

Does gender matter? The NSW Adoption Amendment Bill

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I give my personal in-principle support to this issue. For the record, my primary concern is what is in the best interests of children. Adoption provides permanence, stability and security that is important for children. I know of successful parenting and fostering by gay and lesbian couples. However, I am aware that there are very deeply held, divergent views on this issue ...

- Premier Kristina Keneally

This briefing is for readers in NSW. On 24 June the Member for Sydney, Ms Clover Moore, introduced into the Legislative Assembly a Private Member's bill titled *Adoption Amendment (Same Sex Couples) Bill 2010*.

1. The Bill will permit same sex couples to be included as candidates for consideration to adopt an infant (an 'unknown' adoption).
2. It will also allow the same sex partner of the biological parent of a child to adopt the child (a 'known' adoption).
3. The Bill does not provide any exemption provisions for Christian adoption agencies.

This Bill is the third initiative in five years for the amendment of NSW adoption law to allow adoption by same sex couples. The SIE has made submissions to a 2006 Department of Community Services enquiry, and to a 2009 Law and Justice Committee enquiry.

The recent Law and Justice Committee enquiry (see link below) recommended for changes to the law, by the narrowest of margins. It also recommended that provisions be made for the exemption of Christian adoption agencies. The current bill ignores this recommendation.

In a nutshell, our position has been that:

1. No matter how well functioning a same sex couple, adoption by them deprives an infant the opportunity either to be 'fathered' or 'mothered'. Of course many children now experience no 'fathering' or 'mothering'. But when the State is charged to provide optimal care for an infant, its officers should presume, conservatively, that optimal care includes being well-fathered *and* well-mothered.
2. For children whose biological parent is now in a same sex relationship, we do recognise that the new partner should be supported in their co-care of the child. However, other arrangements than adoption can be strengthened to achieve that end. The inclusion of these children's needs under the general category of 'adoption', muddies the waters of 'unknown' infant adoption. Moore's changes deliberately conflate the very different considerations of 'known' and 'unknown' adoption.
3. If the law is changed, Christian organisations should not be forced to act against their best judgment of a child's best interests.

Everyone – the Premier, Clover Moore and the SIE – all now speak in terms of 'a child's best interests'. The nub of the argument is over whether children need a

women *and* a man among their main carers. We know that not all children have such care, and we do want them to be well-cared for by the carers they know. But when the State is charged to supply care, we think that a loving, stable married man and woman are a kid's best shot. It is not homophobic simply to ask the State to continue providing infants with a loving man and woman wherever possible.

The Bill will be debated once State Parliament resumes on **31 August 2010**. The Premier has announced that she will allow a **conscience vote**.

If you also think that the Bill is well-intentioned but mistaken, a conscience vote means that **you need to see your local State Member** (not your Federal member!!) and politely alert them to the issues. Our central denominational officers have no easy method to address a conscience vote. If you think this change is a mistake, **it now boils down to your engagement with a local member**. It is over to you, to get your local members to think through their position. Here are some resources to guide you:

- The 2009 Standing Committee on Law and Justice Report: *Adoption by same-sex couples*: <http://tinyurl.com/SSA-report>.
- A helpful summary of the issues by Greg Donnelly, who participated in Committee that prepared the Report: <http://tinyurl.com/gregdcomment>.
- Twelve reasons why the adoption act should not be changed, provided by ANGLICARE Sydney, and available by permission at www.sie.org.au under 'Reports'.
- The 'excursus' (and link) on the next page: **'Does gender matter?'**

To communicate with your local State member:

1. Use the tool provided by the NSW branch of the Australian Christian Lobby at www.kidsrightscount.org.au to email your local member. (The 'Contact your MP!' link goes to another site)
2. Or, first **find** your electorate here: <http://tinyurl.com/find-NSW-electorate> then **find** your member here: <http://tinyurl.com/find-NSW-member> then **call** for an appointment.
3. You might even consider **printing** the *Adoption by same-sex couples* report and even **getting it bound** at an instant printer. **Read** it and **highlight** a few short sections to show to your MP. Give it to your MP, and ask him or her to **make time to read** the report before voting.
4. WHATEVER YOU DO, outline your concerns **POLITELY** and **BRIEFLY**. Do not get into red herrings. The main concern is whether the optimal experience for children includes a mother *and* a father.

That's it. It's over to you.

- **Andrew Cameron**
(for the Social Issues Executive, Anglican Diocese of Sydney)

Excursus: Does gender matter?

It is worth stepping back from this current bill to consider some wider attitudes about the relevance of gender difference.

To date, adoption policy has retained the relevance of gender difference on the hunch that children should ideally have an experience both of mothering and fathering. It has followed that same-sex couples are not accepted as candidate parents for 'unknown' infant adoptions, on the presumption that it is not about the 'rights' of these people to have a child, but that it is about what is in the best interests of the child.

But the needs of children parented by (usually) a biological mother and her new lesbian partner generate the proposal for so-called 'known' adoption by the same-sex partner of the child's biological parent. Like all adoptions, this proposal is meant as a kind of retrieval, because these kids do need the care of those known to them whom they trust. So it is argued that adoption law should be extended to these cases.

These cases have been conflated with the cases of 'unknown' infant adoption, which are conceptually quite different. But after this conflation, the overall argument is now put that no child necessarily needs the experience of both mothering and fathering. By studying the outcomes of children already parented by same-sex couples, and by asserting that these kids are fine, we are told to change our long-held hunch that a mother and a father matters. This, we are told, is now an outdated a prejudice, and children will be expected to adapt to care arrangements that suit a new adult interpretation of gender.

The studies in this area are controversial. Even pro-gay researchers admit that research is distorted by each researcher's 'family values', whether conservative or progressive. The SIE made this point as clearly as we could in a submission to the 2006 review of the NSW Adoption Act: <http://tinyurl.com/SIE2006sub> (or go to 'Reports' at www.sie.org.au). Some of its points are no longer relevant, but the bulk of the argument remains directly relevant.

The hunch that gender difference is somehow important, has also been the sole remaining secular reason to retain marriage as a gender complementary institution. We are living through a twin-pronged assault on the relevance of gender difference: in parallel to our local adoption debate, a recent Californian judicial ruling has effectively declared that we are now beyond gender as a relevant consideration in all our social arrangements, marriage included. (See Michael A. Lindenberger, 'Why California's Gay-Marriage Ban Was Upped', *Time.com* 5 August 2010, <http://tinyurl.com/timegmban>.)

Christians simply ask our neighbours – is it really true that our gender differences matter so little? And is it safe to conclude that gender difference is irrelevant in our caring relationships with children? Those who want to minimize this differentiator answer 'it matters little; we're going ahead'. The response we propose is a socially orthodox argument: that in a high-stakes decision, and when it is very hard to prove that a change will be beneficial or not deleterious, there is nothing wrong with doing as we have always done. Socially orthodox arguments are not popular, but not necessarily untrue. This kind of position relies upon the presumption that the status quo is not doing enough damage to warrant a change. It also places a high burden of proof upon those who propose the change.

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