being front, centre and back—

Reverend Dr FORD: Absolutely. But everybody is going to say that.

Ms SYLVIA HALE: You would not deny that your submission is influenced by Christian tenets as you would see them?

Reverend Dr FORD: Sure, absolutely.

Ms SYLVIA HALE: A fundamental Christian position?

Reverend Dr FORD: Absolutely. I am a Christian man who speaks from a Christian perspective.

Ms SYLVIA HALE: You are saying you are working on basic Christian principles. But would you not also agree that religious doctrine has a way of changing over time? I can give you examples: views on homosexuality, views on divorce, views on women priests, papal infallibility, polygamy, transubstantiation, and virgin birth. We have seen extraordinary shifts.

Reverend Dr FORD: Are you asking whether my religious views have changed over time?

Ms SYLVIA HALE: No. Given the way in which there can be these significant doctrinal shifts, is it appropriate therefore to approach legislation from the point of view of religious doctrine? Is that an adequate basis, given that those grounds may be shifting?

Reverend Dr FORD: How long have I got to answer this question?

Ms SYLVIA HALE: Take it on notice if you like.

Reverend Dr FORD: I would be happy to take it on notice. I think the answer is an extensive thesis, really. There is much to say. And there is much to say about the places that we find authority within these discussions. So, fundamentally, an approach to where you find your authority is going to be the underlying basis. But even if we have that debate about whether doctrine changes over time and whether that means that it is a solid basis for approaching legislation, and we disagree—which I assume we probably will—what I am saying is that there are some fundamentals that have come to us from the pages of scripture and our understanding about the world as God has created it, and us in it, that align with the way that people who have no concept or knowledge or belief or do not see any need for those things of God, view the world. There is something fundamental about the way this place we live in called the world, the universe, is put together that we can agree on even if we do not agree on God, belief and doctrine, and those things.

Ms SYLVIA HALE: I am not going to agree with that.

CHAIR: It could be a very lengthy debate.

Reverend Dr FORD: It could be. I am happy to have it.

CHAIR: I thank you for your appearance today and for informing our debate. As usual, your evidence has been very valuable. You will hear from the Secretariat regarding the questions on notice.

Reverend Dr FORD: Thank you for the opportunity. The questions you have already sent through, we will forward you some short answers on those as well.

(The witness withdrew)

JENNI MILLBANK, Professor in Law, University of Technology Sydney, affirmed and examined:

CHAIR: Professor Millbank, welcome to the second hearing day of the Standing Committee on Law and Justice inquiry into adoption and same-sex couples in New South Wales. I will not go through the processes of the formal guidelines. 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.

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

Professor MILLBANK: Yes.

CHAIR: The Committee is asking for many questions on notice, and the date for responses is 13 March. We would be grateful if you could get the information back to us before that date. Would you like to make a brief opening statement?

Professor MILLBANK: I would. I would like to make an opening statement addressing the terms of the fourth question you have asked me. I would like to start by talking about the body of research, and explaining and illustrating by way of example what I mean by reputable research and what I mean by rigorous methodological studies, because that is the basis of a lot of what I have to say today and I know it is the basis of a lot of the contentious views that have been put before the Committee.

On a number of occasions in Australia there have been inquiries about these kinds of matters, where equality seekers have tried to rely upon social science and psychological research to say that child wellbeing and sexual orientation of parents are not related. And then primarily religious groups have either tried to discredit that research by saying it is not methodological sound or have brought forward some of their own research to say that same-sex parenting actually harms or disadvantages children.

The Hon. GREG DONNELLY: Are you saying, only religious groups?

Professor MILLBANK: Primarily, I said. Because of the short timeframes of these inquiries and the fact that the inquiries do not necessarily involve expert view or time for research, what you then have is a list of references on the one hand and a list of references on the other. So, for example, a Senate Committee in 2000, in looking at changes to the Sex Discrimination Act, just said, "It is inconclusive. There is so much there and everybody is saying different things, so we cannot form a view."

I would like to start off by saying that I think the Committee absolutely can form a view. I do think the research is conclusive, and I want to talk about why. You can call it the battle of the footnotes if you will. But I think that there is very strong reason to suggest that the research that is being relied upon by me and other people suggesting that the Act should change is definitive and reputable.

I want to start off by talking about what I mean by reputable research, and then I want to talk a little about research methodology and the quality of particular studies. When I talk about reputable research I mean, first of all, research that is engaged in by people who are professionals, who are qualified in their field of expertise. They have a high degree in that field; some use an experience in that field of research. I would also suggest that they would be people who are employed in universities or comparable independent scholarly institutions, rather than by think tanks or particular lobby organisations. Thirdly, publishing that work in high-quality research outlets, such as peer review or top-quality journals, which exposes that research to the scrutiny of experts and the commentary of other experts.

A fourth factor that I take into account in assessing whether research is quality research is whether it has been funded by an external competitive funding body. Any kind of empirical research, when you are talking to a lot of people, costs a lot of money. If you go to do empirical research in Australia you are almost certainly going to be applying for funding from the Australian Research Council or the National Health and Medical Research Council. It is a fiercely competitive process that involves peer review and then review by a college of experts, and only 20 per cent of applications get up. So that is another threshold to meet. If you have external funding from a government agency that is competitive, you are quite likely to be doing good research.

The fifth criterion I would apply is about the methodological rigour or soundness of the study itself. Those first four criteria are about who is doing it and whether they are publishing it, and the fifth is about individual studies. I want to talk a little about the requirements of a good, methodologically rigorous study in this kind of field.

The first issue that is often talked about is sample size and recruitment method. If you are trying to draw distinctions between bodies of people, you need to have enough that you can have statistically sound conclusions, but you also need to be recruiting them through methods that are not going to bias your sample. Particularly when we look at some of the early studies, we had snowball sampling, which is very much disapproved of by later researchers and later studies. Snowball sampling means I call you, you call your friends, they call their friends, and they call their friends. What we end up with is all the people who would have come to a party that you held being my research sample. As opposed to something like random sampling or self-select methodology that involves representativeness of people within the population at large.

The first issue is about sample size and recruitment method. The second issue is about making sure that your target population is appropriate for what you are seeking to study. That is linked to the third point, which is about having an appropriate control group to compare that group with, so you are not comparing apples and oranges. Particularly in the early studies, and studies that I have disregarded for this reason, we had the children of divorced parents who left a marriage to become lesbian or gay being compared with the children of married parents—children who have gone through divorce and separation, and possibly considerable conflict because the marriage had broken down in those sorts of circumstances, being compared with intact family units. What we see with the later studies is more and more attention and care to comparison groups and having multiple comparison groups—but appropriate comparison groups.

The next thing I would mention is the use of standardised psychological instruments to assess that. If you are trying to work out whether the kids are doing well at school, or how they relate to their siblings, or how they relate to their peers, you do not rely on teachers just looking at them in the playground and saying, "He doesn't seem to have any friends." And you do not rely on parents self-reports, which will often be overly positive. You rely on standardised psychological measures that are used commonly in a whole range of fields, so that you have a bank of knowledge against which to assess that and you knock out research bias and perception.

Additionally, when you apply those instruments, good studies will have tried—it is not always possible—to have a blind or standardised application of those instruments. For instance, if you are measuring the warmth of parent-child contact, they have standardised measures that include things like the way a mother's face moves when she talks about her child, or how quickly she will respond to the child calling out to her. The person who is administering that test should not know who they are assessing, because they might have an unconscious view one way or another of the target population. If they are administering that test, they should not know which ones are the lesbian mothers and which ones are the heterosexual mothers.

The other factor to take into account when looking at studies is the possibility of repeat studies or longitudinal studies. Even if you have relatively small sample sizes—and in family dynamic research you often have cohorts of only 50 or so, and that is considered an appropriate number, that is, 50 in one cohort and 50 in another.

CHAIR: For longitudinal?

Professor MILLBANK: I am talking about the surveys generally. You will often have 50 and 50 but with the longitudinal study you will have a return and you will see how they are doing years down the track. Likewise with a repeat study you use exactly the same survey instruments with a new cohort several years later to test it against that. The final thing that you can do is to use what is called META analysis, and that is where you might have a series of studies with relatively small numbers but as long as they have had close enough similarities in their methodology, you can combine the figures from the different studies to produce data that actually looks at a bigger population of people.

I know I have taken a lot of time but this is the really crucial issue for the inquiry, so please indulge me. I would like to take just a little bit of time to give you a couple of examples of this. I would argue very strongly that the work of someone like Susan Golenbock you should pay a great deal of attention to. She is the leading expert in the field, she has a masters and Ph.D. in the field. She has worked in her field of child psychology for over 20 years and has been conducting multiple research studies through that time based on all kinds of diverse family forms, not just families with lesbian parents but families formed through assisted reproductive

technology, sperm donor children, egg donor children, surrogacy children, and as her work has gone along you can see it develop over those 20 years; it becomes increasingly careful, bigger sample sizes, more attempts to get close to random sampling—as close as possible in the circumstances. She runs a highly prestigious research body on family research at Cambridge University. If you look at the journals she has published, even in the last 10 years, every single one of them is ranked A or A-plus under Australia's journal ranking system, so they are the very best outlets that experts are publishing in.

I think her research commands enormous respect and I do not think you can take a footnote to her and a footnote to Sarantakos, whom I will give you as an example of also. I do not think you can say, "One person says that kids are okay and the other person says that kids are harmed. Oh, we don't know what to do". I want to talk particularly about Sarantakos because I know that a number of organisations have relied upon his work. I have brought a copy of his study from 1996 called "Children in Three Contexts". It is the only Australian research I am aware of that purports to show that children from same sex families are educationally disadvantaged compared to children of married heterosexual families, with children of heterosexual de facto families coming middlingly in between.

I brought a copy of it because it is actually very hard to find. I would be surprised if a lot of the organisations relying on it have actually read it and because it is a perfect example of almost everything that you can do wrong with methodology. I just want to talk briefly about a couple of those things, and I can address it later in writing if you wish.

First of all, Sarantakos wrote on a snowball sampling, which is the discredited method that I talked about that is not an acceptable form of any social science research now. On that basis alone I did not assess a series of early studies because they used snowball sampling. Most importantly, I think, he did not compare appropriate family forms. He compared children who were born into a separated family where one parent had become gay and lesbian some time in their marriage with married couples. He gave no indication of how long ago the children of gay and lesbian families parents' marriages had broken down, so he could have been looking at kids whose parents had separated weeks or months earlier.

It is very commonly known that a dip in educational performance follows often from a parent's divorce, particularly if it is one that involves conflict. On that basis alone I think he should have reconsidered any of the results that he found. Equally, with the parents who were heterosexual de facto couples who gave no indication whether the kids were born into those relationships and had been raised by unmarried parents through their lives or whether they themselves were step-family formations or had gone through a separation or divorce, that is a critical issue. You have to compare like with like in this situation and in 1996 there is no excuse for not having done so.

Secondly, a critical flaw of this research is that he relied on reports from teachers. He did not have any form of interaction with the children themselves nor was there any study of the children in their home environments. It was not about the family dynamic, although his conclusion purports to find things about family dynamics which were not examined. It was based on what teachers thought about the kids. The teachers who did use some tests of the children were not using any form of standard measure: They were using a test that had been drawn up specifically for the study, which again does not meet with the usual parameters of trying to standardise and remove researcher bias, nor were the teachers blind to the instruments that they were using.

Indeed, there is a section of the study called "Sex Identity", which is basically about which of the children the teachers thought were sissies. It is completely perception based and impressionistic. I leave you to read the study itself to draw your conclusions about that. Finally, it was published in a C-ranked journal. It is a referee journal so it does meet the requirement of peer review but I would suggest probably not the most rigorous form of peer review and I would be surprised if that was the first choice of outlet for any research in Australia.

As a study, that included almost 200 people. There is no indication of the funding source of this research. That would lead me to conclude at the very least that it was not funded through competitive external government funding because those bodies require research to be—you have to thank them in the first footnote basically, and they have a particular form of words, so that leaves me to question where this research came from.

It is not something that relates to this particular sociologist's whole body of research. He did one study. It has come out of nowhere. It does not reflect a body of work, as well as just being an extremely poor quality

study. I wanted to give examples of Golenbock and Sarantakos by way of saying I actually think you can choose between them. I think that there are very strong scholarly research criteria that you can exercise to choose between them.

CHAIR: Thank you very much for that. I would like you to take this question on notice because of the time factor and members want to ask you questions. I would like a brief outline on the benefits or otherwise of qualitative and/or quantitative research in relation to social sciences and I would also like your thoughts on how many persons have actually used the poverty variable in relation to familial studies?

Professor MILLBANK: Yes.

The Hon. DAVID CLARKE: Professor Millbank, you say it is important to note at the outset that there is no body of reputable research, which demonstrates that children have been harmed by virtue of being raised by lesbian or gay parents. You go on to define a series of guidelines that should be used to assist us in assessing what is reputable research. We have received advice from another professor of law who raised the same question and goes in the opposite direction. This professor of law has also done an investigation of a whole series of these studies and has found that they are very biased. That professor of law also refers us to a study at the University of Toulouse that reviewed 311 publications and research papers, most of which favoured same sex parenting. They found that they were not devoid of methodological defects and that the authors called for new research, partly because of the polemical and militant context which accompanied the emergence of these studies. We have had referred to us people like Dr Robert Lerner and Dr Nagai from the University of Chicago, Professor Stacey, Professor Biblarz, Professor Poponoe, Professor Rekers and you tell us we should basically disregard these people?

Professor MILLBANK: No, not at all. I would say that the Stacey and Biblarz study is something—and I have said in my submission—that the community absolutely should read, for the very reason that they chose the 21 most methodologically rigorous studies to review. I would say that yes, there are probably 300 papers out there and I said in my submission that I read 50 and only assessed 30 of them because some of them were not methodologically solid, particularly if you look at the early days of research; it was very hard to get appropriate target populations to compare with or to get enough numbers.

If you look at the early research in the mid-1980s even, you will find that they were just taking anybody who were being raised by lesbians and gay men, without differentiating the family form that children were born into and so on. But the research that I would really focus on is the research that has been done in the last 10 years where many of those flaws have been appropriately dealt with and I think you can see a concrete improvement in the quality of that research. So it is not enough to say we read 300 and we could find that some of them were flawed. If you look at the best of the most recent research, it is very clear.

The Hon. DAVID CLARKE: Just finishing the point I was making, in your comments you made reference to the fact that many of these studies came from religious bodies, something the Hon. Greg Donnelly queried. I am not aware of any of these studies that I have referred to—

Professor MILLBANK: Nagai and Lerner were commissioned by the Marriage Institute in America, which is a Christian anti-gay marriage think-tank that commissions and publishes research to try to prevent same-sex couples—

The Hon. DAVID CLARKE: And Professor Rekers?

Professor MILLBANK: I am not aware of that study.

The Hon. DAVID CLARKE: And Professor David Poponoe?

Professor MILLBANK: I am not aware of him either.

The Hon. DAVID CLARKE: Professor Biblarz?

Professor MILLBANK: He works with Judy Stacey and that is the study that I would highly recommend to you.

The Hon. DAVID CLARKE: Professor Sarantakos?

Professor MILLBANK: I have just spoken about him extensively.

The Hon. DAVID CLARKE: Yes, but is he one of those who has been commissioned by a church?

Professor MILLBANK: I cannot assess that because I do not know who funded his research.

The Hon. DAVID CLARKE: Okay. Most of those that I have mentioned here today, you are not aware that they have been commissioned by a church. The point I am making is that we have had another professor today?

Professor MILLBANK: Who was that?

The Hon. AMANDA FAZIO: He was a lecturer actually, not a professor.

The Hon. DAVID CLARKE: A professor or a doctor, somebody who was highly qualified—a lecturer in the law?

Professor MILLBANK: Who was that?

The Hon. DAVID CLARKE: We cannot say because he gave in-camera evidence.

Professor MILLBANK: I am sorry, I understand.

The Hon. DAVID CLARKE: That expert witness made the similar point that you did but from the other side.

Professor MILLBANK: I am confident that I have better expertise and that I have read a very high proportion of the high quality recent research.

The Hon. DAVID CLARKE: Who is better qualified is a bit like art; it is in the eye of the beholder very often, so I do not know that it is fair to say that you feel you are more qualified because you do not know who it is?

Professor MILLBANK: I said I feel it.

The Hon. DAVID CLARKE: I would want to go on more than feelings, with great respect.

Professor MILLBANK: You need not accept that.

The Hon. DAVID CLARKE: That is right.

Professor MILLBANK: I think the only solution is for the Committee to read all of the research and form its own view.

The Hon. DAVID CLARKE: We have the problem that you have put a contention to us—and it is a pretty strong statement—that there is no body of reputable research, and you give those reasons, and then we get from the other side qualified people who are saying the same thing but from the reverse about the sort of research that you would rely upon. That is our problem and it is not as easily dealt with, with great respect, as you might suggest to us. I think my time is up.

The Hon. JOHN AJAKA: I have been focusing on a couple of specific areas of my concern that I hope you can assist me with. I have been looking at a situation—and I notice in your paper you identify in the same way—of adoption where the child is well known and part of the living arrangements as opposed to a completely different scenario of adoption where you have a couple who decide they want to adopt a child, go through the rigours, become certified and then join the pool and the waiting list. In your view, should we be looking at a different perspective for those two situations, and different regulations for those two situations? Should we be looking at one being acceptable—because the child is already part of that group and the child is with that group—as opposed to one where the child, without any say, is suddenly being adopted?

Professor MILLBANK: I would say no, based on a number of things, one of which is simply of practice. You cannot say, if you wanted to draw a distinction between known and unknown child adoption, that that would work if you do not already have individual gay and lesbian applicants to adopt unknown children and to foster unknown children. So you have children who were unknown children and who become known children and who are now part of the household. It is an artificial distinction.

The Hon. JOHN AJAKA: This is a concern I have. If one wants to use the term loophole or circumvent, it provides a situation.

Professor MILLBANK: You will be making people adopt twice.

The Hon. JOHN AJAKA: Someone will be clever enough to go out and adopt on their own as a gay person, and then within a few years suddenly form a relationship, and the next thing you know—

Professor MILLBANK: No, they would have had that partner all along, and the Department of Community Services [DOCS] would have assessed them as a family unit, and would have known that they were a family unit. Then they had to complete the formalities and go through the costly expense of that twice, and I see no virtue in doing that.

The Hon. JOHN AJAKA: The other aspect that has been seriously concerning me is that we do have situations in the known factor, as you have just said, whereby either through foster care, single or gay lesbian adoptions, or areas of that nature, to use my favourite expression with great power comes great responsibility. All of a sudden a person is deriving all the benefits but does not seem to be acquiring the responsibilities, and that is from the child's perspective. That is what is concerning me.

Professor MILLBANK: I would agree in a sense that I think the child in that instance has been deprived of the benefits of a deeper relationship with both their caregivers. If one of their caregivers dies, they are not going to be automatically able to inherit and they are not going to get workers or accident compensation and, importantly, when the parents separate, as people do—even long-term couples who are committed to adopting a child, including heterosexual couples who adopt children, break up. By not giving the option of adoption to those parents, you do not have the option of a child support order against the non-legal parent in that instance.

The Hon. JOHN AJAKA: The previous witness, Dr Ford, was very impressive. I think you might have been in the audience during some of his evidence. He rated the notion of looking at, if I can use his term, other avenues as opposed to adoption. My concern with that at the end of the day is that if we are going to try to bring in all the protection for the child of an adoption, to me it becomes an adoption by simply another name. I do not see how that will advance the cause any further other than maybe to make certain groups feel more comfortable about the concept. Would you have a view on that?

Professor MILLBANK: It is hard to speak on other models when the person who is proposing them did not seem to know what they were. I would say that the major change that would be brought about through amending the Adoption Act would be through the formalisation of the step-parent provisions for couples who are already raising children together, but who do not have a legal relationship. I have given some examples in my submission of where that have would happen.

Particularly, for instance, if a lesbian couple got together slightly after the conception of a child—even a week later or even a day later—they are not going to be recognised under the new provisions for lesbian families. Adoption would be a means of formalising an existing familial relationship. Likewise adoption provides avenues for foster parents who are fostering children. Finally, you have the prospect of adopting unknown children. But the thing to bear in mind there is that I think it is something like 20 children in New South Wales who are adopted every year domestically rather than internationally. It is a very, very small number.

But most States in Australia, and I would need to check whether New South Wales is one of them, are giving a veto to the relinquishing parents. They get to choose who their child goes to. We are not talking about tearing children out of the arms of relinquishing mothers in heterosexual families and giving the child to lesbian and gay families where that is not something that everybody concerned is comfortable and happy about.

The Hon. JOHN AJAKA: I am aware that you gave evidence in the surrogacy inquiry before most of us. Is the issue same-sex adoption one that we need to determine first? Do we need to determine surrogacy first? It is almost like a chicken and egg question, but I do not mean it to be that way. Is this something that must be dealt with simultaneously?

Professor MILLBANK: I would still deal with them separately because I believe that the transfer of the parentage process in surrogacy should be distinct from adoption.

The Hon. JOHN AJAKA: Which would you consider that we would need to deal with first, as a professor of law? You were not expecting that question.

Professor MILLBANK: No, I was not. Which one to do first?

CHAIR: Whatever your answer is, it will probably increase our fight after the hearing is finished.

Professor MILLBANK: I would say adoption first on the basis that surrogacy is a more complex issue. I think there are more live issues in the regulation of surrogacy in terms of the range of things that the Committee was looking at, and I think it is an area that has undergone a lot of upheaval and reconsideration in recent years. I think this is simpler, I think it is clearer, and I would do it first.

The Hon. JOHN AJAKA: I would be happy for you to take that on notice, if you wish to later on when you have had a chance to think about it. I appreciate that.

Professor MILLBANK: Okay. There is just one little thing by way of a segue from that question. I did have a one liner in my submission. I think that the inability of gay male couples in particular to adopt is driving the desire for surrogacy and commercial surrogacy. I base that view on anecdotal evidence because there is no comprehensive research on surrogacy in Australia. But one of the things I did after I appeared before the Committee was do a survey of all the press reports on surrogacy in Australia over the last two years, using one of the search databases. I came up with 40 separate instances of surrogacy arrangements that have been pursued by distinct family groups. There were 40 different groups and 40 different arrangements in the space of two years. Of them, several involved couples who said, "We're doing this because we can't adopt." A number of those couples were gay male couples.

CHAIR: Do you want to share this, or are you waiting to publish it?

Professor MILLBANK: It has not been published yet, but I am happy to—

CHAIR: What is your time frame?

Professor MILLBANK: It will be in about the next six months. I can send you the reference.

CHAIR: Okay. Thank you very much.

The Hon. GREG DONNELLY: Professor, I have just a few questions. What we are talking about is a proposition to amend the law to accommodate the reality of arrangements that are out there in terms of the circumstances where children are being raised. As I understand your submission and the evidence you have given today, we ought move forward and move beyond the mindset of heterosexuals raising children as being the "ideal model" or the optimal model to accommodate the reality that is out there today. What I am wondering though is why are we drawing a line at just two adults being within the optimal model. In other words, we are talking about moving beyond the paradigm of a mother, a father and children to what is being proposed, which is a mother, a father and children and gays and lesbians being able to have children as well. That moves us into that new paradigm.

But do we not actually face the reality of situations out there where you have, for example, two lesbians with a child, and it may not be a sperm donor but in fact a man who, through the conventional ways of having a child, has a child with one of the women, and the three of them want to be legally recognised as the parents of the child, or indeed to adopt a child, to take us to the next scenario. Should we not be contemplating those types of things? Is that not the reality that is actually out there, not in the future but now, in different combinations? You might have two gays and a woman, and they may wish to have an arrangement. They may wish to live under the same roof and parent a child. Why should the Adoption Act not be amended to provide for that?

Professor MILLBANK: I think it is a really good question, and it is something that I grappled with in my own research and community consultations I have done around recognition of parenting relationships—particularly around the "Brides Changed Nappies" report in 2003—because there are, I think, a very small number of lesbian-led families where the biological father actually has a parental role in relation to the child. We have the picture that the research suggests which is a very, very broad range of involvement for sperm donors. There is no of one-size-fits-all in terms of the role that they perform or the way in which they engage in children's lives. It can be no contact or it can be a lot of contact.

The Hon. GREG DONNELLY: Just clarify this for me: When you say "sperm donor", are you saying a sperm donor who then donated sperm and inseminated?

Professor MILLBANK: Yes, versus natural sex. If the child is conceived through sex, the legal parents are the man and the woman. That could only be dealt with presently if he was prepared to have his parental status severed. The only cases I am aware of where that has happened have been in fact where the parties were mistaken about their legal position and they did not realise that the sex meant they were parents because they had signed an agreement saying they were not. So in that case it was not his intention to be a legal parent. The far more common situation is where you have an involved known donor and conception is through assisted conception, often informally at home.

The Hon. GREG DONNELLY: And may or may not be done under the same roof?

Professor MILLBANK: Almost certainly it does not. Of the very small surveys that have done by the Gay and Lesbian Rights Lobby and by the Victorian Gay and Lesbian Rights Lobby, less than 5 per cent of lesbian-led families have a biological father who relates to the child as a parent figure. He may have involvement in the child's life and have contact in the child's life, whatever, but does not live with the child and defers to mothers as the primary care-giving unit and the "number one parent".

The Hon. GREG DONNELLY: So it is less than 5 per cent.

Professor MILLBANK: Yes, it is less than 5 per cent. This is based on surveys of the 300 or 400 people. Is not a lot, but it is all we have. When I did the consultations that I did, I spoke to gay men and had a men's only consultation. I talked about what they wanted in terms of recognition. There was one family there where there were two mothers and two fathers. They were equally parenting, and they had flats up and down stairs from each other. They regarded themselves as a family unit of four parents. They would have liked the option of having adoption for all four of them.

Firstly I want to say that I think it is an incredibly rare family form, but it exists. The Victorian inquiry mooted this idea in its discussion paper, but backed away from it in its final report because they said there was not yet a demonstrated need for multiple parent adoption. They shied away from it. I think it is worth considering.

The Hon. GREG DONNELLY: They were not brave enough?

Professor MILLBANK: Potentially. I think it is worth considering, but I think it is something that needs more investigation in terms of who needs it and what for. There are some men who are saying, "I'd like to be a father", which was very much about status. It was not about the child's need for a liberal relationship with them. They were not actually exercising parental authority and were not making decisions about medical things or whatever. I would say that it is worth looking into. I do not think it is an urgent question now. A major impact in my view would be that you would have to reconsider the child support legislation, or any form of legislation that uses a formula that is premised on the idea of two parents.

The Hon. GREG DONNELLY: But at least in principle you do not see there is any reason not to proceed down the track?

Professor MILLBANK: I said it is worth considering.

The Hon. GREG DONNELLY: So you are agnostic about it at this stage and you would need more information.

Professor MILLBANK: I think that is a good choice of words, yes.

The Hon. GREG DONNELLY: This is a legal question. I direct it to you because you are a law professor. You would be familiar with section 56 of the New South Wales Anti-Discrimination Act, which deals with the exemption for church and faith-based organisations? Are you familiar with that?

Professor MILLBANK: Loosely, yes.

The Hon. GREG DONNELLY: Perhaps you might like to take this question on notice.

Professor MILLBANK: Do you mean the question about conscientious objection of religious entities?

The Hon. GREG DONNELLY: Yes.

Professor MILLBANK: Yes, I do have a view on that, and I am happy to give it now.

The Hon. GREG DONNELLY: Please do.

Professor MILLBANK: Is it question 10?

The Hon. GREG DONNELLY: No.

CHAIR: None of us is using our proper questions.

The Hon. GREG DONNELLY: With respect to that exemption, do you think that exemption has passed its use-by date in the context of the changes in legislation that you are talking about?

Professor MILLBANK: I think it is a completely appropriate exemption for religious entities who are performing religious functions. I do not think it is an appropriate exemption for religious entities who are providing social services on behalf of government, who have been contracted out, who are paid for those services and who are performing a secular function. I think, just to be absolutely crystal clear, the placement of children for fostering and adoption is a secular social function, it is not a religious function.

The Hon. GREG DONNELLY: In your opinion. So in terms of the reality, in terms of changes to the legislation that are proposed, if we picked up the change for same-sex adoption—and take this on notice if you wish and provide a written response—do you believe that exemption as it is currently provided for in section 56 would provide the exemption for these church agencies?

Professor MILLBANK: I cannot give you a legal opinion as to the current wording of the Act, but my very strong submission to you is that religious entities providing adoption services should not be exempted.

CHAIR: We will have to move on.

The Hon. GREG DONNELLY: No, if I am asking a question on notice, can you provide us with an opinion?

Professor MILLBANK: I am too busy. I am not an anti-discrimination lawyer and I know that this provision has been contested in foster care, I know that an Administrative Decisions Tribunal case has come down, and I have nothing additional to add to that.

The Hon. GREG DONNELLY: So you will not provide an opinion.

Professor MILLBANK: How much more of my time do you really want to occupy?

CHAIR: I think the witness has answered the question; she said she will not provide an opinion.

The Hon. JOHN AJAKA: I think it was more that she cannot offer anything further.

Ms SYLVIA HALE: I am not sure if what I am going to ask relates to the last question that Mr Donnelly asked. There has been reference to a case, and we have not had any of the specific details, involving the Wesley Mission. Is this the one that involves the Administrative Decisions Tribunal?

Professor MILLBANK: Yes, that is correct.

Ms SYLVIA HALE: It is my understanding that the issue there was whether in fact there was a consistent opinion across the Methodist Church in relation to gay couples and the finding was that because the church could clearly be demonstrated to have been divided in its views on gay couples they could not argue that they were prosecuting a single view of the church when they declined to support some sort of gay fostering arrangement, but I really do not know, I am asking if you knew.

Professor MILLBANK: I am afraid I only know the outcome of the case. It was a confidential decision, so I have not read it.

Ms SYLVIA HALE: Could the Committee ask for that information?

Professor MILLBANK: You could ask the Administrative Decisions Tribunal for a copy of the decision that has been de-identified or whether they would release one in camera to you.

The Hon. GREG DONNELLY: I have a copy. I am surprised a professor of law does not have a copy, but I have a copy.

CHAIR: No, it is a confidential document.

The Hon. GREG DONNELLY: I do not think it is. The decision has been appealed, but the first decision is readily available, as far as I know.

Professor MILLBANK: Then I can seek it and provide it to you if it is readily available, but at the time I saw it it was confidential.

Ms SYLVIA HALE: Clearly, as you have recognised in your submission, there has been a battle of experts and I appreciate your very concise critique of research methodology, I found that very interesting, but you do say that the most common argument raised by those who critique the existing body of research is not that there is any convincing evidence that children are harmed by same-sex parents, rather they argue that there is insufficient evidence that they are not harmed. Indeed that is a position that has been put quite frequently, that we should adopt a precautionary principle, that we know too little and therefore we should not venture down unknown paths. Would you care to expand upon why you believe that is an inadequate approach to adopt?

Professor MILLBANK: Firstly, as I have said, I think that there is adequate research now. I think that the research is more and more rigorous and more and more conclusive, particularly with the ability to return longitudinal studies and so on, and we are getting a much better sense of outcomes, but I also think that it is not appropriate for a legislative body to take the suggestion of harm that has not been demonstrated and discriminate on that basis as though that is a cautious and careful thing to do. I actually think it is quite a radical and dangerous thing to do. If you had a group of people turning up today saying, "Well, we think that parents of colour are just terrible parents, and mixed race couples, I just don't know how their kids survive, I mean is there much research on it?" And you said, "Well, you know, we're not really sure, and the research seems to be inconclusive", so you then proceed to prevent mixed race couples from adopting children. I do not think that is a cautious approach.

Ms SYLVIA HALE: You talk about avoiding the hypocrisy of adoption orders to individual gay and lesbian applicants who are members of and will be parenting as part of a couple. There seems to be a lot of inconsistency in the laws, whether it is in relation to fostering by gay couples, co-parenting for women who are in a lesbian relationship or the ability to adopt by a single gay person. Is this sort of ambivalent attitude present in other aspects of the law that you are aware of, or is it particularly prevalent in law dealing with discrimination on sexual matters, or is it merely reflective that as social change is occurring the law is stumbling and gradually catching up with that change?

Professor MILLBANK: No, I think New South Wales has been really anomalous on this and is really dishonest on this. We have the Department of Community Services, which is a government agency, placing

children with gay and lesbian foster parents and gay and lesbian adoptive parents at the same time as saying they are not good enough to adopt as couples. I think it is a reflection of the cowardice of Government—and please excuse me for saying that in this place—because it is patently inconsistent. If this Committee concludes that a heterosexual married couple is the best environment for children to be raised in, they should ban lesbians and gay men from adopting children as individuals, they should repeal the legislation that gives lesbian parents parental status if they have a child through assisted conception, they should ban lesbians from accessing assisted conception, and they should probably go into the homes of people of rehab children and take them away to prevent that harm and adopt them out to heterosexual families. None of those things are happening, so I do not believe that the Government in New South Wales really believes that they are doing what is best for children through the current provisions of the Adoption Act.

Ms SYLVIA HALE: One of the arguments raised, but it was only in relation to fostering by gay people, was that the State at least could intervene and could remove a child from that fostering situation; it was not necessarily a permanent situation.

Professor MILLBANK: Adoption orders can be repealed. Children can be removed from their legal parents—as they are when they are removed because of neglect or abuse. The Government always has an important function in protecting the welfare of all children and that happens whether or not adoption is permanent.

Ms SYLVIA HALE: So you have safeguards in place of having to satisfy the criteria that what you are doing is in the best interests of the child, and fairly rigorous requirements, and then the additional safeguard of the State being able to intervene if it turns out to be inappropriate?

Professor MILLBANK: Yes, and I would say the further safeguard of relinquishing parents having a choice about where their children are going and probably having ongoing contact with them if it is an open adoption.

Ms SYLVIA HALE: And I suppose there is the additional need for the child's views on the matter also when they are above the age of 12?

Professor MILLBANK: Yes, they can then choose an alternative if they wish.

The Hon. AMANDA FAZIO: I have one question, and we dealt with it a little yesterday with the Department of Community Services in relation to overseas adoptions, but in some of the subsequent evidence it seems to have been put across that if we were to legalise same-sex adoptions in New South Wales that would impact on the ability of New South Wales residents to access overseas adoptions. I just wanted to clarify that with you. My understanding was that whoever was applying to adopt overseas had to meet the criteria as determined by the overseas country they were dealing with?

Professor MILLBANK: That is correct, yes. With international adoptions with The Hague Convention on inter-country adoption you have to comply with the requirements of the sending country and receiving country and, broadly speaking, you are talking about children leaving the developing world and coming to the developed world. Most of the sending countries to Australia and elsewhere are not countries that allow eligibility for same-sex couples to adopt, so the position would be as it is now in fact, that the couple would be treated as an individual and would be eligible under the very few programs that allow adoption by individuals. There is some possibility in the future that South Africa will become a sending country and South Africa does permit same-sex adoption and has done for about 10 years now, but the Government of South Africa is actually very opposed to international adoption generally, but I think that if we are looking at the medium to long term I would say they would be the likeliest country who would provide children under the Convention that could be adopted by same-sex couples, if they choose to pursue inter-country adoption in the future.

CHAIR: I strongly suspect there will be a long series of questions. I recognise the impost on your time, but I do thank you for your willingness to assist us in this process—and I really mean that. I do understand that we impose on you as a personal citizen and thank you very much for what you are giving to the inquiry.

Professor MILLBANK: I am very happy to respond to questions on notice, but I will try to keep them within my area of expertise.

(The witness withdrew)

CHAIR: Welcome to the second day's hearing of the Law and Justice Committee's inquiry into adoption by same-sex couples in New South Wales. There are some processes that I will mention. We have broadcasting guidelines, but we do not have any cameras here and the press people know what they mean. If you have any messages or information you want to give to the Committee, the secretariat will assist you with that. The 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. If you have a mobile phone, would you please turn it off? They interfere with the recording mechanisms.

SILKE KATRIN BADER, Publisher, affirmed and examined, and

TANYA ELIZABETH SALE, General Manager, sworn and examined:

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

Ms BADER: Yes.

Ms SALE: 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 the Committee will consider your request but may not make a decision to keep confidentiality on the specific issue, so that is important to know. If you wish to take any questions from the Committee on notice and answer them later, the secretariat will contact you and the Committee would require an answer by 13 March 2009. Would either of you like to make an opening statement?

Ms BADER: I would like to make a quick opening statement on behalf of Tanya and myself. Thank you for inviting us here today. I know in the last two days there have been many arguments for and against the inclusion of same sex couples being able to adopt. We are here today to show you a family who has given our children a very stable, secure and loving family environment. One example I wanted to bring up was when we fostered seven years ago we had Jardin and Mahalia out of a group of seven siblings that all went to foster care. Six years later we are the only family who has been like a stable family. All the other siblings have been to at least three or four other placements. I think we are living proof that as a same sex couple we are able to provide a loving and stable environment for our children.

The Hon. JOHN AJAKA: I have read with interest your submission. I must say you have brought something to my attention that I had never given thought to. Under the law as it stands today in a situation where two siblings come into a family unit you can adopt one and you can legally adopt the other. Has that actually occurred? Have you actually adopted each of the children?

Ms SALE: No.

The Hon. JOHN AJAKA: The reason you have not adopted is because of your concern of who chooses whom?

Ms BADER: I guess it is one concern. A lot of other elements play with adoption. DOCs has to support it. DOCs approached us late last year to ask if we would like to adopt the children individually.

The Hon. JOHN AJAKA: Have they recommended that they will give approval?

Ms BADER: That is right, yes.

Ms SALE: They will support us.

CHAIR: So the children have been put on a more permanent list? There is a process where you go into permanency?

Ms SALE: No, it is probably more stringent than that. To back pedal a little bit, we actually went to court a few years ago. So we are not as normal foster parents but we actually went to court to obtain parental responsibility.

The Hon. JOHN AJAKA: I understand that. I know you have got the full parental orders but you have done that jointly?

Ms BADER: That is correct.

The Hon. JOHN AJAKA: In relation to both. So both of you for each of the children?

Ms SALE: Correct.

The Hon. JOHN AJAKA: I was limiting it to the adoption aspects. At this stage neither of you have adopted either child?

Ms SALE: No.

Ms BADER: No. This would be with an heterosexual family the next natural step in wanting to adopt the children after six years of placement. DOCs is approaching us and we have talked about it. We want to adopt the children and the children want to be adopted. So for us that would be the next logical step to do.

The Hon. JOHN AJAKA: How old are the children now?

Ms SALE: Ten and nine years. The struggle for us is that we have a very open family transparency, the children are aware of everything. They are aware of why we are here today. They are aware of some of the questions you are going to ask us today and, of course, the answers we are going to give back to you. It is hard for us as parents to sit, I guess, at a round table—if my voice goes it is because I have the flu—and you have two children in front of you saying, "What do you mean? One has to adopt one and the other has to adopt the other? That is not fair. We are a family so why can't you both adopt us? You are our parents." Then we try to explain to a 10 and 9-year-old the law. They go, "You go to the Government or to the Prime Minister and get it changed." We say, "It is not just as easy as that but we wish it was." It is hard trying to explain to your children and how do you pick? Do I say, "Jardin, I am going to adopt you and Silke is going to adopt Mahalia" and then Mahalia will go, "No, I want you to adopt me." It is just not right.

The Hon. JOHN AJAKA: You do not want to put them in that position?

Ms SALE: You should not have to put them in that position.

The Hon. JOHN AJAKA: From your personal experiences are there any situations at the kids schooling where the kids are either segregated or hero-worshipped or given a hard time or in one form or another treated differently from any of the other children?

Ms SALE: No, not at all and this again is all about—whether it is same sex couples or heterosexual couples to me it is irrelevant—putting the child in a loving, secure and stable environment and putting the structures around to ensure that child or children are in that environment. We put a lot of thought into the school they go to and everything along those lines so they do not come up against anything like that.

Ms BADER: It is important as a parent to recognise what need your child has, I guess, and as Tanya said, it was important for us to have the issue like the school—it needed to know straightaway that we are a couple and not just I walk in with the children. I think with other schools it would have been a bit more uncomfortable but the school we have chosen was for that reason because it was recommended to us as being known to be open and if we are putting the children in that kind of situation then there will not be any additional bullying than there is with anything else on school grounds I guess.

The Hon. JOHN AJAKA: If adoption is not permitted, as is the situation, and you are not looking at single adoption—I hope this does not upset or offend you in any way—what happens if something happens to one of you? What happens if you separate? Where does that leave these two children?

Ms SALE: It would be interesting if you asked that question to heterosexual couples as well on what they would answer.

The Hon. JOHN AJAKA: Except they have got more legal rights than you have?

Ms SALE: They have.

The Hon. JOHN AJAKA: The reality is that I am looking at it purely from your perspective and the deficiencies in what is out there. Does that force you into having to make different arrangements or different situations as to who takes the children or who does not? Where does that leave you?

Ms SALE: We do not talk about divorce or separation. We have been in a 10-year relationship, and a very loving relationship.

Ms BADER: What we have done—

Ms SALE: Just going back—

The Hon. JOHN AJAKA: I am sorry if this is getting personal.

Ms SALE: No, it does not worry me. We are very transparent and that is why we wanted to come to this Committee and we welcome the opportunity of coming here. We are transparent so you may ask any questions you like. At the end of the day we are here as mums. We do not have any political agenda; we are just here as mums. If the Adoption Act is not amended—and we are not asking for the Adoption Act to be amended because it is there to protect the child but what we are asking for is for the definition of "couple" to be amended—we will go down the path of adopting the children one by one purely to safeguard their rights and ours.

The Hon. JOHN AJAKA: But that does not solve your problem from a will perspective? It does not solve your problem from an intestacy perspective?

Ms SALE: All of that has been—do you want to comment on that?

Ms BADER: That is why I wanted to jump in before because it was really important for us at the beginning of the placement that we went to our solicitor and we drew up a will and we went to DOCS and we have given DOCS a copy of the will. There was one issue that we have a very close friend who is a director of a childcare centre, she has all the criteria to fulfil as a foster carer. Anyway she is a close friend and the children know her and she is in our will as a person we would recommend to replace us if anything would happen to us. However, at this stage once you foster it is much easier for DOCS to decide whether the children actually go back into the system or not.

The Hon. JOHN AJAKA: Correct. You can only recommend.

Ms BADER: Exactly. If we could adopt the children it would be a family matter.

The Hon. JOHN AJAKA: That is so.

The Hon. GREG DONNELLY: I have read your submission and listened carefully to your evidence. Today you have used the phrase "stable, secure and loving" at least once or twice as being in your minds the critical feature, if I could describe it as that, of the parental relationship with the child. In other words, that is what we should be focusing on when looking at whether or not we recommend the legislation be amended to provide for same sex couples to adopt. What is exercising my mind—and I have actually asked this question of others and you may have been in the room when I raised it with the previous witness—the nature of the phrase "stable, secure and loving" could apply to a range of relationships, could it not? Not just heterosexual, gay or lesbian but multiple adults, could it not? In other words, hypothetically why could not a male be in a relationship directly with yourselves as lesbian mothers and the two of you and the male wanted to live together in the one unit?

Ms BADER: Yes.

The Hon. GREG DONNELLY: There was obviously consent to that because that is what you wanted as parents. Why should not the law then reflect that arrangement?

Ms SALE: I guess that is not up to us to decide or even comment on. We are here purely as mums so we probably could not comment on that.

The Hon. GREG DONNELLY: You could not comment on that?

Ms SALE: No.

The Hon. GREG DONNELLY: That is theoretical and you do not want to comment on that?

Ms SALE: Correct.

The Hon. GREG DONNELLY: If we look at the situation of lesbians—I think you used the phrase "two mums"—this is of some interest to us because that is part of the issue when it comes to the adoption of a child and matters of stability, security and love. If we go a step beyond that and think about other things that parents bring to the nature of the child, some of us argue that some of these things relate to the gender of the parents. In fact, that is the very point: you are two mums to your respective children but you do not see yourselves as fathers, do you?

Ms SALE: No, we see ourselves as parents.

The Hon. GREG DONNELLY: Indeed. If we were talking about two homosexual men adopting a child, it would be the same thing. They are two fathers to the child or children but they are not mothers, are they?

Ms SALE: They would be parents. We cannot get mixed up in the terminology of the words. To us "parents" is a word—two mums, two dads—again, to me that is probably irrelevant. It is how you are bringing up the children—

The Hon. GREG DONNELLY: Let us be clear about this and put it on the record. Your position is that the gender of the parents is irrelevant in rearing and raising children. Is that your submission?

Ms SALE: Yes.

The Hon. GREG DONNELLY: So it is your position that there is nothing unique in their gender that a mother or a father brings to the raising of child?

Ms SALE: I can only speak for myself. No.

Ms BADER: I think also there are too many bad examples of heterosexual families where you could counter that argument. It comes down to two parents offering a safe, stable environment.

The Hon. GREG DONNELLY: There is no doubt there are some dreadful heterosexual families and examples of domestic violence, child abuse and matters like that. I am not contesting that. I think we take it as a given that that exists in reality. Just going back to the question I asked you, is it your submission that there is nothing unique that a mother and a father bring to the parenting of a child?

Ms SALE: No, as long as those three or four ingredients are there.

The Hon. GREG DONNELLY: If I said to you that there are a number of people who consider themselves expert in the area of child behaviour, in child psychology and related matters, who have done some pretty serious research—to use an example of someone who is pretty well-known in Australia and has written many books being published internationally, have you heard of Steve Biddulph?

Ms SALE: No.

The Hon. GREG DONNELLY: Never heard of him?

Ms SALE: No, never heard of him.

The Hon. GREG DONNELLY: He is Australia's best-known family psychologist.

Ms SALE: We probably do not need to hear of him. Our children are well adjusted.

The Hon. GREG DONNELLY: No, do not be defensive about it.

Ms SALE: I am not being defensive, just being honest.

The Hon. GREG DONNELLY: No, I think you are being a bit defensive.

Ms SALE: That is your view.

The Hon. GREG DONNELLY: I want to quote from Steve's book, which has been published around the world. Steve says:

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 at school and be members of teenage gangs in adolescence. They are also less likely to progress to university or have a good career, they marry less successfully and are less effective fathers themselves.

Then he goes on to say:

Fatherless daughters are more likely to have low self-esteem, to have sex before they really want to, to get pregnant young, be assaulted and abused—

Ms SALE: And someone bought these books, did they?

The Hon. GREG DONNELLY: Don't interrupt. To continue—

and not continue their schooling. Families without men are usually poorer and children of these families are likely to move downwards in the socioeconomic ladder.

He is Australia's most well-known family psychologist. He is not religious at all; he is not coming at this from any religious perspective. He has no particular views on religion. He is basing this on his research and looking at the issue. What do you say—this confronts this Committee because we are dealing with this sort of evidence—to evidence like that?

Ms SALE: I could probably say a lot but I am being recorded.

The Hon. GREG DONNELLY: Feel free to say whatever you like.

Ms SALE: Again, we can only go on our experience. I can probably bet our bottom dollar that our children will not turn out like that, so I do not know where his research is. Maybe if our children had stayed with their father they would probably still be living in a park or they would be on drugs, or they would have had sex by now because they would have been molested or abused.

The Hon. GREG DONNELLY: Or they could be in a foster family with a mother and a father.

Ms SALE: They could be in a loving, stable and secure environment regardless of the sex. Children of today—

The Hon. GREG DONNELLY: They could be.

Ms SALE: They could be. Again, I am not an expert in the field. I am an expert in another field, but certainly not in that one. I think I have experience now as a parent and that is all we can go on here today. We are here today to say that our children are in this kind of environment and they want to be adopted, so their voice is us. We are speaking on their behalf. I will ask you the question, or the gentleman who wrote the book: will you tell our children that they cannot because this is what will happen because they do not have a father there? They have male role models, and very good ones at that.

Ms SYLVIA HALE: Just pursuing the issues that Mr Donnelly raised, he did suggest that one alternative for those children was to be in foster care. Did I hear correctly that your two children were two of seven siblings and those siblings had been through a number of foster care arrangements?

Ms SALE: Yes, there are now 10 siblings and they have all gone through numerous placements, which is quite sad.

Ms BADER: When DOCS took the children off the grandparents they were all placed in foster care at the same time. They were in foster care before or in and out of it or living with the grandparents. They all had three or four different placements and also there are 10 children now who are all in foster care.

Ms SYLVIA HALE: To your knowledge are those foster carers in heterosexual relationships and you are the only same-sex relationship?

Ms SALE: Correct.

Ms BADER: The type of foster carers we met in the first couple of years were single mums, and just boyfriend and girlfriend, and an older lady of 75. From our perspective of supplying a family and a home for a child in need they were quite weak cases.

Ms SYLVIA HALE: Do you know why they were chosen as foster parents?

Ms SALE: No, we do not.

Ms BADER: I think it was an emergency placement as well. It had to happen really quickly because the parents went away and the grandparents drove off, or something.

Ms SYLVIA HALE: Are you saying that these seven children, as they were, were products essentially of a heterosexual relationship where the parents just walked out on them?

Ms SALE: Correct.

Ms BADER: They were all from different fathers, too.

Ms SYLVIA HALE: So heterosexual but not stable heterosexual relationships?

Ms SALE: Correct.

Ms SYLVIA HALE: I do not know whether this applies because I was thinking from the names of your children that they were possibly of a different ethnicity from yourselves or a different cultural background.

Ms SALE: Mahalia's father is an Aborigine.

Ms SYLVIA HALE: In dealing with her part-Aboriginality do you find that has been an object of greater comment than, say, the fact that she is in a foster arrangement?

Ms SALE: No. Not at all. It is hard to sit here and explain our situation to you without your viewing it. Our children are just two well-adjusted little kids that have not had any discrimination on either side—whether their parents are the same sex, or Mahalia being a half-Aborigine, and beautiful at that. We have not experienced any of this.

Ms BADER: The only issue we have experienced was the poor health and the neglect that they came to us with and what we had to go through to bring them up to a level from an academic point of view and a health point of view.

Ms SYLVIA HALE: It is just that with adoptions, particularly those from overseas, there is a concern among many people that those children should be able to be aware of and pursue those cultural contexts from which they came. They should not be cut off from—

Ms SALE: Definitely not. We encourage Mahalia to pursue her culture.

Ms BADER: With Mahalia's father being an Aborigine he had problems with us being a same-sex couple. When he found out that Mahalia and Jardin would be placed with us he told DOCS he did not like the idea. The interesting development was that he met us a few times and warmed to us. We have not spoken to him for a few years now but in the first couple of years we went to visit him a few times in jail with the children and we developed quite a nice relationship. He really was very grateful at the end for us taking care of his daughter and he knew it would break the vicious cycle his family has been in. He was very grateful. He changed his mind.

Ms SALE: When we went to court to get parental responsibility he came along and supported us.

Ms SYLVIA HALE: Do you encourage the children to have contact with their other siblings?

Ms SALE: Definitely.

Ms SYLVIA HALE: Is that a fairly regular occurrence?

Ms SALE: That is every school holidays.

Ms SYLVIA HALE: But if they come from different fathers does that mean—

Ms SALE: I know. It is fairly hard.

Ms BADER: DOCS is coordinating that.

Ms SYLVIA HALE: You said that the children were not experiencing any discrimination or bullying. Are the children at the school they attend aware of your children's circumstances?

Ms SALE: Yes, fully aware.

Ms SYLVIA HALE: Do you think that being open about those circumstances has prevented that?

Ms SALE: It has assisted the process, definitely.

Ms BADER: Also they have been there since kindergarten, for a long time now, so everybody knows everyone. There are small classes, that sort of thing.

Ms SYLVIA HALE: Clearly you would be financially better off and more secure than many other fostering families or adopting families. How important has that consideration been in your decisions and how you are able to raise your children? Is it more important from your point of view to be able to offer a form of financial security as well as emotional security? Is that a more important consideration than the gender of the parents?

Ms SALE: I do not think it makes any difference as long as you put them in that good environment. The ingredients are there, just like baking a cake. If the ingredients are there—loving, stable security—it does not matter how wealthy or how financial you are. If that is there it really should not make a difference.

The Hon. AMANDA FAZIO: I want to ask you a question that follows on from that a bit. Apart from the resources that DOCS has given you as foster carers, from what you have said in your submission and what you have said today it seems that your children were quite behind the eight ball when they came into your custody. Have you had to put a lot of time and resources into speech therapy and other things?

Ms SALE: Definitely, Ms Fazio.

Ms BADER: We also decided to manage that very much by ourselves. There were a couple of situations with DOCS, I think some extra tutoring or speech therapy that DOCS would have paid for, but we would have had to drive the children somewhere far away. We basically did not get DOCS involved with a lot of those things. We looked after that from our end and did whatever we had to do.

Ms SALE: As I said to someone the other day, the vision will never leave when we saw those two little kids come up the stairs. Once we got to know them, they were so neglected, they were undernourished, and Mahalia had a deep cut in her face because she was attacked by another little boy. It is unbelievable what they have had to go through. It was not anybody else but us sitting at the hospital when Mahalia had to go under anaesthetic for an operation. It was not anybody else but us when we saw, in our eyes, our daughter gagging on the gas. It was us that had to teach them to eat vegetables and fruit, because they had never had it before; all they knew was KFC and McDonald's. It was us that had to take them to the speech therapist because Mahalia was so far behind because she had this ear problem that meant she had a learning disability. All those things we had to do, and we did it as parents.

Again I keep on saying: It is irrelevant to us whether we are male or female, or two females, or whoever. These children came to us very, very, very neglected. It was us that got up at one o'clock and two o'clock every morning for three months and had to nurse them because they were having nightmares. I guess I ask that fellow who wrote the book: Where was the father then?

The Hon. GREG DONNELLY: They did not have a chance to have a father.

Ms SALE: They had a very good chance to have a father.

The Hon. GREG DONNELLY: Not in your relationship.

Ms SALE: In the previous relationship, where they were neglected.

The Hon. AMANDA FAZIO: Ms Bader, in your submission you speak about your magazine, which I am familiar with. Because you are a key player in the gay and lesbian community in Sydney, are you aware of the parenting experiences of other gay and lesbian couples? We heard some evidence yesterday about the additional effort that goes into bringing kids who have been fostered by gay and lesbian couples up to speed, which I think is quite commendable based on what we heard yesterday and from what you have said today. Are you aware of other examples of that in the gay and lesbian community, where people are fostering children and putting in that extra effort to get those kids up to standard?

Ms BADER: I must say, almost the opposite really. With regard to fostering, when I speak to people about our situation—and Tanya and I had a couple of public appearances, where people have come up to me because they know me and I run the magazine, et cetera. What I hear most of the time is, "I didn't know you could foster, as a lesbian or gay couple." They just assumed that because we cannot adopt, we cannot foster. That is not the response I am getting. We talked about it yesterday. We do not know any other lesbian couples who are fostering. We know some couples who have adopted, but I am not quite sure how that system works. It was overseas, et cetera. It is more the opposite.

The Hon. AMANDA FAZIO: Do you think a lot more gay and lesbian couples would be happy to get involved in fostering if it were more widely known that the assessment criteria are based on the set of skills people bring to it, rather than on their gender or sexual orientation?

Ms SALE: Yes, I believe so.

The Hon. DAVID CLARKE: Ms Sale, you mentioned that Jardin and Mahalia have some male role models.

Ms SALE: Yes, they do.

The Hon. DAVID CLARKE: Can you tell us a little bit about them, without mentioning names?

Ms SALE: They have about three or four strong male role models, one being a partner in Ernst and Young. He and his wife and children come over regularly. Probably once every fortnight we see them. So that gentleman is always around. We have a couple of others who come around. A lot of them are in different business environments. One of them is a businessman. Another one is a car fanatic. He would take Jardin and Mahalia to car shows, and they love them. They have a mixture of male role models. So, in a way, these children are very lucky because they do have a mixture.

The Hon. DAVID CLARKE: Do you have any brothers?

Ms BADER: Yes. There is also my dad, who is poppy, and my two brothers. But they are in Germany, so we only see them once a year. With the role models, for me it is very important to recognise, with Jardin being a boy, that there are interests there which—maybe it comes back a little bit to what you mentioned before. Maybe it does not come naturally to me: I do not like cars, for whatever reason. But Jardin loves them. It is not that we have drummed it into his brain; he just does.

We as parents need to recognise that, and we need to fulfil this need. This is really important. We are very lucky that Tanya is a footy freak. If she were not a footy freak, we would have to have a male role model who would take our son to the footy. But because Tanya is so into the footy, that really fulfils Jardin's need of soccer and footy, and all those kinds of sporting activities. It is so important for us to watch this constantly. When any kind of need arises and it is not natural for us, as parents we need to nurture that.

Ms SALE: I think it has to be understood here that we are not anti-men. Trust me, we love them, but just not to marry them. We understand the importance of having a male in the children's lives. They are not surrounded by a mad bunch of females. There is a beautiful mixture here. A male is very important—we believe that—and that is why we have male role models in the children's lives.

Ms BADER: But not only for that. It is natural for us. We surround ourselves with people we like to get on with.

Ms SALE: The majority of our friends are heterosexual. They are just well-adjusted children because they have a beautiful blend. But with the Adoption Act, this is where I struggle with it. I have only had a look at this for the last month and. This is where I struggle with it. If all the boxes are ticked and the Act is there for the main reason of protecting children—and that should never be changed—and the skill sets that we talk about are there, just because the names are different why should not those people be recommended to adopt a child? I really struggle with that just as a parent.

The Hon. JOHN AJAKA: But you take it one step further: that one of you can adopt one of them if all the boxes are ticked, but both of you cannot adopt both of them.

Ms SALE: That is right.

The Hon. JOHN AJAKA: That is your dilemma?

Ms SALE: That is our dilemma, and that is what we want to be rectified. If it is not rectified, we have to go down the path of adopting one, which again is not fair.

CHAIR: Thank you for your appearance today. You have informed the debate. The Secretariat will contact you if we need to hear from you further.

(The witnesses withdrew)

(The Committee adjourned at 5.25 p.m.)
