

ADOPTION AMENDMENT (SAME SEX COUPLES) BILL 2010

WHY THE ADOPTION ACT SHOULD NOT BE CHANGED

The Bill was introduced into the Lower House of the NSW Parliament by Ms Clover Moore on 24 June 2010 and seeks to amend the *Adoption Act 2000 (NSW)* to permit the adoption of children by same sex couples.

ANGLICARE Sydney is one of only three accredited non-Government adoption agencies in NSW handling domestic adoptions, with 45 years of service experience in the field. This briefing draws on many years of frontline experience in the provision of adoption services in NSW.

Under the Adoption Act, the best interests of the child are paramount. The current Act conforms with the UN Convention on the Rights of the Child, which states that *in all actions concerning children, the best interests of the child shall be the primary consideration*. Consequently there are several reasons why ANGLICARE Sydney believes this Bill should be rejected:

1. Children need the opportunity to have both a mother and a father: Men and women complement each other in their parenting roles as a result of their inherent physical, psychological and emotional attributes. Optimal care for children consists of being in a family with both a mother and father. Adoptive children should not be denied this opportunity.

2. No adult has the right to adopt a child: The appeal to anti-discrimination upon which this Bill is based puts the rights of adults ahead of children. The Adoption Act makes clear that adoption is a service for the child and that no one has the right to adopt a child. Whether denial of same sex couples to adopt impacts adversely on the rights of same sex couples, or whether it is an area that is in need of reform to remove continued discrimination against same-sex couples, should not be relevant to the determination of this issue.

3. The best interests of the child are paramount: The only relevant consideration ought to be whether adoption by same-sex couples is in the best interests of the child. Adoption is a decision that must be made paying attention to both childhood and later life. Given that adoption should provide children with optimal care and that optimal care consists of being in a family with both a mother and a father, adoptive children should have the right to both a mother and father. The State must uphold and protect this fundamental right.

4. Adopted children already feel different to other children: Adoptive children often struggle with feelings of difference as they grow up. Heterosexual families are the norm in Australia. Given that same sex parenting is outside this norm, being adopted by a same sex couple will impose an additional, ongoing adjustment on adoptive children. If the best interests of the child are to be ensured, then the child must be given the best opportunity, in keeping with societal norms.

5. Young children and infants have no say in who adopts them: Adoptions where the child is unknown to the adoptive parents usually involve infants and young children. The proposed changes to the Adoption Act mean that same sex couples would be able to apply to adopt infants and young children. It is incumbent upon the State to take a cautious approach to what is permissible in the area of adoptions. This is essential where the child is too young or developmentally unable to understand the implications of the adoption decision.

6. Unlike foster care, adoption is permanent: It has been stated that there is a double standard in same sex couples being permitted to foster but not adopt. However adoption is a permanent situation whereas fostering is not. Therefore a cautious approach is required

where the decision is irreversible, as would be the case in putting the child in an unusual family configuration.

7. It is unlikely that birth parents will support this change: Adoption is about receiving another person's child. In unknown adoptions, birth parents select potential adoptive parents from profiles presented to them; they usually want a mother and a father over single adoptive parents. The adoption process is a very difficult and painful process for birth parents in giving up their child. Transition is facilitated where birth parents recognise the pain that adoptive parents are also experiencing, such as in the struggle with fertility issues.

8. There is a lack of well founded, unambiguous research evidence: To evaluate the impacts that this Bill might bring, sound research evidence is needed in relation to the roles of mothers and fathers in parenting, key factors in the development of children and the effect of same sex parenting on children. However, as was noted at the Standing Committee on Law and Justice Inquiry (2009), research in this area is affected by the ideological nature of the subject and the bias of the researcher, and inherent methodological flaws and problems in many of the studies so far undertaken. The onus is on the proponents of same-sex parenting to prove that moving further away from the heterosexual parenting model is appropriate and safe for children.

9. Changing the Adoption Act will impact negatively upon adoptions agencies: It is disingenuous to suggest that all faith-based adoption agencies need to do is refer same sex couples on to agencies willing to handle same sex adoptions. In fact, this Bill opens up faith-based agencies to litigation, as has already occurred in Australia in relation to foster care. The end point of this path would be that faith-based agencies would be forced to vacate the adoptions field, to the detriment of all parties in the adoptions process.

10. Changing the Adoption Act will create inconsistencies in the adoptions field: If passed, this Bill will create inconsistencies between domestic and inter-country adoptions, since same sex adoptions will not be permitted under the latter. It has been stated that the Bill is needed because adoption these days mostly involves children who are known to one of the parents. The fact that inter-country adoptions are more numerous than domestic adoptions makes this statement untrue. In any event, the ratio of known to unknown domestic adoptions will fluctuate; consequently legislation should not be passed which addresses a situation among a small number of potential known adoptions, to the disadvantage of unknown adoptions.

11. Changes to adoptions law are different to changing other laws: There have been recent changes to a number of laws, both Federal and State, in order to bring greater equality for homosexual individuals and same sex couples. Most of these changes have to do with access to welfare and financial benefits (e.g. property, superannuation). The Adoption Act, however, is fundamentally different to these other issues, since adoption exists as a service for the child, not adults and although respectful of the needs of birth parents and of those who wish to adopt, is necessarily and profoundly child focussed.

12. Finally, there is no strong need to make this legislative change: There is no shortage in the supply of suitable parents willing to adopt children. In the case of a child with a same sex parent, a parenting order or care order can be obtained. It is our firm belief that, in the light of the above facts, the State should adopt a cautious approach in respect of adoptions law and should reject this Bill.

Peter Kell
CEO
ANGLICARE Sydney
02 9895 8000
peterkell@anglicare.org.au