

TASMANIA
LAW REFORM
INSTITUTE

Adoption by same sex couples

FINAL REPORT NO 2

MAY 2003

Contents

Information on the Tasmania Law Reform Institute	1
Terms of reference	2
Acknowledgements	2
Executive summary	3
Part 1 Introduction	8
Changing family structures	8
Changing attitudes to same sex parenting	9
Part 2 Adoption: law and process	13
What is adoption?	13
Who can apply to adopt?	13
Trends in adoption	14
Adoption rates	15
The adoption process	16
Part 3 Should same sex couples be eligible to adopt?	21
Introduction	21
The Institute's view on eligibility of same sex couples	22
Arguments against same sex adoption	25
Recommendation 1	43
Part 4 The profile of applicants for adoption and birth parents' preferences	44
Introduction	44
In favour of profiles disclosing sexuality and relinquishing parents expressing a preference	44
Against profiles disclosing sexuality and relinquishing parents expressing a preference	46
The Institute's view	47
Recommendation 2	47
Part 5 Known child adoption only?	48
Introduction	48
Issues in relation to known child adoption	49
Recommendation 3	51
Part 6 Additional qualifications: length of the relationship	52
Recommendation 4	53
Appendix A:	
Summary of responses to the Issues Paper: Qu 1(a)	54
Appendix B:	
Summary of responses to the Issues Paper: Qu 1(b)-3	68
Appendix C:	
List of original respondents to the Issues Paper	73
Appendix D:	
List of people who sent multiple responses or signed a petition	75

Information on the Tasmania Law Reform Institute

The Tasmania Law Reform Institute was established on 23 July 2001 by agreement between the Government of the State of Tasmania, the University of Tasmania and The Law Society of Tasmania. The creation of the Institute was part of a Partnership Agreement between the University and the State Government signed in 2000.

The Institute is based at the Sandy Bay campus of the University of Tasmania within the Law Faculty. The Institute undertakes law reform work and research on topics proposed by the Government, the community, the University and the Institute itself.

The Institute's Director is Professor Kate Warner of the University of Tasmania. The members of the Board of the Institute are Professor Kate Warner (Chair), Professor Don Chalmers (Dean of the Faculty of Law at the University of Tasmania), The Honourable Justice AM Blow OAM (appointed by the Honourable Chief Justice of Tasmania), Paul Turner (appointed by the Attorney-General), Philip Jackson (appointed by The Law Society), Terese Henning (appointed by the Council of the University), Mathew Wilkins (nominated by the Tasmanian Bar Association) and Kate McQueeney (nominated by the Women Lawyers Association of Tasmania).

To find out more about the Institute or obtain further copies of this report please visit our website:

www.law.utas.edu.au/reform

Terms of reference

In November 2002, the Attorney-General requested that the Institute undertake a law reform project on same sex adoptions. This followed considerable media discussion of this issue. At the Institute's board meeting on 18 November it was agreed that the project be undertaken. Formal terms of reference were given by the Attorney on 28 November and these were agreed to by the Board in the following terms:

1. *Whether the Adoption Act 1988, Section 20(1), should be amended:*
 - (a) *to remove the requirement that an order for the adoption of a child may only be made in favour of a man and a woman who are married to each other, and have been so married for not less than 3 years before the date on which the order is made; and*
 - (b) *to permit an order for adoption to be made in favour of any couple regardless of the gender of the partners making up the couple.*
2. *If so, whether any other qualifications for adopting couples should be included in the Act.*

On 17 December 2002 the Institute was requested to amend the second paragraph to the following:

2. *If so, whether any other qualifications for adopting couples, particularly the proven length of the stable relationship, should be included in the Act.*

Acknowledgements

The Institute would like to thank its Director, Professor Kate Warner, for writing this report; Claire Buxton, Sarah Mackay, Jenny Gawlik, Catherine Radley and Simon Nicholson for their assistance with the research and preparation of this report; and the following members of the Faculty of Law for their advice: Associate Professor Margaret Otlowski, Ms Sam Hardy, Ms Julia Davis, Dr Henry Finlay and Dr Greg Carne.

Executive Summary

Part 1: Introduction

In November 2002 the Attorney-General invited the Law Reform Institute to undertake a project on same sex adoptions. This followed a press release in which the government indicated an intention to legislate to amend all Acts which discriminate against de facto and same sex partners. In February 2003 the Institute released an issues paper on adoption by same sex couples inviting responses to the following questions:

1.
 - (a) Should the *Adoption Act* s 20(1) be amended to permit an order for adoption to be made in favour of any couple regardless of the gender of the partners making up the couple?
 - (b) If so, should the non-identifying profile of adopting parents specify the sexuality of the couple and should the birth parents be able to express a preference about the sexuality of the adopting parents?
 - (c) If not, should the *Adoption Act* s 20(6) be amended to allow known child adoption orders to be made in favour of any couple regardless of the gender of the partners making up the couple?
2. Should the length of the relationship for eligibility for adoption be changed?
3. Should any other qualifications for adopting couples be included in the Act?

More than 1300 responses were received, many of them duplicates. Of the original responses 134 were against any change and 61 in favour.

Changing Family Structures

Adoption laws that exclude same sex couples from eligibility for adoption are premised on the assumption that heterosexual marriage is both the normal and the ideal family structure. However, modern trends are for children to be raised in a number of diverse family forms. What was a normal family for a child 50 years ago has changed significantly. The impact of divorce and changing legal and social attitudes to lesbian and gay relationships means that being raised outside a heterosexual nuclear family is no longer exceptional. Census data show that 21% of children under 15 were being raised in single parent families. In Tasmania 547 persons reported living in a same sex relationship in the 2001 Census. Many of these, up to 20% in the case of lesbian couples, are likely to be living with children. Parenting of children born in a previous heterosexual relationship by same sex couples and intentional parenting of children by lesbian couples is now a reality.

Changing Attitudes to same sex parenting

Changing attitudes to same sex parenting is demonstrated by the approach of the Family Court of Australia which has refused to regard sexual orientation of parents as a disqualifying factor and shown a readiness to recognise that the best interests of a child can be served by making parenting (including residence) orders in favour of same sex couples.

Same sex parenting through adoption is becoming a reality for lesbians and gay men in Europe, Canada, the United States of America and South Africa. Most recently the United Kingdom and Western Australia have passed legislation granting gay and lesbian couples eligibility to adopt. The rationale for change is the recognition that emotional security, stability and criteria assessing the best interests of the child are the ideal basis for decisions regarding adoption rather than criteria relating to sexual orientation and marital status.

Part 2: Adoption, law and process

Adoption is a process by which society provides a substitute family for a child whose natural parents are unable or unwilling to care for the child. An adoption order severs the existing legal parent-child relationship and substitutes a new legal parent-child relationship. There are two basic categories of adoption:

- Placement adoption – where the child and adoptive parents do not already know each other. This can be a local placement or an inter-country placement.
- Known child adoption – where the child is adopted by someone known to them, usually a step-parent or relative.

In Tasmania, adoption is primarily available to a married man and woman who have been cohabiting for not less than 3 years. In exceptional circumstances a single person can adopt and step-parents and relatives are permitted to do so in limited circumstances. Under the *Adoption Act 1988* same sex couples and heterosexual unmarried couples are ineligible to apply to adopt.

Adoption Trends and Rates

The number of adoptions has fallen markedly over the last 30 years. In Australia there were 9,798 adoption orders in 1971-2 compared with only 561 in 2001-2002. The majority of adoption orders are now inter-country placement adoptions. In Tasmania in 2001-2002 there were just 20 adoptions in total, 16 were inter-country placement adoptions, two were known child adoptions and two local placement adoptions.

Assessment

Applicants for adoption need to undergo rigorous tests and meet stringent criteria. Prospective adoptive parents must demonstrate eligibility to adopt before assessment of the application can take place. Eligibility to adopt does not imply suitability to adopt. The assessment process involves discussions and interviews, and usually takes six months to complete. The Manager of Adoptions will then review the assessment report and either approve or deny the application. Successful applicants are then placed in a pool of potential adoptive parents for selection. Placement in the pool does not guarantee that applicants will be selected as parents.

For the child to be legally available and placed for adoption the consent of certain people must be obtained. In addition to providing this consent, relinquishing parents can express their wishes regarding the characteristics of the adoptive family selected for the placement of the child. Before making an order the court must be satisfied that these wishes have been taken into account and that that welfare and interests of the child will be promoted by the adoption.

Although the assessment process is not as rigorous for step-parents and relatives who apply to adopt, they have additional hurdles. Before a court can make an order in such a case it must be satisfied that there are special circumstances warranting making the order, that a Family Court order would not make adequate provision for the welfare and interests of the child and that an adoption order would better serve those interests.

Part 3: Should same sex couples be eligible to adopt?

Known child adoption has the greatest potential for use by same sex couples. It could be used by lesbian couples who plan a pregnancy and conceive a child during their relationship (co-parent adoption) or by couples with a child from a previous relationship (step-parent adoption). It could also be relevant to a same sex couple where the child is a relative of one of the couple or where a same sex couple wishes to adopt a child they are fostering. In theory a gay couple could apply to adopt a child born as a result of a surrogacy agreement. However, such an agreement is illegal and unenforceable.

Local placement adoptions may have appeal for a same sex couple, however there are very few babies available. Placement adoption raises issues in relation to the profile of adoptive parents and the wishes of relinquishing parents as to the sexual orientation of the adoptive parents of their child.

Applicants for inter-country adoptions must satisfy the eligibility criteria of the overseas country as well as Tasmanian criteria. Because none of the countries accepting applications from Tasmania allow same sex couples to adopt, inter-country adoptions will not be open to same sex couples even if Tasmanian law makes them eligible.

The Law Reform Institute has carefully considered the arguments put forward in response to the Issues Paper. Despite the limited practical impact of changes to the profile of adoptive parents that any changes would bring, the issue is clearly an emotive one as the volume and tone of the responses to the Issues Paper demonstrate. The majority of responses opposed same sex adoption. Clearly many people hold strong and sincere beliefs on the issue. Those opposing change relied on nine main points:

- that homosexuality is wrong and unnatural
- same sex adoption would be detrimental to society and to marriage
- and for that reason unconstitutional and contrary to international law
- that same sex adoption is not in the best interests of children
- that social science studies cited in support are flawed and prove nothing or that they were selectively cited and interpreted
- that denying same sex couples eligibility to adopt is not discriminatory
- that there is no need for reform.
- that such a change lacks public support
- and would have adverse effects on the adoption process

Notwithstanding these arguments the Institute is firmly of the view that the law should be changed to allow same sex couples to be assessed as applicants for adoption in the case of local placement adoption and known child adoptions. The Institute is persuaded that this is in the best interests of children. And the Institute believes that to continue to deny same sex couples eligibility to adopt is unjustified and unfairly discriminates against same sex couples and their children.

The Institute rejects all of the arguments raised by those opposing allowing same sex couples to apply to adopt. If there was a consensus in our society that homosexuality was wrong, depraved or unnatural this is no longer the case. The Institute refutes the claim that same sex marriage is detrimental to society. Nor is the institution of marriage threatened by allowing same sex couples to adopt. Given that same sex couples will only be allowed to adopt in individual cases when it is in the best interests of the child and given that a dramatic increase in the number of gay and lesbian parents is unlikely, the suggestion that same sex adoption poses a meaningful social threat is highly implausible. The constitutional argument is unconvincing and adoption legislation that excludes same sex couples from adoption is more likely to contravene international law than same sex adoption legislation.

The social science research

The social science research on same sex parenting is controversial. It is conceded by those conducting the research that it is flawed. However, it seems that much of it is as reliable and respected as research in other areas of child development and psychology. The problem appears to be that the anti-gay scholars either have a tendency to view any evidence of difference as evidence of harm or alternatively, they employ double standards by attacking studies, not so much because the research methods are inferior to most studies of family relationships, but because these critics oppose equal family rights for lesbians and gays.

The Institute's view is that it does not have to be satisfied that homosexual parenting *in general* is as good for children as being raised by a married heterosexual couple before recommending that gay and lesbian couples be eligible for adoption. It is our position that it is in the best interests of children for parents to be evaluated individually on the basis of their ability to be good parents and not to be assessed on assumptions based on their sexual orientation. If the social science is so flawed, it presents no obstacles to same sex adoption which involves decisions made on a case-by-case basis. On the other hand if it is accepted, allegations of greater instability, promiscuity and higher levels of violence in same sex couples compared with heterosexual couples are irrelevant given that same sex couples applying for adoption will have their relationship assessed on a case-by-case basis.

Many respondents opposed to same sex adoption pointed to the increased risk of growing up to be gay or lesbian. There are two answers to this. First, there is prejudice in such an assumption as it suggests that such an outcome is undesirable, or that homosexuality is wrong or a pathological condition. Secondly, there is no clear evidence that the children of lesbians and gays are more likely to identify as gay or lesbian. There is some evidence that they are more likely to engage in homosexual activity and this is probably because growing up with gay parents would be likely to reduce a child's reluctance to acknowledge or act upon same sex desires. It by no means follows that allowing same sex couples to adopt is not in the best interests of children.

There are a number of responses to the argument that same sex adoption should not be allowed because children need a mother and a father. First, it is inappropriate to rely on research on single mother families in this context. Secondly, the research on lesbian and gay parenting, whilst flawed, does support the limited proposition that there is no evidentiary basis for considering parental sexual orientation as something adverse to children's best interests. Thirdly, even if, in general, a child does best with a mother and a father (and this is not conceded), this does not mean there should be an across the board disability affecting gay and lesbian parents. If there is a possibility that a same sex couple could be the best choice for an individual child, then to open the possibility of adoption in such a case is in the best interests of children.

In summary, the Institute rejects the claim that same sex adoption is not in the best interests of children. To allow same sex couples to apply to adopt will not give same sex couples the right to adopt. It merely means that they are eligible to apply. Each case will be assessed on a case-by-case basis. The Institute also rejects the other arguments raised by those who oppose same sex adoption, namely that to deny eligibility is not discriminatory, that there is no need for reform and that to allow same sex adoption will adversely effect the adoption process.

Recommendation 1:

The Institute recommends that s 20(1) of the *Adoption Act* be amended to permit a couple to apply for adoption regardless of the gender or marital status of the partners making up the couple.

Part 4: The profile of applicants for adoption and birth parents' preferences

Because s 24(1)(b) of the *Adoption Act 1988* indicates the court must be satisfied that *any* wishes expressed by birth parents have been taken into account before it can make an adoption order, this would include wishes as to sexual orientation of the prospective adoptive parents if s 20 were amended to allow same sex couples to be considered for adoption. Similarly, the profile of families considered suitable for a placement adoption could include sexual orientation under the description of family makeup.

The Institute is sympathetic to the arguments opposing the inclusion of sexual orientation in the profile of potential adoptive parents and to excluding sexual orientation preferences as a consideration in selecting an adoptive couple. Sexual orientation is not a factor that bears on the upbringing of a child like religion, nor is it a factor relating to the development of a child's identity as is race or ethnicity. It is a valid concern that allowing relinquishing parents to, in effect, veto adoption by a same sex couple will do nothing to counter intolerance of sexual diversity. However, it is important that confidence is maintained in the adoption process. This may not be assisted by the knowledge that parenting profiles do not specify the sexual orientation of applicants. The Department's concerns about this have been noted. For this reason, the Institute is of the view both that parent profiles should include this factor and that parents should be able to state their preferences in relation to this. When counselling relinquishing parents, the issue should be dealt with in a way which promotes tolerance.

Recommendation 2

The Institute recommends:

- (a) that the profile of potential adoptive parents include the sexual orientation of the adoptive couple, and**
- (b) that the preferences of relinquishing parents as to sexual orientation of the adoptive couple be taken into account in the selection of adoptive parents.**

Part 5: Known Child Adoption Only?

In the light of Recommendation 1 it is clear that the Institute does not recommend allowing same sex adoption in the known child category only. The Institute agrees with those respondents to the Issues Paper who argued that that to so limit adoption would not address the issues of stigmatisation of lesbian and gay people and their children in particular, nor the issues of human rights and discrimination.

While step-parent and relative adoption should be available to the same sex partner of a parent or relative of a child, in the case of co-parents (lesbian couples who have a child as a result of a planned pregnancy) adoption is not the optimal choice. A more appropriate legal response in such a situation is presumptive recognition of both parents from birth.

Recommendation 3

The Institute recommends:

- (a) that both step-parent and relative adoption should be available to the same sex partner of a parent or relative of a child; and**
- (b) that the *Status of Children Act 1974 s 10C* be amended to apply the conclusive presumption of parenthood to the same sex partner of a woman who, with her partner's consent, conceives a child as the result of an artificial fertilisation procedure.**

Part 6: Additional Qualifications: length of the relationship

The Institute is of the opinion that there is no reason to extend the length of the relationship required by the Adoption Act for eligibility to apply for adoption. There should be no different requirements for married couples, de facto heterosexual couples or same sex couples in this respect. Nor are there grounds for adding criteria.

Recommendation 4:

The Institute recommends that the length of the relationship of adoptive couples remain at 3 years for eligibility to adopt and that no qualifications be required in addition to the current qualifications.

Part 1

Introduction

The request by the Attorney-General to consider the issue of same sex adoptions was made in the context of a policy announcement of the intention to give legal recognition to same sex and significant relationships. The Attorney-General noted that the stereotype of a husband, wife and two children no longer encompasses the diversity of Tasmanian society. She indicated that the government would legislate to amend all Acts which discriminate between married and defacto or same sex partners.¹ Adoption is one area where the law does discriminate against both unmarried heterosexual and same sex couples. However, the issue of adoption was not specifically addressed in the press release. Nor was it dealt with by the Joint Committee on Community Development in its inquiry into the legal recognition of significant relationships.² Instead it was referred to the Law Reform Institute in November 2002 to allow for more community debate on the issue. In February 2003 the Law Reform Institute published an issues paper inviting responses to the options discussed in the paper. The paper outlined the legal process for adoption, adoption trends, the approach in other countries to same sex adoption and social science research on lesbian and gay parenting. Responses were invited to following questions:

1.
 - (a) Should the *Adoption Act* s 20(1) be amended to permit an order for adoption to be made in favour of any couple regardless of the gender of the partners making up the couple?
 - (b) If so, should the non-identifying profile of adopting parents specify the sexuality of the couple and should the birth parents be able to express a preference about the sexuality of the adopting parents?
 - (c) If not, should the *Adoption Act* s 20(6) be amended to allow known child adoption orders to be made in favour of any couple regardless of the gender of the partners making up the couple?
2. Should the length of the relationship for eligibility for adoption be changed?
3. Should any other qualifications for adopting couples be included in the Act?

Despite the relatively short time specified for responses, more than 1300 people sent in responses and a petition signed by 45 people was also received.³ Many of these responses were copies of the same letter: 957 people sent in the same response. The majority of responses were not in favour of changing the law. There were 196 original responses, 134 against any change and 62 in favour. Of the responses that did favour changing the law to allow same sex couples to adopt, almost all favoured the first option of making same sex couples eligible for placement adoptions as well as step-parent and relative adoption. A detailed summary of the responses is given in Appendix A. In this part it is proposed to first review the nature of family structures today and the changing attitudes to same sex parenting illustrated by the approach of the Family Court of Australia to parenting and by changes to adoption laws in other jurisdictions.

Changing Family Structures

Adoptions laws which exclude same sex couples from eligibility for adoption are premised on the assumption that heterosexual marriage is both the normal and the ideal family form for raising children. However, modern trends are for children to be raised in a number of diverse family forms. Census statistics show that only 52% of households in Tasmania were composed of a husband and wife and 21% of children under 15 were living in

¹ Press release, 24 September 2002.

² This inquiry was referred to the Committee by the Attorney-General on 22 May 2001 and the report was tabled on 19 December 2001: *Report on the Legal Recognition of Significant Personal Relationships*, Paper No 25, Parliament of Tasmania, 2001.

³ Responses received after the closing date of 10 March were also accepted.

a lone parent family.⁴ The number of cohabiting same sex couples in Australian society is difficult to gauge. Census figures for this were collected for the first time in Australia in 1996. The response was low and it may well be that couples are reluctant to identify themselves as gay or lesbian in surveys. However, of the 8,296 lesbian couples who responded, 17.9% lived with children. Of the 11,288 gay male couples who reported to the Census, only 2.4% were living with children.⁵ In the 2001 Census the number of persons indicating that they were living in a gay and lesbian relationship almost doubled to 37,774⁶ suggesting an increased readiness to report being in a same sex relationship. This Census reports 547 persons in same sex couples in Tasmania.⁷ Numbers and proportions living with children are not yet available. The New Zealand 1996 census also included a question on same sex couples, which suggested 21% of lesbian couples had children. The response of the Tasmanian Gay and Lesbian Rights Groups to the Issues Paper suggests that 20 to 25% of gay and lesbian people already care for children and that in Tasmania this would amount to several hundred children in the care of lesbian and gay people.⁸

Parenting by same sex couples is now a reality. The results of a small survey in Sydney suggest a trend to an increasing number of lesbians having children and wanting to have children.⁹ Self insemination from a known donor seems to be the preferred method of lesbian couples conceiving a child in Australia.¹⁰

What was a normal family for a child 50 years ago has changed significantly. The impact of divorce rates and changing legal and social attitudes to lesbian and gay relationships means that being raised outside the heterosexual nuclear family is no longer exceptional.

Changing attitudes to same sex parenting

The Courts

The Family Court of Australia has sometimes had to address the question of gay or lesbian parenting in the context of disputes relating to residence and contact orders for children. The Family Court has consistently held that the sexual orientation of a parent is simply one factor to be taken into account and is not of itself a disqualifying factor. The nature of a parent's sexual relationship will be relevant to the court's proceedings only to the extent that it affects parenting abilities or the welfare of a child in a particular case.¹¹

The leading Australian family law case involving a lesbian mother was decided some 20 years ago. In *In the Marriage of L and L*¹² Baker J granted custody (as it was then called) of the four children of the marriage to the wife, who was living in a lesbian relationship. The wife's sexual preference was a matter of concern for Baker J yet he held 'I am firmly of the view that her proclivity in this regard is not and cannot be, *per se*, a disqualifying factor against her'.¹³ There has been some criticism of Baker J's approach, as rather than dealing with the case solely on the quality of care each parent could provide, he set out eight factors¹⁴ which a court

⁴ Australian Bureau of Statistics, *Australian Social Trends* Cat no 4102.0, Table 1. Family: State summary, 2002.

⁵ McNair R et al, 'Lesbian Parenting: Issues, Strengths and Challenges' (2002) 63 *Family Matters* 40 at 45.

⁶ Birrell B and Rapson J, 'How Gay ins Australia' (2002) 10 *People and Place* 59.

⁷ *Ibid* at 60.

⁸ Submission of the Tasmanian Gay and Lesbian Rights Group, p 3.

⁹ Millbank J, *Meet the Parents: A Review of the Research on Lesbian and Gay Families*, January 2002, at 20-21 citing *Significant Others*, 'Australian Lesbians Get Used to Being Called Mum' Press release, 30 March 2000 which reported 19.7% of respondents intended to have children in the next 5 years; an earlier survey by the same magazine reported 14.5% planning to do so.

¹⁰ Millbank J, *ibid*, citing survey of 84 women at the Sydney Lesbian Parenting Conference in 2000; and McNair R et al, 'Lesbian Parenting: Issues, Strengths and Challenges' (2002) 63 *Family Matters* 40.

¹¹ *Re K* (1994) FLC 92-461 at 80,774.

¹² (1983) FLC 91-353.

¹³ (1983) FLC 91-353 at 78,366.

¹⁴ These factors are:

1. Whether children raised by their homosexual parent may themselves become homosexual, or whether such an event is likely.

should take into account when assessing a gay or lesbian parent's application. It was held by Baker J that the wife clearly had the capacity to fulfil the children's needs and she would provide them with balanced sex education and would not encourage the children to become homosexual.

The checklist proposed by his honour in *In the Marriage of L and L* was applied by Hannon J in the more recent case of *Doyle and Doyle*,¹⁵ where it was acknowledged that the list was not exhaustive although it 'provided an extremely handy checklist'.¹⁶ The Family Court has consistently held that homosexuality is relevant only if it affects the parenting abilities or the welfare of the child. Hannon J stated:

The approach that homosexuality per se disqualified a parent from having custody of a child has never been accepted in the determination of custody applications under the *Family Law Act*.¹⁷

Whilst the Family Court in *In the Marriage of L and L* and *Doyle and Doyle* did not use the parent's sexuality to presume they would be unsuitable parents, it has been argued that the application of the checklist contains unfounded assumptions about gay and lesbian adults as parents. According to the Chief Justice of the Family Court of Australia, the checklist used by Baker J begins from:

an improper footing because such an *a priori* list of factors seems to presume that such differences may be expected when the applicant is a gay man or lesbian as against a heterosexual parent.¹⁸

The first recognition of lesbian co-parents by Australian courts was the landmark decision of *W v G*.¹⁹ This case arose when two women separated after eight years together in the course of which they raised two small children. The plaintiff (referred to as Wendy) had given birth to the children through donor insemination and was seeking compensation towards the cost of maintaining the children from the defendant (referred to as Grace) on the basis that Grace had always indicated she intended to help raise the children. The New South Wales Supreme Court upheld Wendy's claim against Grace, awarding a lump sum payment of child support of \$150,000 on the basis of the doctrine of promissory estoppel.²⁰

One of the responses to the Issues Paper argued that child placement with same sex couples and recognition of lesbian co-parents by the Family Court does not justify changes to the *Adoption Act*. The purposes of the Family Court legislation and adoption legislation is fundamentally different: the former applies in damage control situations – to reach a compromise when relationships break down.²¹ While this is true, it is also the fact that the best interests of the child are paramount in both adoption and parenting orders and the Family Court has shown a readiness to recognise that the best interests of the child can be served by making parenting and residence orders in favour of same sex couples.

Adoption Laws in other jurisdictions

The Institute's Issues Paper No 4 reviewed the position in overseas countries and other Australian jurisdictions to adoption to demonstrate how attitudes are changing to same sex adoptions. Some of the responses to the Issues Paper argued that the fact that other countries have allowed same sex couples to adopt does not make it

2. Whether the child of a homosexual parent could be stigmatised by peer groups, particularly if the parent is known in the community as homosexual.

3. Whether a homosexual parent would show the same love and responsibility as a heterosexual parent.

4. Whether homosexual parents will give a balanced sex education to their children and take a balanced approach to sexual matters.

5. Whether or not children should be aware of their parent's sexual preferences.

6. Whether children need a parent of the same sex to model upon.

7. Whether children need both a male and female parent figure.

8. The attitude of the homosexual parent to religion, particularly if the doctrines, tenets and beliefs of the parties' church are opposed to homosexuality.

¹⁵ (1992) FLC 92-286.

¹⁶ (1992) FLC 92-286, at 79,122.

¹⁷ (1992) FLC 92-286, at 79,122.

¹⁸ The Hon Justice Alastair Nicholson, Chief Justice of the Family Court of Australia 'The Changing Concept of Family: The Significance of Recognition and Protection' (1996) 3(3) *Murdoch University Electronic Journal of Law* at para 61.

¹⁹ (1996) 20 Fam LR 49.

²⁰ J Millbank 'If Australian Law Opened its Eyes to Lesbian and Gay Families, What Would it See?' *Law* (1998) 12 *Australian Journal of Family* 99-139.

²¹ G and J Powell, p 4.

right or acceptable. While it is true that another country's legislative changes should not be copied without careful consideration, if good reasons exist for the change, the fact that other Western democracies have been persuaded to make the change provides support for a conclusion reached independently that the law should be changed. It does not of course dispense with the need to evaluate the arguments for and against a proposal. For this reason, it is worthwhile to repeat and up-date the summary of overseas developments.

The first Australian state to allow adoption by same sex couples was Western Australia. This was done as part of a number of reforms removing discriminatory provisions against same sex couples in a range of legislation. In relation to adoption, the legislation, the *Acts Amendment (Lesbian and Gay Law Reform) Act*, 2002 amends the *Adoption Act*, 1994 (WA) to allow same sex couples to adopt in accordance with criteria that assess the suitability of couples and individuals to be parents, regardless of sexual orientation.²²

The Western Australian Ministerial Committee commented that 'decisions of courts in Australia and overseas indicate that their consideration of the best interests of the child when determining issues related to custody and adoptions are not influenced by sexual orientation of the couple...'.²³ The Ministerial Committee concluded 'that criteria such as emotional security and stability, criteria that are used to assess effectively the best interests of the child should be the basis for decisions regarding adoption'.²⁴

Other Australian states are in the process of reviewing adoption legislation. South Australia is doing so in the context of removing legislative discrimination against same sex couples.²⁵ In Victoria, the Law Reform Commission is considering the issue. In 1997 the New South Wales Law Reform Commission recommended that gay and lesbian couples be eligible to adopt.²⁶ However, the Government rejected the proposal soon after the release of the report.

In Europe, a number of European countries allow adults in same sex couples to adopt their partner's child.²⁷ Netherlands and the United Kingdom have gone further and have made same sex couples eligible to adopt.²⁸ Nine states in the USA have allowed openly gay or lesbian individuals and couples to adopt.²⁹ An additional 22 states allow lesbian and gay 'second-parent' adoptions.³⁰ These adoptions occur in situations where one parent has conceived a child through donor insemination, resulting in the child having only one legal parent.³¹ A second-parent adoption leaves the parental rights of the birth mother intact whilst creating a second legally recognised parent, inevitably the natural parent's partner. There are 31 states that have recognised lesbian and gay second-parent adoption.³²

In Canada adoption legislation has come under challenge on the basis that it infringes the *Canadian Charter of Human Rights and Freedoms 1982* by discriminating on the basis of sexual orientation.³³ Four lesbian couples brought the case of *Re K* under the Charter.³⁴ The central issue was whether the couples should be permitted to apply to jointly adopt the children that each was already parenting. The barrier to joint adoption was found to be discriminatory and the definition of spouse in the *Child and Family Services Act 1990* (Ontario) was modified to include same sex couples. In *Re K* the judge then had to consider the substantive adoption applications according to the child's best interests. In doing so Nevins J was presented with evidence

²² *Adoption Act 1994* (WA).

²³ Lesbian and Gay Law Reform – Report of the Ministerial Committee June 2001 Western Australia, at 100.

²⁴ *Ibid* at 103.

²⁵ See *Removing Legislative Discrimination Against Same-Sex Couples*, Discussion Paper, Attorney General's Office, Adelaide 2003: [http://www.sacentral.sa.gov.au/agencies/agd/](http://www.sacentral.sa.gov.au/agencies/agd/Submissions) Submissions closed on 7 April, 2003.

²⁶ New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965 (NSW)*, Report No 81, 1997.

²⁷ Denmark, Norway, Sweden, Iceland, Finland; see International Lesbian and Gay Association – World Legal Survey <http://www.ilga.org/>

²⁸ See *Adoption and Children Act 2002* (UK) s 144(4).

²⁹ 'Gay and Lesbian Adoptive Parents: Resources for Professionals and Parents (4/00)' National Adoption Information Clearinghouse, USA Department of Health and Human Services: http://www.calib.com/naic/pubs/f_gay.cfm

³⁰ *Ibid*.

³¹ This is also the legal situation in Tasmania: *Status of Children Act 1974* (Tas) s 10C(2).

³² Lambda Legal Defense and Education Fund (1997) 'Lesbian and Gay Parenting: A Fact Sheet' New York: NY: Lambda, Legal Defense and Education Fund.

³³ T Canny 'Same Sex Adoption: The Situation in Canada and Australia', Department of the Parliamentary Library, Research Note 29 1999-2000, 11 April 2000, <http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn29.htm>

³⁴ (1995) 15 RFL (4th) 129.

concerning the ability of lesbians and gay men to parent from highly regarded experts in the fields of sociology, psychology and psychiatry.³⁵ His Honour could find no rational basis for the negative stereotypical beliefs relating to mental health and relationship stability of lesbian and gay parents and of the psychological profiles of their children³⁶ and concluded from the available evidence that:

there is no cogent evidence that homosexual couples are unable to provide the very type of family environment that the legislation attempts to foster, protect and encourage, at least to the same extent as “traditional” families parented by heterosexual couples.³⁷

Legislative amendments and decisions by the courts in Canada allow same sex couples to jointly adopt in five of the fourteen Canadian provinces and territories.

In the judgment of *Re A*³⁸ in the Alberta Court of Queens Bench, Martin J held that a same sex couple may constitute a family able to perform the same functions as traditional families and that the overriding consideration should be the applicants’ relationship with the child.³⁹ The case concerned an application by a lesbian couple to become the legal parents of a child they had raised since birth. Martin J stated that the legislation should look to the suitability of the parents, rather than sexual orientation.⁴⁰

South Africa has recently allowed same sex couples to apply to adopt. In the case of *Du Toit and De Vos v The Minister for Welfare and Population Development and ors*,⁴¹ the Constitutional Court of South Africa held that the adoption provisions which excluded same sex couples from the category of persons entitled to adopt were unconstitutional because first, they violated the provision in the Constitution that the child’s best interests are paramount in every matter concerning the child and secondly they violated the equality clause in the Constitution that prohibits unfair discrimination on the grounds of sexual orientation and marital status. As well as declaring the impugned provisions inconsistent with the Constitution and invalid, the Court read into the impugned provisions words to cure the constitutional defect.

The legislative amendments and various court rulings outlined above do not mean that same sex couples are automatically granted adoption rights. The best interests of the children involved in same sex applications remain paramount, as in other applications. The majority of the same sex adoption applications that have been granted internationally are what would be considered in Tasmania as known child adoptions, with one parent adopting the child of their partner, usually a child that they have raised together since birth. This allows both parents to be legally recognised as a parent of the adoptive children.

³⁵ The Hon Justice Alastair Nicholson, Chief Justice of the Family Court of Australia ‘The Changing Concept of Family: The Significance of Recognition and Protection’ (1996) 3(3) *Murdoch University Electronic Journal of Law* at para 65.

³⁶ *Ibid*, at 9.

³⁷ *Re K* (1995) 15 RFL (4th) 129 at 161.

³⁸ [1999] AJ No. 1349.

³⁹ T Canny, ‘Same Sex Adoption: The Situation in Canada and Australia’, Department of the Parliamentary Library, Research Note 29 1999-2000, 11 April 2000, <http://www.aph.gov.au/library/pubs/rn/1999-2000/2000rn29.htm>

⁴⁰ *Ibid*.

⁴¹ Case CCT 40/01; decided on 10 September 2002. The applicants were partners in a long term lesbian relationship. Because they could not both apply to adopt, one of the couple had successfully applied to adopt two children. Some years later they brought an application challenging the constitutional validity of the Adoption legislation. Placement adoptions of local children are common in South Africa because ‘of the vast number of parentless children’, see Skweyiya J at 15.

Part 2

Adoption: law and process

What is adoption?

Adoption is ‘a process by which society provides a substitute family for a child whose natural parents are unable or unwilling to care for the child.’⁴² An adoption order severs the existing legal parent-child relationship and substitutes a new legal parent-child relationship.⁴³ As a result, the legal rights of the child are as if he or she had been born to the adoptive parents, and the legal rights that exist from birth with regard to the birth parents (for example inheritance and name) are removed.⁴⁴ The child is issued with a new birth certificate bearing the names of his or her adoptive parent(s) as the legal parent(s) and the new name of the child.⁴⁵

The parent/child relationship dictates who has the authority to make decisions regarding the child’s welfare, such as education and medical procedures and also has important ramifications in relation to inheritance. The central principle in adoption is that notionally a complete substitution takes place of the adoptive parents for the natural parents.⁴⁶ The identity of the legal parents of a child is also important in the event of a relationship breakdown as it impacts upon the provision of child support and contact and residence of the child.

Who can apply to adopt?

There are two basic categories of adoption:

1. Placement adoption – where the child and adoptive parents do not already know each other. This can be a local placement or an intercountry placement.
2. Known child adoption – where the child is adopted by someone known to him or her, usually a step-parent, relative or carer.

This terminology is not used in the *Adoption Act 1988* (Tas) but it is the terminology now used by adoption agencies and in official adoption statistics.

In Tasmania, adoption is primarily available to a married man and woman who have been cohabiting for a period of not less than 3 years. Section 20(1) of the *Adoption Act 1988* requires:

- A marriage between a man and woman
- Co-habitation for at least 3 years (s 20(2) allows this 3-year period to include a period in which a man and woman resided together in a continuous de facto relationship immediately prior to their marriage)

⁴² Royal Commission on Human Relationships, *Final Report*, The Parliament of the Commonwealth of Australia, 1978, vol 4, at 98.

⁴³ *Adoption Act 1988* (Tas) s 50.

⁴⁴ Australian Institute of Health and Welfare (AIHW) (2002) *Adoptions Australia 2001-02* AIHW cat. No. CWS 18, Child Welfare Series no. 30, Canberra: AIHW, at 1.

⁴⁵ *Ibid.*

⁴⁶ H Finlay, R Bailey-Harris and M Otowski (1997) *Family Law in Australia* 5th ed, Butterworths, at 481.

Placement adoptions fall under s 20(1) but the sub-section also covers known child adoptions by a married couple who are caring for or fostering a child. De facto and same sex couples are ineligible to adopt under s 20(1).

A single person can adopt in exceptional circumstances (ss 20(4) and (5)), usually where the child has special needs, is an older child or there is an existing relationship between the child and the applicant.⁴⁷ Adoption by a single person is rare in practice and it is particularly rare in the case of a placement adoption.⁴⁸

In addition to single person adoptions by a relative and married couple adoptions of a child already in their care, known child adoption is permitted by the Act by a step-parent or relative in limited circumstances. Section 20(6) and (7) provides an adoption order may be made in favour of the spouse of a natural parent or of an adoptive parent of a child provided that an order for custody and guardianship of the child (which would now be equivalent to a residence and specific issues order from the Family Court) would not be adequate for the welfare and interests of the child and special circumstances exist warranting the making of the adoption order. Restrictions on step-parent adoptions were introduced into the 1988 Act because adoption severs the legal relationship between the child and a natural parent and also with grandparents and other relatives. Because adoption under s 20(6) is limited to the 'spouse' of a natural or adoptive parent, a same sex or de facto partner is not eligible to adopt the other partner's child from a previous relationship (a step-parent situation). Nor is a same sex partner eligible to adopt the natural child of her partner conceived by donor insemination (a co-parent situation).

Adoptions by relatives of a child are also permitted under the s 21 of the Act with the same proviso that applies to step-parents. The construction of the Act suggests that adoption by relatives is only available to married couples or to a single person. It follows that adoption is not an option for a same sex couple where one of a couple is a relative of a child.⁴⁹ In this situation the relative would have to apply to adopt the child as a single person.

There are additional eligibility criteria for adoption. The *Adoption Act 1988* s 6 imposes residence and domicile requirements and regulation 14 of the *Adoption Regulations 1992* prescribes certain requirements for adoptive parents in relation to health and character, which are described below.

In summary, under the current *Adoption Act* it is legally impossible for any adoption order to be made in favour of a same sex couple or a heterosexual couple who are unmarried. This paper is primarily concerned with the law in relation to same sex adoption. However, if the marriage prerequisite for adoption by a couple were to be removed, heterosexual unmarried couples would also be eligible to adopt. This change is relatively uncontroversial. Adoption legislation has been amended to allow adoption orders to be made in favour of de facto heterosexual couples in many Australian states.⁵⁰

Trends in adoption

Adoption has traditionally been viewed as an option for women with an unplanned pregnancy.⁵¹ Changing societal attitudes have resulted in adoption being utilised with less frequency in recent years. The number of adoption orders fell substantially from the early 1970s. In Australia there were 9,798 adoption orders in

⁴⁷ P Boss (1992) 'Adoption Australia: A Comparative Study of Australian Adoption Legislation and Policy' Published by the National Children's Bureau of Australia Inc. at 6.

⁴⁸ Gael Moffat (personal communication, 20/12/02), Department of Health and Human Services, Adoption and Information Service.

⁴⁹ Section 21, which deals with special requirements relating to orders in favour of relatives, does not alter the eligibility criteria in s 20. A contrary interpretation was suggested in the Issues Paper.

⁵⁰ *Adoption Act*, 1994 (WA) s 39(1)(d); *Adoption Act*, 1984 (Vic) s 11(1); *Adoption Act*, 1993 (ACT) s 18; *Adoption Act*, 1988 (SA) s 12; *Adoption Act*, 2000 (NSW) s 23.

⁵¹ *Ibid* at 487.

1971-2 compared with only 561 in 2001-02.⁵² In Tasmania there were 303 adoptions in 1971-72 and 20 adoptions in 2001-02.⁵³ Whilst the number of ex-nuptial births has increased in Australia, reaching 26% in 1994,⁵⁴ this has not been reflected in rates of adoption. On the contrary, there has been a marked decline in the number of children placed for adoption in Australia.

There are a variety of factors that have contributed to this overall fall in adoptions of children, including:⁵⁵

- Effective birth control which has resulted in a decrease in the number of unplanned pregnancies;
- Changed community attitudes to single parenthood and the provision of income support for single parents; and
- The encouragement of step-parents to use arrangements other than adoption in the parenting of their spouses' children.

There are now very few Australian children available for adoption. Parents waiting to adopt now outnumber children available.

Inter-country adoptions

As a result of the dramatic decline in the availability of Australian babies for adoption there has been a corresponding rise in inter-country adoption. Adoption by Australian citizens can serve a useful social function in providing a family for children who may otherwise not receive adequate care. To avoid the potential for exploitation of these children the *Adoption Act* regulates inter-country adoption.⁵⁶ The Hague Convention⁵⁷ on the *Protection of Children and Co-operation in Respect of Intercountry Adoption* establishes legally binding safeguards and procedures in countries of origin and countries of destination for children being adopted. The Convention helps Australian parents wishing to adopt by establishing uniform procedures to be followed by the countries party to the Convention whilst ensuring that the child's best interests are safeguarded.⁵⁸ Australia's ratification of the Hague Convention is in part the explanation for the increase in inter-country adoptions in Australia since 1998.⁵⁹

In addition to working with countries who have signed and ratified the Hague Convention, Tasmania also sends applications to China. This is possible because the Commonwealth Government has entered into a bilateral agreement with China to facilitate adoptions of Chinese children.⁶⁰

Adoption rates⁶¹

Nationally

⁵² Australian Institute of Health and Welfare (AIHW) (2002) *Adoptions Australia 2001-02* AIHW cat. No. CWS 18, Child Welfare Series no. 30, Canberra: AIHW, at 4.

⁵³ *Ibid.*, at 5.

⁵⁴ 'Australian Social Trends 1996 – Family Formation: Trends in Fertility' Australian Bureau of Statistics <http://www.abs.gov.au/ausstats/>

⁵⁵ These factors are taken from the Australian Institute of Health and Welfare (AIHW) (2002) *Adoptions Australia 2001-02* AIHW cat. No. CWS 18, Child Welfare Series no. 30, Canberra: AIHW, at 4 and H Finlay, R Bailey-Harris and M Otlowski (1997) *Family Law in Australia* 5th ed, Butterworths. The increased availability of abortion may also be a factor.

⁵⁶ *Adoption Act 1988* (Tas) s 46.

⁵⁷ Entering into force 1 December 1998.

⁵⁸ Australian Institute of Health and Welfare (AIHW) (2002) *Adoptions Australia 2001-02* AIHW cat. No. CWS 18, Child Welfare Series no. 30, Canberra: AIHW, at 12.

⁵⁹ *Ibid.*

⁶⁰ *Family Law (Bilateral Agreements – Inter Country Adoption) Regulations 1998*, Statutory Rules 1998 No. 248.

⁶¹ Australian Institute of Health and Welfare (AIHW) (2002) *Adoptions Australia 2001-02* AIHW cat. No. CWS 18, Child Welfare Series no. 30, Canberra: AIHW.

The decline in the number of children available for adoption in Australia and the general decline over the last 30 years in the number of adoption orders made has been noted. There were 561 adoptions of children in Australia for the period 1 July 2001 to 30 June 2002. Placement adoptions comprised 71% (401) of the adoptions in 2001-02 and 29% (160) were known child adoptions.

Of the 401 national placement adoptions, 73% (294) were intercountry placement adoptions.

Of the 160 adoptions of known children 64% (103) were by step parents wishing to incorporate children into the new family, 33% (52) were by carers⁶² and 3% (5) by other relatives.

Whilst local placement adoptions have declined, inter country adoptions have been steadily increasing. Local placement adoptions are usually of children who are less than one year of age (83%) whereas only 30% of children adopted from another country are less than one year of age.

Tasmania

Adoptions in Tasmania for the period 2001-02 totalled 20. The average number of adoptions in Tasmania over the past 10 years is 22.6. Of the 20 adoptions that occurred in Tasmania in 2001-02, 16 were inter-country placement adoptions, 2 were local placement adoptions and 2 known child adoptions. The 16 children who were adopted through inter-country adoption were born in Thailand, Ethiopia, India, China and the Phillipines.

The trend in Tasmanian adoptions is consistent with the national trend of a decline in local placement and known child adoptions and a rise in the number of inter-country adoptions.

The adoption process

No person has an automatic 'right' or entitlement to adopt a child. If an individual or couple is seeking to adopt a child they must undergo rigorous tests and meet stringent criteria. Throughout the adoption application process the welfare and interests of the child are regarded at all times as the paramount consideration.⁶³

Prospective adoptive parents must first demonstrate eligibility to adopt before assessment of the application can take place. Eligibility of a couple does not imply suitability to adopt. If applicants are eligible, an assessment process involving a number of interviews takes place. This process usually takes six months to complete. The Manager of Adoptions will then review the assessment report and either approve or deny the application. If the applicants for a placement adoption are successful, they will be placed in a pool of potential adoptive parents for selection. Even if an applicant couple is placed in the pool of applicants there is no guarantee that they will be selected to have a child placed with them. It is estimated that there are currently 70 people at various stages of the adoption process in Tasmania, ranging from couples awaiting allocation to an adoption worker to those who have been allocated children.⁶⁴ The final stage involves the application for an order from the Children's Division of the Magistrate's Court. Before making an adoption order the court must be satisfied of various matters including that the welfare of the child will be promoted by the adoption.⁶⁵

The eligibility and assessment processes are discussed in some detail below.

⁶² The AIHW *Adoptions Australia 2001-02* report defines a carer as including foster parents and other non-parents who have been caring for the child before adoption in Appendix 2.

⁶³ *Adoption Act*, s 8.

⁶⁴ Gael Moffat (personal communication, 20/12/02), Department of Health and Human Services, Adoption and Information Service.

⁶⁵ *Adoption Act 1988*, s 24(1)(d), s 20(7) (step-parent adoptions), s 21 (relative adoptions).

Local placement adoptions

Birth Parents

For a child to be legally available and placed for adoption the consent of certain people must be obtained unless the court has dispensed with the consent requirement.⁶⁶ In the majority of circumstances the consent of both biological parents is necessary. Consent to the adoption of a child cannot occur until the child is 9 days old.⁶⁷

In addition to providing this consent, parents who are relinquishing their child for adoption can express their wishes regarding characteristics of the adoptive family selected for the placement of the child. A non-exhaustive list of wishes may include matters such as religion, race and ethnic background. Before making an adoption order, the court must be satisfied that the wishes of the birth parents have been taken into account.⁶⁸ The birth parents have access to the non-identifying profiles of the families considered suitable to adopt their child.⁶⁹ A non-identifying profile is prepared of a couple when they are placed in the pool of applicants awaiting the placement of children. This non-identifying profile of the prospective adoptive parents may include:

- family make-up
- where the applicants live (i.e. country/city)
- life experiences
- occupation and education
- ideas on child raising
- age

Initial Inquiry and Eligibility

The first stage of adoption for prospective adoptive parents is an expression of interest, in writing, which is recorded on the Department of Health and Human Service (DHHS) provisional register. Prospective adoptive parents must then attend an information seminar regarding adoption before confirming their interest and providing documents to establish their eligibility for assessment. Prospective adoptive parents must meet the eligibility requirements before an assessment of suitability to adopt a child can occur. The requirement under s 20 of the Act that joint applicants be a married couple who have cohabited for not less than 3 years has been explained. Regulation 14 of the *Adoption Regulations 1992* creates certain additional requirements before an applicant will be accepted for assessment.

- (c) That the applicants are (were) resident or domiciled in Australia for not less than 2 years at the time of application;
- (d) That the applicants are resident in Tasmania;
- (e) That at least one of the applicants is an Australian citizen;
- (f) That the applicants are in good physical and mental health and it is reasonable to expect that the health will be maintained throughout the period of the child's legal and social dependency;
- (g) That neither applicant has been sentenced to a term of imprisonment for a criminal conviction within a period of 5 years preceding the application;
- (h) That neither applicant has been sentenced to a term of imprisonment of 5 years or more at any time;
- (i) That neither applicant has been convicted of an offence against a child;
- (j) That neither applicant is undertaking treatment for infertility;
- (k) That in the case of a female applicant, that the applicant is not pregnant.

⁶⁶ *Adoption Act*, s 29.

⁶⁷ *Adoption Act*, s 36(2); Tasmanian Department of Health and Human Services *Adoption in Tasmania: Questions & Answers*, May 2000, at 3.

⁶⁸ *Adoption Act 1988* s 24(1)(b).

⁶⁹ Tasmanian Department of Health and Human Services *Adoption in Tasmania: Questions & Answers*, May 2000.

Internal guidelines provide that a prospective adoptive parent must be no more than 40 years older than the adopted child for applicants who do not have a child in their care and 45 years for applicants who have one or more children in their care.⁷⁰ Thus a 41-year-old applicant who is childless can only be approved for the adoption of a child who is aged 12 months or older.

If the applicants meet the eligibility criteria they may then be entered on the register for assessment of suitability to adopt a child.

Assessment

Eligible applicants must undergo an assessment process to determine the suitability of the prospective adoptive parents and to prepare the applicants for the challenges associated with bringing up an adopted child. The assessment of adoptive parents takes place through a number of interviews and discussions at both the applicants' home and departmental or agency offices. Some of these interviews are conducted with both applicants and some separately. An adoption worker conducts these interviews. This worker will either be an employee of the DHHS Adoption and Information Service or a contracted social worker. The adoption worker discusses the application and requires detailed information about the applicants and their family circumstances.

The adoption worker prepares an assessment report and makes a recommendation concerning the suitability of the applicants. This report is comprehensive and covers many aspects of the applicants' life.⁷¹ The assessment process of applicants is usually completed approximately six months after they have been allocated to an adoption worker.

The assessment report is significant because:

- it is used in the selection of the most suitable adoptive family for a particular child;
- it is used to prepare a non-identifying family profile that may then be considered by the birth mother in the selection of an adoptive family; and
- it is the basis of the report submitted to the court when an application for adoption is made.

The adoption worker's assessment report will include information such as:⁷²

- references
- family background
- family circumstances
- health
- personality and way of life
- financial situation
- religious affiliation
- social and cultural issues
- personal relationships
- motive for adoption
- ability to have biological children
- parenting experience and expectations
- identity issues
- parenting resources
- child desired

When the assessment report is completed it is forwarded to the Manager of Adoptions at the Department of Health and Human Services who makes a decision about the applicants' suitability to adopt. The Manager may seek further information about the applicants or seek advice from the Assessment Review Panel before

⁷⁰ DHHS Adoption and Information Service, 'Guidelines for Applicants' at 11.

⁷¹ *Ibid*, at 6.

⁷² *Ibid*, at 7-9.

making a decision. The Assessment Review Panel consists of people with particular expertise and advises the Manager of Adoptions. It is not an appeal body. Applicants are notified of the Manager's decision to approve or refuse approval. If approval to adopt a child is given, certain conditions are attached. These include the age range of the child, and approval is subject to the applicants' circumstances remaining satisfactory. Approval remains current for 2 years, this being the time frame in which a child can be placed with the prospective parents. Approval of an application does not guarantee the placement of a child and it is impossible to predict how long a family may have to wait before a child is offered.

Once a child is offered to the applicants and accepted by them, the child is placed in their care with guardianship remaining with the Secretary of the Department and with supervision by the an adoption worker. At the end of a period of about 6 months an application for an adoption is made if this is the recommendation of the adoption agency. Before an adoption order is made s 24 of the *Adoption Act* requires that the court have evidence that the applicants satisfy the prescribed legal requirements relating to approval. In addition the court must be satisfied that consideration has been given to any wishes expressed by a parent of the child, particularly in relation to religion, race or ethnic background of the prospective adoptive parents of the child and the court must be satisfied that the welfare and interests of the child will be promoted by the adoption. The assessment report provides a substantial part of the required evidence. In addition the court must receive a report from a doctor as to the physical and mental condition of the child⁷³ and it must be satisfied that the appropriate consent to adoption has been given by the parents or guardian of the child unless this is dispensed with by the court.⁷⁴

Inter-country adoptions

Inter-country adoption involves the entry into Australia of children from another country for the purposes of adoption.⁷⁵ These adoptions are strictly controlled in Tasmania by the *Adoption Act*. In addition to this there must be a suitable central agency in the overseas country to administer the program in accordance with standards acceptable to Australia.

The cost of inter-country adoption falls on the adopting parents. This includes fees charged by the State and the cost of the child's immigration.⁷⁶ The process for an inter country adoption is similar to that of a local placement adoption with the following additional steps:

- the preparation of documents to be sent overseas with the assessment report;
- acceptance by the overseas authority;
- once a child is allocated, the applicants must commence immigration proceedings; and
- travel to collect the child.

The process for intercountry adoption also depends on the country from which the adoption is made and there are slight variations between countries. Tasmania currently sends applicants' files for consideration for adoption to the following countries, however not all of these countries are currently accepting applications:⁷⁷

- China
- Ethiopia
- Hong Kong⁷⁸
- India
- Korea (South)
- Philippines

⁷³ *Adoption Act 1988* s 24(5).

⁷⁴ *Adoption Act 1988* s 29.

⁷⁵ Boss P, *Adoption Australia: A Comparative Study of Australian Adoption Legislation and Policy*, 1992, Published by the National Children's Bureau of Australia Inc. at 13.

⁷⁶ *Ibid*, at 15.

⁷⁷ Handout from the DHHS stating what countries children can be adopted from and additional information, current as at December 2002.

⁷⁸ China and Hong Kong are treated separately for the purposes of adoption.

- Romania
- Sri Lanka
- Thailand

Inter-country adoptions provide applicants with more hurdles than do local placement adoptions, as applicants must satisfy both the requirements of the Tasmanian legislative scheme and the additional criteria of the country to which they are applying. Guardianship of the child remains with the Secretary until an adoption order is made. Before making an adoption order in respect of a child from overseas, in addition to the matters the court must consider for a local placement adoption, the court must be satisfied that the adoptive applicants were approved as suitable to adopt before the child came into their care, that the child's placement with adoptive parents was approved by the Secretary and that it has been supervised by the adoption agency for the previous 12 months.⁷⁹

Known child adoptions

The majority of known child adoptions are by step-parents with the aim of providing the child with a clear legal position and status within the new family arrangement. While step-parent adoptions in favour of a spouse of a natural parent are a possibility under s 20(6) of the Act, they are only allowed in exceptional circumstances when no other order can provide the child with the required security and status within the new family.

As with placement adoptions there is an assessment process that the step-parent or relative and partner (or carer) must undergo. Before applying for assessment, step-parents must obtain leave to commence proceedings from the Family Court. Applicants must then satisfy the eligibility requirements in Regulation 14 of the *Adoption Regulations*. This means that police checks and medicals will be required as with placement adoptions. A child protection check will be done and interviews conducted with the adopting parent(s). The stability of the relationship between the natural parent and step-parent is an important consideration. In addition, in the case of step-parent adoptions, the impact of an adoption order on relationships with birth families, such as grandparents is important.

Before a court can make the order it must be satisfied of the same matters as for local placement adoptions. In addition, the court will not make such an order unless it is satisfied that:

- a custody or guardianship order would not make adequate provision for the welfare and interests of the child (s 20(7)(a));
- an order for adoption would better serve the welfare and interests of the child (s 20(7)(b)); and
- special circumstances warrant the making of an adoption order (s 20(7)(c)).

Section 21 of the *Adoption Act* creates the same three requirements as s 20(7) when considering relative adoptions. While the assessment process is not usually as rigorous for known child adoptions as it is for placement adoptions, it can take longer because there is not the degree of urgency as there is with a placement adoption.

⁷⁹ *Adoption Act 1988* s 46.

Part 3

Should same sex couples be eligible to adopt?

Introduction

As the discussion of the current law in Part 2 reveals, the *Adoption Act 1988* allows neither same sex couples nor unmarried heterosexual couples to adopt as a couple. Placement adoptions require applicants to be a man and a woman who are married to each other. Similarly, a known child adoption order can only be made in favour of a step-parent if that parent is the spouse of the child's natural parent. Other forms of known child adoption, such as adoption by foster parents or carers, also require an applicant couple to be married. Before considering the responses to the first question posed by the Issues Paper namely, 'Should same sex couples be permitted to apply to adopt?', a brief overview of the practical relevance of the different kinds of adoption for same sex couples is given.

Known child adoption

This category of adoption has the greatest potential for use by same sex couples. It could be used by lesbian couples who conceive a child during their relationship (co-parent adoption) and by couples with a child from a previous relationship (step-parent adoption). Increases in the divorce rate have resulted in diverse family configurations. It is no longer rare for a child conceived in a heterosexual relationship to be raised by one biological parent and his or her same sex partner. In addition, lesbians are conceiving and giving birth to babies whilst in a lesbian relationship. It appears that lesbians can access donor insemination services in Tasmania although Assisted Reproductive Technology (ART) Services are not regulated by statute in this State.⁸⁰ Alternatively, lesbian couples may resort to conceiving children through intercourse or by the use of donor sperm administered at home in circumstances that are lacking the concern for health and safety that exists when conducted through a medical procedure. These donors are predominately gay men.⁸¹ More often than not, known donors have contact with the child.⁸²

The use of artificial fertilisation procedures raises questions about parentage. If a married woman, with her husband's consent becomes pregnant through a fertilisation procedure using donor sperm, the husband is treated for the purposes of law as the father of the child.⁸³ The man who has donated sperm used in a successful fertilisation procedure is not regarded at law as the father.⁸⁴ A child who is conceived through donor insemination in the context of a heterosexual marital relationship has two legal parents, whereas a child so conceived and born to a lesbian couple or a de facto couple has only one parent, the biological mother. The donor male is not regarded as a parent. It is likely that a known sperm donor, even where

⁸⁰ Szoke H, 'Regulation of Assisted Reproductive Technology: the State of Play in Australia' in I Freckleton and K Peterson, *Controversies in Health Law*, Sydney, The Federation Press, 240 at 254; Chalmers D, 'Professional Self-regulation and Guidelines in Assisted Reproduction' (2002) 9 *Journal of Law and Medicine* 414 at 421.

⁸¹ J Millbank 'If Australian Law Opened its Eyes to Lesbian and Gay Families, What Would it See?' (1998) 12 *Australian Journal of Family Law* 117.

⁸² *Ibid.*

⁸³ *Status of Children Act 1974* (Tas) s 10C(1).

⁸⁴ *Status of Children Act 1974* (Tas) s 10C(2).

insemination was not conducted through established medical procedures, will not be considered as the father.⁸⁵

A co-parent of the birth mother has no legal relationship with the child. This situation may be addressed through a parenting order, which the Family Court of Australia can make in favour of parents and ‘any other person concerned with the care, welfare or development of the child’.⁸⁶ This would allow for a mother and co-mother to apply jointly for parenting orders, establishing a legal relationship between a co-mother and her child.⁸⁷ However, while a parenting order, if granted, can cover residence and parental responsibility, it does not confer the status of legal parent. For this reason, a same sex couple may prefer adoption to a co-parenting order.

There are three other situations in which known child adoptions could be relevant to a same sex couple. First, where one of the couple is a relative of the child and the couple wishes to adopt that child as a couple. Secondly, where a child is being fostered by a same sex couple and they would like to adopt the child. There is no embargo on a same sex couple fostering a child in Tasmania, although it seems that this is not common here. Where it does occur, the arrangement is usually made with one member of the couple. Under current law of course, a same sex couple could not adopt a child they had been fostering. In theory, a gay couple could enter into a surrogacy arrangement with a woman to acquire a child. However, surrogacy arrangements in Tasmania are illegal.⁸⁸

Local placement adoption

A local placement adoption may have appeal for either a gay couple or a lesbian couple who are not prepared or able to have a child through artificial insemination procedures. However, local placement adoptions are rare. There were only two such adoptions in Tasmania in the last financial year. Nevertheless, as the government is committed to removing unjustified discrimination against same sex couples, this review was required to consider the issue of same sex adoption in general. As was explained in the Issues Paper, local placement adoption by same sex couples raises questions about what should be included in the profile of prospective adoptive parents and whether the wishes of relinquishing parents in relation to sexual orientation of the adoptive parents of their child can be taken into account. These are discussed in Part 4 of this report.

Inter-country adoption

As well as meeting the eligibility criteria under Tasmanian law, applicants for a child from overseas must satisfy the eligibility criteria in the overseas country. Currently, the countries that Tasmania has an adoption agreement with require that a couple be legally married, although three countries allow single parent applicants. It follows that a change to the Tasmanian law would not make inter-country adoption available to same sex couples.

The Institute’s view on eligibility of same sex couples

The Law Reform Institute has carefully considered the arguments put forward in response to the Issues Paper. Despite the limited practical impact of changes to the profile of adoptive parents that any changes would bring, the issue is clearly an emotive one as the volume and tone of the responses to the Issues Paper demonstrates. The majority of responses opposed same sex adoption. Clearly many people hold strong and

⁸⁵ *Re B and J* (1996) FLC 92-716, not a parent for the purposes of child support; *Re Patrick* [2002] FamCA 193: known donor not a parent for the purposes of the *Family Law Act*.

⁸⁶ *Family Law Act 1975* (Cth) ss 64C and 65C.

⁸⁷ J Millbank ‘If Australian Law Opened its Eyes to Lesbian and Gay Families, What Would it See?’ (1998) 12 *Australian Journal of Family Law* 120.

⁸⁸ *Surrogacy Contracts Act 1993*, s 4.

sincere beliefs on the issue. Notwithstanding the arguments put forward by those opposing change the Institute is firmly of the view that the law should be changed to allow same sex couples to be assessed as applicants for adoption in the case of local placement adoption and known child adoptions. For the reasons outlined in this Part, the Institute is persuaded that this is in the best interests of children. This change will not give same sex couples the right to adopt. It merely means that they are eligible to apply. Each case will be assessed on a case-by-case basis. The Institute believes that to continue to deny same sex couples eligibility to adopt is unjustified and unfairly discriminates against same sex couples and children. Moreover, to remove the disqualification of same sex couples is in the best interests of children.

Discrimination against same sex couples and their children

In the Institute's view the current adoption laws are unfairly discriminatory. Whilst no couple has a right to adopt, it can be argued that same sex couples (and heterosexual unmarried couples) should have the same rights as a married couple to apply for adoption if they satisfy the same set of eligibility criteria in relation to length of relationship, absence of criminal record, health, residence, etc. Once eligible they should receive fair and equal treatment and consideration of their qualifications as adoptive parents.

Discrimination on the grounds of sexual orientation is prohibited by the International Covenant on Civil and Political Rights.⁸⁹ Moreover sexual orientation, like race, sex or religion is the target of the *Anti-Discrimination Act 1998* (Tas). So both international human rights standards and our domestic laws accept that we should strive to eliminate discrimination on grounds of sexual orientation from our statutes.

As well as unfairly discriminating against adoptive parents, our adoption laws discriminate against children whose interests would be better served by being adopted by a same sex couple. In the case of such children our laws are unjust and discriminatory because they treat such children differently from other adoptive children whose best interests are protected by the State.

A related argument accepted by the Institute is that discriminatory laws stigmatise gay and lesbian couples and their children. As the Tasmanian Gay and Lesbian Rights Group (TG&LRG) argued in their submission, so long as the law discriminates against same sex couples by excluding them from adoption, offensive and unfounded assumptions and myths about the association between homosexuality and paedophilia and the belief that gays and lesbians cannot be trusted with children are reinforced. Moreover, it was argued.⁹⁰

Indeed the removal of discrimination against same sex couples in other areas, as proposed by the current Government, will only highlight prejudice against gay and lesbian parenting, if, at the same time, reform does not include complete equality in adoption law.

The TG&LRG argued that the re-inforcement of old prejudices about homosexuality affects all gay and lesbian peoples but the people who suffer most are lesbian and gay parents and their children. These families already experience significant legal disadvantage and in some cases social stigma. To reinforce this disadvantage and stigma by retaining laws which suggest they are dysfunctional is grossly unfair.⁹¹ The social stigma associated with same sex parenting can lead to consequences such a reluctance of both parents to identify themselves at school; denial of access to their child in hospital and denial of the right to make a decision about a child in a crisis.⁹²

The Commissioner for Children was particularly concerned about the impact of discriminating against same sex couples on children – both children who identify as gay or lesbian and the children brought up by a

⁸⁹ *Toonen v Australia* Human Rights Committee, Communication No 488/1992.

⁹⁰ Tasmanian Gay and Lesbian Rights Group, p 3.

⁹¹ *Ibid.*

⁹² Hon Louise Pratt, MLC, Western Australia.

same sex couple. In her view such discrimination could adversely impact on their self esteem and emotional development.⁹³

The stigma associated with having a gay or lesbian parent is well illustrated by Sarantakos' study of children in three contexts. He found that some children of lesbians and gays have been ridiculed for the sexual preferences of their parents. To quote from his findings:⁹⁴

In certain cases, these children were called sissies, lesbians or gays, or asked to tell 'what their parents do at home', where they slept, and so forth. Such incidents were one of the reasons for these children to move to another school, to refuse to go that school, or even for the parents to move away from that neighbourhood or town.

And:⁹⁵

In many cases their children have been harassed or ridiculed by their peers for having a homosexual parent, for being 'queer' and even labelled as homosexuals themselves.

In certain cases, heterosexual parents advised their children not to associate with children of homosexuals, or gave instructions to the teachers to keep their children as much as possible away from children of homosexual couples. Teachers also reported exceptional cases where a group of 'concerned parents' demanded that three children of homosexuals be removed from their school. Others approached the homosexual parents with the same request.

Teachers reported that children who went through such experiences have suffered significantly in social and emotional terms, but also in terms of scholastic achievement...

The couples and their children in this study came from metropolitan and country areas of New South Wales and Victoria. Studies conducted elsewhere have also reported increased teasing of the children of gay and lesbian couples although not always with adverse effects on self-esteem or mental health.⁹⁶ Some commentators use findings of teasing and ostracism to support the case against same sex adoption, as did a number of the respondents to the Issues Paper.⁹⁷ However, in the Institute's view, irrespective of the impact of such teasing and ostracism on self esteem, mental health or scholastic achievement, the fact that children suffer the kind of ridicule and treatment described by Sarantakos highlights the need to alter laws that tend to reinforce such prejudices. Granting legal rights to gay and lesbian parents and their children should lessen the stigma they now suffer which might even reduce the high rates of depression and suicide reported among closeted gay youth living with heterosexual parents.⁹⁸

The best interests of the child

The object of adoption is to provide for the care and protection of children in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential. As the *Adoption Act 1988* proclaims, the best interests of the child must be the paramount consideration in adoption.⁹⁹ With this in mind the focus in adoption should be on the parenting abilities of the applicants, the stability and quality of their relationship and their ability to meet the parenting needs of the child rather than on their marital status and sexual orientation.

⁹³ Patmalar Ambikapathy, Commissioner for Children, Tasmania, p 3.

⁹⁴ Sarantakos S, 'Children in three contexts: Family, education and social development' (1996) 21 *Children Australia* 23 at 25.

⁹⁵ *Ibid* at 26.

⁹⁶ Huggins SL, 'A Comparative Study of self-esteem of adolescent children of divorced lesbian mothers and divorced heterosexual mothers' (1989) *Journal of Homosexuality* 123, reporting no impact on self-esteem; Wald MS, 'Same Sex Couples: Marriage, Families and Children' (1999) Stanford Law School, reporting no impact on mental health.

⁹⁷ E.g. Lindsay Smith, the Baptist Church of Tasmania, Dennis Cook, Reg Livermore etc.

⁹⁸ Stacey J and Biblarz T, '(How) does the sexual orientation of parents matter' (2001) 66 *American Sociological Review* 159 at 15 (electronic version). The submission from Julian Punch reports his experiences as a priest and social worker of suicides of gay and lesbian people induced by religious intolerance.

⁹⁹ Section 8.

Children need to know that their parents are stable and legally recognised. This applies equally to all children, whether their parents are gay, lesbian, heterosexual, married or unmarried. Children born or raised in a family headed by partners of the same sex have only one legal parent. It is in the best interests of children in such families to be given the financial, legal and emotional security provided by having two fully sanctioned and legally defined parents. This will better protect the child's legal right to a relationship with both parents and the right to child support should one become incapacitated or should the relationship end. Similarly a child who has been fostered by a same sex couple, should not be denied the possibility of being adopted by that couple with the increased financial, legal and emotional security that goes with adoption. As the Commissioner for Children submitted:¹⁰⁰

We have a chronic shortage of foster carers of children in Tasmania, and possibilities of safe and stable adoptive home where a child is loved and respected cannot be dismissed, simply because of their parent(s)' sexuality.

Adoption is a rigorous process. Factors such as relationship stability, character, criminal record, health and parenting ability are assessed to ensure that it is in the best interests of the child to be placed with/adopted by the applicants. Not all gay couples can be good parents, just as not all married couples are good parents. Decisions about adoption need to be made on a case-by-case basis, in the best interests of the child.

Advocates of same sex adoption, including respondents to the Issues Paper, support their case with social science research which shows that gay and lesbian parents do not differ from heterosexual parents in terms of relationship stability, parenting ability and that there is no evidence that children raised by same sex couples are adversely affected. The conclusions drawn from the social science research are vigorously contested by opponents of same sex adoption. The Institute's response to this debate and to the criticisms of the use of research in the Issues Paper is dealt with below. However, whatever conclusions are drawn from the research on same sex parenting in general, the point needs to be emphasised that adoption decisions are made on a case-by-case basis with the best interests of the child being the dominant consideration. An adoption order will only be made by a court if it is satisfied that it is in the child's best interests in the particular case.

Arguments against same sex adoption

The respondents opposed to same sex adoption relied on nine main points:

- that homosexuality is wrong and unnatural
- same sex adoption would be detrimental to society and to marriage
- and for that reason unconstitutional and contrary to international law
- that same sex adoption is not in the best interests of children
- that social science studies cited in support are flawed and prove nothing or that they were selectively cited and interpreted
- that denying same sex couples eligibility to adopt is not discriminatory
- that there is no need for reform.
- that such a change lacks public support
- and would have adverse effects on the adoption process

In this section these arguments are outlined and the Institute's reasons for not accepting them are explained.

Homosexuality (or homosexual parenting) is wrong and unnatural

¹⁰⁰ Patmalar Ambikapathy, Commissioner for Children, Tasmania, p 2.

A number of respondents argued that homosexuality was immoral, unnatural, or deviant and perverted. Others asserted it was contrary to Christian principles.¹⁰¹ The argument is that for the law to remove the disqualification on adoption by same sex couples is to encourage, support or condone a wrongful or deviant lifestyle. A variant of the unnatural argument is that homosexual couples should not be allowed to adopt because they are biologically unable to have children. As one respondent argued, 'I believe that if people decide to be homosexual, they must, for obvious reasons, sacrifice the natural privilege to become parents.'¹⁰² And another asserted that, 'If God had intended for mankind to be able to have children in a 'same sex' relationship, then He would have given men the ability to procreate without women'.¹⁰³ It is clear from the number of responses that relied upon this argument that there are a significant number of people who hold the strong belief that homosexuality is wrong and should not be tolerated or recognised by the law.

The Institute rejects this argument. If there was a consensus in our society that homosexuality is wrong, unnatural or depraved, this is no longer the case. In our modern, secular, pluralistic and multicultural society, it is no longer possible to assert that there is general agreement about issues such as abortion, euthanasia, drug use and homosexuality. Opinions have changed on these issues and our society is now more tolerant of diversity and more accepting of people who adopt a gay or lesbian life style. In 1997 our criminal law was changed to decriminalise homosexual behaviour. Other laws that discriminate against lesbian and gay couples are in the process of being changed. These changes are a consequence of a more tolerant society in which homophobia is no longer acceptable. A recent public opinion poll suggests that a clear majority of Australians now say they do not believe homosexuality is immoral.¹⁰⁴ The 'it's not normal' argument is sometimes supported by minimising the incidence of same sex orientation in the community, while those sympathetic to lesbian and gay rights tend to report much higher estimates. However, there are no reliable demographic data on this question. The Institute accepts that it is likely that opponents of gay and lesbian rights minimise the incidence of homosexuality and supporters tend to exaggerate the incidence. The correct figure is likely to be somewhere in between the two extremes. The same is true of estimates of the percentage of children raised by gay or lesbian parents. Scholars sceptical of the competing claims accept that gays and lesbians comprise between 1% and 6% of the population¹⁰⁵ and that somewhere between 1% and 12% of children have a lesbian or gay parent.¹⁰⁶ Whatever the prevalence of homosexuality in the community, underlying the 'not normal' argument is the assumption that homosexuality is morally suspect.

The argument that a gay and lesbian life style is a matter of choice and gays and lesbians should accept the consequences of that choice in terms of sacrificing the privilege of raising children assumes that sexual orientation is a matter of choice. While there is still considerable debate on this issue, the more widely accepted and more convincing view is that for most gays and lesbians, sexual orientation is fixed; pre-disposition and natural forces are more important than personal choice. As Sarantakos concluded, based upon his reading of the literature and on interviews with gay and lesbians:¹⁰⁷

The most convincing explanation is presented by the essentialist theory, according to which homosexuality is a way of being, which is determined prenatally or early in childhood, and which cannot be controlled or changed by the individuals. In this sense, homosexuals are as much responsible for their sexual preference as heterosexuals for their sexual orientation. Environment may have some influence on the development and direction of this personal attribute but the 'essence' is not the creation of the individual.

¹⁰¹ See Appendix A.

¹⁰² Patricia Dove, Mowbray.

¹⁰³ Wendy Burbury, Norwood.

¹⁰⁴ 'Australians Say Homosexuality Not Immoral ...', Roy Morgan Poll of 4,658 people interviewed between April 2001 and May 2001, <http://www.roymorgan.com.index>

¹⁰⁵ S Sarantakos, *Same Sex Couples*, Harvard Press, Sydney, 2000, 5.

¹⁰⁶ J Stacey and T Biblarz, '(How) does the sexual orientation of parents matter' (2001) 66 *American Sociological Review* 159.

¹⁰⁷ S Sarantakos, *Same Sex Couples*, Harvard Press, Sydney, 2000, 96. Sarantakos found that for 80% of his respondents, homosexuality was an integral part of their personality and an attribute that they were not able to change. This author's work was relied upon by many of the respondents opposed to same sex adoption; see also Wardle, L, 'A Critical Analysis of Constitutional Claims for Same-Sex Marriage' (1996) *BYU Law Review* 1 at 74 quoting Byne W and Parsons B, 'Human Sexual Orientation: the Biologic Theories Reappraised' (1993) 50 *Archives Gen.Psychiatry* 228 at 236;

The assertion that it is unnatural for gays and lesbians to have and to raise children and that if God had intended it, he would have given them the ability to procreate is no longer supportable. Heterosexual couples with fertility problems are now assisted to procreate by means of IVF procedures with and without donor sperm. These medical procedures may not be natural but they allow many couples who would otherwise be childless to conceive and raise children. The ‘unnatural’ argument was also raised in the argument that relationships that ‘cannot beget new life’ cannot provide the appropriate environment for children.¹⁰⁸ However why there is a link between the ability to create a viable embryo and the ability to successfully raise children is assumed rather than explained. One would have thought that wanting children was a better beginning for a child than parents’ ability to conceive.

¹⁰⁸ Kilby and Chapman.

Same sex adoption is detrimental to marriage and to society

Some opponents to same sex adoption argued that same sex adoption would lead to moral decline and a decadent society. For example one response argued:¹⁰⁹

History has served us many warnings. When we as a society step away from the moral boundaries designed by God for the benefit of all, we seriously compromise, dare I suggest destroy, the very foundations upon which society is built.

Others argued that to allow same sex couples to adopt would devalue marriage, undermine the family and erode family values. It was also asserted that ‘at the heart of the reforms proposed... is the abolition of the Institution of marriage for all relevant purposes’.¹¹⁰ Concern was expressed that allowing same sex couples to adopt and other reforms giving legal recognition to relationships other than marriage will formally abolish the distinction between marriage and all other inter-personal relationships.

Another argument was that allowing same sex couples to adopt would necessarily require giving same sex couples the status of marriage and that this would require not legal reform but ‘a fundamental social revolution’.¹¹¹

The argument that same sex adoption would undermine marriage and hence society is reminiscent of Lord Devlin’s disintegration thesis – that the enforcement of communal morality is necessary for social preservation.¹¹² Devlin’s argument that a deviation from accepted morality, such as homosexuality, threatens the existence of society has been emphatically rejected. It has been said that it is a proposition that was entitled to no more respect than Roman Emperor Justinian’s statement that homosexuality was the cause of earthquakes.¹¹³ A society is not identical with its morality and the fact that morality may change in a permissive direction does not mean that society is going to be destroyed. And given that same sex adoption will only be allowed in individual cases when it is in the best interests of the child, and the number of same sex adoptions will necessarily be very small, it is impossible to accept that either the institution of marriage or the family unit will be threatened, that family values will be eroded, still less that it will lead to moral decline and a decadent society.

The assertion that family values or traditional family values will be eroded is also problematical. The notion of traditional family values is elusive and difficult to define. If it means love, support care and commitment, there is no reason to privilege the traditional nuclear married family over different family forms.

The Institute rejects the suggestion that an unstated object of same sex adoption reform is the formal abolition of the institution of marriage for all relevant purposes. This is not the case. It is not inconsistent to be supportive of the institution of marriage (and the Institute is) and yet argue that same sex couples and de facto heterosexual couples should be eligible to be apply to adopt in the same way that married couple are. It is significant that reforms in other states that have recognised de facto heterosexual relationships have not led to ‘the abolition of the institution of marriage for all relevant purposes’.¹¹⁴ In fact marriage remains a very popular means of formalising relationships. It is unlikely that either the legal recognition of same sex relationships or allowing same sex couples to apply for adoption will lead to the death of marriage.

The argument that same sex adoption will require a social revolution not law reform because it will require that same sex couples be allowed to marry misrepresents the nature of same sex adoption reform. It will not (and cannot) affect the status of marriage. Marriage is a federal matter, not a state matter.

¹⁰⁹ Karen Dickson, Rosevears; see also the submission from the Australian Christian Lobby quoted in Appendix A.

¹¹⁰ Archbishop Doyle, on behalf of the Catholic Church in Tasmania.

¹¹¹ Kilby and Chapman p 2.

¹¹² *The Enforcement of Morals*, London, Oxford University Press, 1965.

¹¹³ HLA Hart, *Law, Liberty and Morality*, London, Oxford University Press, 1963 at 50 quoted by Bronitt S and McSherry B, *Principles of Criminal Law*, Sydney, LBC, 2001, 54.

¹¹⁴ Archbishop Doyle.

Underlying the view that same sex adoption is a meaningful social threat is the assumption that it will lead to a steady increase in the numbers of children with lesbian and gay parents. In the Institute's view this is unlikely. Most children with gay and lesbian parents were conceived and born within heterosexual marriages. As homosexuality becomes more legitimate fewer people with homoerotic desires will enter into heterosexual marriages and so fewer will become parents in this manner. While it is likely that as homosexuality becomes more acceptable, intentional parenting by gay and lesbians will continue to increase, it is not clear that this will more than compensate for the decline in the current ranks of formerly married gay and lesbian parents.¹¹⁵ It is likely that the ranks of gay fathers will thin. Biologically there are more obstacles to gay couples parenting and there is some evidence that fewer men of any sexual orientation actually desire children as strongly as women.¹¹⁶ Moreover, it is generally accepted that there is a higher incidence of homosexuality among men than women. All this suggests that there is unlikely to be a big increase in the prevalence of children with a gay or lesbian parent.

Same sex adoption is unconstitutional and contrary to international law

Related to the argument that same sex adoption would be detrimental to marriage is Archbishop Doyle's suggestion that legislation breaking down the distinction between marriage and other relationships could be unconstitutional on the grounds of inconsistency with Commonwealth legislation, specifically s 43 of the *Family Law Act 1974* [sic] which enjoins the Family Court of Australia to have regard to 'the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life' and ss 46(1) and 69 of the *Marriage Act 1961*. He also asserted it could be in breach of obligations under international instruments to which Australia is signatory that recognise 'marriage is the fundamental group unit of society'.

The constitutional argument is unconvincing. While legislation relating to marriage and matrimonial causes (divorce etc) is a matter for the federal parliament (Constitution, s 51 (xxi) (xxii)), adoption is a State matter. When additional powers in relation to certain matters concerning children (eg maintenance, custody, guardianship and access) were referred to the Commonwealth by the States in 1987, the matter of adoption was expressly excepted.¹¹⁷ There is no direct inconsistency between State legislation dealing with adoption and adoption eligibility criteria and the marriage power in the Constitution or any legislation enacted pursuant to it; nor would there appear to be any indirect inconsistency. In constitutional law terminology there is no 'clash of fields'. Section 43 of the *Family Law Act 1975* is merely a guide to the Family Court and any other court exercising jurisdiction under the *Family Law Act*; it is not a source of substantive law and, in any event, same sex adoption has no bearing on it. Section 69 of the *Marriage Act 1961*, which was also relied upon by His Grace, has been repealed. Section 46(1) defines marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life' for the purpose of the explanation of marriage that authorised celebrants are required to give before a marriage is solemnized. Again, adoption, including same sex adoption is a separate field and there is no conflict. The current reference is not about same sex marriage and the Institute disputes that same sex adoption legislation will lead to a break down in the distinction between marriage and other relationships.

In any event, Archbishop Doyle's submission appears to assume that the meaning of 'marriage' in s 51 of the Constitution is the same as the meaning of marriage in the *Family Law Act* and the *Marriage Act* where it is defined as 'the union of a man and a woman to the exclusion of all others voluntarily entered into for life'. This definition of marriage is based on the dictum of Lord Penzance in *Hyde v Hyde*,¹¹⁸ a nineteenth century English decision. It is unlikely that the meaning of marriage in s 51 would be interpreted so narrowly today. It may in fact mean, as McHugh J has suggested,¹¹⁹ 'a voluntary union for life between two people to the exclusion of others'. The decision of the Full Court of the Family Court in the case of *Kevin*

¹¹⁵ J Stacey and T Biblarz, '(How) does the sexual orientation of parents matter?' (2001) 66 *American Sociological Review* 159.

¹¹⁶ *Ibid*, citing J F Shireman, 'Single Parent Adoptive Homes' (1996) 18 *Children and Youth Services Review* 23.

¹¹⁷ *Commonwealth Powers (Family Law Act 1987 (Tas) s 3(2)*.

¹¹⁸ [1866] LR 1 PD 130 at 133.

¹¹⁹ *Re Wakim, Ex parte McNally* (1999) 198 CLR 511 at 553, emphasis added.

and Jennifer,¹²⁰ where the marriage between a post-operative female-to-male transsexual to a female was upheld as valid, demonstrates a significant change in the nature and meaning of marriage in Australian law. The point is that the reach of the marriage power in the Constitution is not immutably fixed.¹²¹

In terms of the international law argument, it is unclear which international instrument is being relied upon by Archbishop Doyle. The recognition of marriage as the fundamental group unit of society is not in any treaty or convention. It follows that there is no particular article of a convention or treaty that same sex adoption legislation would contravene. While Tasmania is not an international person and so not bound by international conventions, it is desirable that our legislation complies with Australia's international obligations. In the Institute's view to allow same sex adoption is more in accord with those obligations than in contravention of them. In any event, as argued above, the Institute contests the suggestion that same sex adoption legislation undermines marriage or will break down the distinction between marriage and other relationships.

Same sex adoption is not in the best interests of children or has not been shown to be so

Gender identity problems

While some respondents baldly asserted that same sex adoption is not in the best interests of children, many gave specific reasons for this. These included the assertion that same sex parenting leads to gender identity problems and that it makes children more likely to become homosexual.¹²² Empirical studies (by Cameron 1993, 1999, Bailey et al 1997, Morgan, 2002, Stacey and Bilbartz (2001), Wardlle (1997), Golombok and Tasker (1996) were cited to support this latter assertion.¹²³

Greater risk of child abuse

It was also argued that gay parenting exposed children to a greater risk of child sexual abuse and the assertion in the Issues Paper that it is fallacy that a child is at greater risk of being sexually abused if the parents are lesbian or gay was contested. On the basis that homosexual and bi-sexual paedophiles commit one third of the child sexual abuse and homosexual comprise just 2% of males, the Festival of Light submitted:¹²⁴

even though individual homosexual parents may not be paedophiles, their children are much more likely to mix with members of the gay community where the risk of coming into contact with paedophiles is much greater than normal. The Sydney Gay and Lesbian Mardi Gras parade has featured a fair-size group of children in recent years. Such children – said to be of homosexual parents – were exposed to the obscene content and actions of adults on a number of the floats in the parade.

Teasing and stigma

The likelihood of the children of same sex couples being teased, stigmatised and discriminated against was raised to show that same sex adoption was not in the best interests of children. The response from the Baptist Churches of Tasmania asserted:¹²⁵

in our imperfect world the fact is that teasing does occur. Whether or not children are able to cope with this (and there are likely to be large differences between individuals in this respect) the best interests of children require that they be saddled with no unavoidable burdens. Growing up is difficult enough as it is.

Lindsay Smith, a lecturer at the School of Nursing, University of Tasmania, stated:¹²⁶

¹²⁰ *Re Kevin* [2001] FLC 93-087. The time for further appeal to the High Court expired on 21 March 2003.

¹²¹ See H A Finlay, 'Marriage and divorce powers' *Oxford Companion to the High Court of Australia*, 2001, 456.

¹²² eg Catholic Women's League Tasmania, p 9; Baptist Churches of Tasmania, p 9, Marie Nibbs, p 7; Salt Shakers, p 9.

¹²³ Discussed below.

¹²⁴ At p 8; see also Salt Shakers, p 10, Mary Wright, p 3.

¹²⁵ At p 9-10.

¹²⁶ At p 4.

Evidence shows that children raised by a same sex couples are subject to increased bullying and harassment at school (Ray & Gregory, 2001). Under such circumstances, the family model that best serves the interest of the child being adopted also serves the best interest of the community, which intern (sic) produces benefits for the child.

Children need a mother and a father

Many respondents argued that married parents provided the best upbringing for children and that children need both male and female role models. Referring to the Issues Paper, the submission from the Baptist Churches of Tasmania stated:¹²⁷

The paper emphasises that lesbian women have the same maternal instincts and make just as good mothers as heterosexual women. But the issue is not whether they make good *mothers* but that they do not make good *fathers*. In a lesbian relationship where one partner already has a child it would be the non-mother who would be seeking to adopt. Similarly, the issue is that regardless of gay males' capacity as *fathers* they are not equipped to make good *mothers*. Men and women complement each other in their inherent physical, psychological and emotional attributed and social relationships. Hence we believe that to best equip children for their proper development they need the presence of both male and female parents. Adult friends are no substitute for live-in parents of both sexes.

Jacqueline and Jeremy Prichard criticised same sex parenting research for its failure to engage highly relevant research in other fields. They point out that evidence shows that boys without fathers encounter problems with sex-role and gender identity development, academic performance, psychosocial adjustment, and control of aggression.¹²⁸ They asserted:¹²⁹

Notably, boys seem to suffer quite badly from the absence of a father in their lives. Maternal deprivation has been linked with a variety of issues. Girls deprived of a mother appear to have problems with developing their own maternal identity if they have children themselves (Mireault, Thomas & Bearor, 2002). Other negative impacts have been noted in the behaviour of male and female infants deprived of their mothers (Flam and Mirtse, 1977).

The Catholic Women's League quoted Lynn Wardle:¹³⁰

Homosexual parenting poses particular risks for the emotional and gender development of children. Children make the transition through developmental stages better, have stronger gender identity, are more confident of themselves, do better in school, have fewer emotional crisis, and become functioning adults best when they are reared in two parent, dual gender families.

One response sent in by 957 people quoted Professor David Popenoe:¹³¹

Social science research is almost never conclusive. There are always methodological difficulties and stones left unturned. Yet in three decades of work as a social scientist, I know of few other bodies of data in which the weight of evidence is so decisively on one side of the issue: on the whole, for children, two-parent (father and mother, not same sex coupling) families are preferable.

Same sex couples are less stable

It was also argued that same sex parenting was not in a child's best interests because same sex relationships are less stable than heterosexual relationships. Salt Shakers, for example, asserted 'The notion of being monogamous is a rare one in the male homosexual community' citing a Melbourne survey which showed only 27% of gay men had regular partners and that 68% of gay relationships lasted less than 2 years.¹³² Another submission cited research alleged to show that 'Promiscuity is rampant in homosexual lifestyle'

¹²⁷ At p 7.

¹²⁸ At p 4.

¹²⁹ At p 5.

¹³⁰ Catholic Women's League, p 5.

¹³¹ B and W Adams, Bridport and 955 others quoting David Popenoe, 'The Controversial Truth, *New York Times*, 1992, p A21.

¹³² Salt Shakers (P and J Stokes), p 4 citing the *Melbourne Gay Community Periodic Survey 2000*.

and Monogamous relationships are rare'.¹³³ The Festival of Light argued that 'Australian and overseas research shows that homosexual men are highly promiscuous and their relationships with other men are unstable' and referred to the Sydney Gay Community Surveillance Report which found that 'nearly half the men ... were in, or had, a regular relationship lasting over 6 months. ... Around 30% of the men ... had more than 10 casual partners in the previous six months.'¹³⁴ As well as this study the submission from the Baptist Churches of Tasmania cited an overseas study which showed that 60% of lesbian couples break up within 6 years¹³⁵ and 'compare[d] this with heterosexual marriages which, in spite of the recent rise in breakups, are as likely to survive a lifetime as lesbian partnerships are to survive for 6 years.' The submission from the Assemblies of God relied upon research comparing advertisements for relationships by heterosexual and homosexual bachelors to support their assertion that same sex relationships are likely to be shorter than a married relationship.¹³⁶ Sarantakos' study of same-sex couples in Australia and New Zealand was also relied upon to show homosexual couples show higher rates of violence and instability than heterosexual couples.¹³⁷

Health, violence etc

The poorer health and shorter life spans of gay and lesbian couples was also relied upon to support the argument that same sex adoption was not in the best interests of children. The submission from the Festival of Light relied upon evidence that homosexual men suffer from a disproportionately high rate of sexually transmitted diseases and lesbians have more sexually transmitted infections than heterosexual women.¹³⁸ The Australian Christian Lobby pointed to the increased risks gay men have of anal cancer, HIV and other sexually transmitted diseases.¹³⁹

The allegedly high rates of violence amongst gay and lesbian couples, high levels of alcohol and substance abuse¹⁴⁰ and even elevated levels of pornography viewing¹⁴¹ were relied upon to show that same sex parenting is not in the best interests of children.

Onus of proof

A number of respondents argued that the onus is on those proposing to change the law to show that current laws are not in the best interests of children and the changes will promote the welfare of the adopted child. The submission from the Assemblies of God asserted:¹⁴²

For adequate justification to warrant change to the current legislation in this matter it must firstly be proved that the current adoption laws in Tasmania do not adequately provide for the best interests of the child as originally intended. Secondly, it must be proved that these laws are unfairly and *inappropriately* discriminatory. Thirdly, it must be proved that any proposed changes to the Adoption Act will increase the likelihood of an adopted child's welfare being improved not impoverished.

Similarly, Jacqueline and Jeremy Prichard argued:¹⁴³

[I]f the state wishes to alter the status quo it must satisfy itself that no negative consequences will occur to the welfare of the children under its care. Thus, in a sense, an 'onus of proof' lies upon the state to prove that no adverse consequences will be experienced by children of same-sex

¹³³ Peter and Judy Gross, p 2.

¹³⁴ Festival of Light citing National Centre in HIV Social Research, 'Sydney Gay Community Surveillance Report, 1998. Also cited by the Baptist Churches of Tasmania.

¹³⁵ SE Johnson, *Staying Power: Long Term Lesbian Couples*, Naiad Press, 1990.

¹³⁶ At p 7-9.

¹³⁷ J Prichard and J Prichard, p 7 citing S Sarantakos, *Same Sex Couples*, Harvard Press, Sydney, 2000 at p vii.

¹³⁸ At p 6

¹³⁹ At p 6; see also Salt Shakers at p 6; GV and JR Powell at p 3.

¹⁴⁰ P and J Gross at p 2; G and J Powell at p 4, M Nibbs at p 5.

¹⁴¹ P and J Gross at p 2.

¹⁴² At p 2.

¹⁴³ At p 1.

relationships. The onus should be a heavy one, heavier than the evidence required for many other areas of social policy because of (a) the potential for life-long effects upon individuals and (b) the extreme difficulty the state would face in reversing the policy.

Mary Wright put her position succinctly:¹⁴⁴ 'It is stated that there is no evidence to suggest that children will suffer if brought up by same/sex partners. *I say there is no evidence to suggest children will not suffer.*'

It is the Institute's view that to open up the possibility of same sex adoption is in the best interests of children. Because adoption is a selective process with applicants rigorously assessed for suitability on a case-by-case basis, it is not necessary to produce evidence from social science research which shows same sex relationships are in general as stable as heterosexual relationships, that the parenting abilities of same sex couples are generally no different from heterosexual couples and that children brought up in such relationships are not disadvantaged. In other words it is not necessary to prove that same sex parents in general offer a better environment or better outcomes. To discharge any 'onus of proof' all that is needed is a demonstration that in some cases the best interests of a child will be served by allowing same sex adoption. We have given examples of known child adoptions when this will be the case. While it is unlikely that a local placement adoption would be made to a same sex couple, it is theoretically possible that a particular same sex couple may be the best choice for a particular child. As long as this possibility cannot be discounted, adoption should be available to a same sex couple.

The empirical evidence is flawed

There is a significant body of social science research on same sex parenting issues, some of which was summarised in the Issues Paper, which is, on the whole, supportive of same sex parenting. A common assertion of submissions opposing same sex adoption was that the empirical evidence provides no support for change because much of the social science research on same sex parenting is methodologically flawed and proves nothing. Relying upon the critiques of Wardle¹⁴⁵, Nagai and Lerner¹⁴⁶ and Morgan¹⁴⁷ in particular, it was argued that such methodological failings as small sample size, no/inadequate controls, no hypothesis, volunteer samples with vested interests, gaps in the research and other problems mean that the research proves nothing. The Issues Paper was criticised for its failure to discuss these critiques.

While methodological problems with the research were acknowledged in the Issues Paper, it is true that no authors actually denouncing the studies on gay and lesbian parenting were referred to. However, some of these authors have not published their critiques in refereed journals nor have they published on same sex parenting in refereed journals. Lerner and Nagai's critique, in a book called *No Basis: What the Studies Don't Tell Us About Same-Sex Parenting*, argues that not a single conclusion can be drawn about gay and lesbian parenting from any study ever done, that the methods used are so flawed that they prove nothing. This book reviews 49 studies against six key criteria required for a reliable and valid study. They found at least one fatal research flaw in each of the 49 studies. Lerner and Nagai are social science consultants; their book was published in the US by the Marriage Law Project. Another book cited by many respondents opposed to same sex adoption is Patricia Morgan's book, *Children as Trophies?* This book, published by the Christian Institute in the UK in 2002 relies heavily upon Lerner and Nagai's review of research and an earlier review by Belcastro and colleagues. Quoting Lerner and Nagai, Morgan states:¹⁴⁸

... two academic reviewers conclude: 'that the methods used are so flawed that these studies prove nothing. Therefore they should not be used in legal cases to make any arguments about 'homosexual vs heterosexual' parenting. Their claims have no basis.' Failure to design the study properly, failure to properly measure the relevant variables, failure to control for extraneous variables, and failure to use the proper statistical tests invalidates a study. If a study claims to find no difference i.e.:

¹⁴⁴ At p 2, see also Lindsay Smith at 2.

¹⁴⁵ L Wardle, 'The Potential Impact of Homosexual Parenting on Children' (1997) *University of Illinois Law Review* 833.

¹⁴⁶ R Lerner and A Nagai, *No Basis: What the Studies Don't Tell Us About Same-Sex Parenting*, Marriage Law Project, Washington, 2001.

¹⁴⁷ P Morgan, *Children as Trophies*, The Christian Institute, 2002 at 47.

¹⁴⁸ P Morgan, *Children as Trophies*, The Christian Institute, 2002 at 47.

“Non significant results”, and “failed to carry out one or more of these research links in the proper manner, its conclusions are purely and simply invalid. Why? Because failing to carry out correctly one of more of these essential elements, in an of itself increases the chances of finding non-significant results.”

Another writer critical of the social science research on lesbian and gay parenting is Wardle, a law professor.¹⁴⁹ He argues that the studies are methodologically and analytically flawed and cites Belcastro’s 1993 review of 14 post 1974 studies which concluded:¹⁵⁰

The most impressive finding is that all of the studies lacked external validity. Furthermore, not a single study remotely represented any sub-population of homosexual parents. This limitation, in terms of scientific inference, is imposing.

...

Finally, most were biased towards proving homosexual parents were fit parents. ..[S]ome of the published works had to disregard their own results in order to conclude that homosexuals were fit parents.

Wardle’s overview of the flaws in the research refers to small sample size, sampling flaws and analytical lapses. He also asserts that bias on the part of researchers and respondents ‘taints the studies of homosexual parenting’.¹⁵¹

Contrary research findings were ignored

Some respondents claimed that the Issues Paper ignored a large body of contrary research findings, such as those described by Morgan, Sarantakos and Wardle. Interestingly, many of the submissions critical of the social science research on same sex parenting nevertheless used it to support detrimental aspects or effects of same sex parenting.¹⁵²

As well as claiming that the studies to date are flawed and so prove nothing, Morgan claims that they indicate, amongst other things, a significant likelihood that children of lesbians and gays may become more involved in homosexual behaviour, are more exposed to prolonged bullying and teasing, that they experience relationship problems with others as a result of knowledge of their parents homosexuality and that shame and embarrassment may result in a retreat into secrecy where the child assumes responsibility for hiding the truth about their parent’s sexual preferences.¹⁵³ Morgan relies upon Sarantakos’ comparative Australian study of children of married couples, heterosexual and homosexual cohabitantes to support her assertion of significant differences in outcomes between homosexual and heterosexual parenting.¹⁵⁴ A number of respondents were critical of the authors of the Issues Paper for not mentioning this piece of research.

Sarantakos’ study¹⁵⁵ used a sample of 58 children of heterosexual cohabiting couples, 58 children of heterosexual married couples and 58 children of homosexual (47 lesbian and 11 gay couples, matched according to age, gender, year of study and parental characteristics (education, occupation and employment status). All children were of primary school age and living with one biological parent at the time of the study. Issues explored included level of academic performance at school, social behaviour at school, some fundamental personality issues such as sex identity, and school related family issues such as family support and methods of control and punishment. Overall the study reported that children of married couples performed better at school, in academic (language and arithmetic) and social terms, than the children of cohabiting heterosexual and homosexual couples. While class behaviour of all groups was similar, more children of homosexual couples were reported to be timid, reserved and unwilling to talk about family life and this group had the lowest average sociability score. However, the study reported children of homosexual couples performed slightly better at social studies and they demonstrated a stronger attitude to learning than

¹⁴⁹ L Wardle, ‘The Potential Impact of Homosexual Parenting on Children’ (1997) *University of Illinois Law Review* 833.

¹⁵⁰ *Ibid* at 845.

¹⁵¹ *Ibid* at 848.

¹⁵² For example, Catholic Women’s League, Baptist Churches of Tasmania, etc

¹⁵³ Morgan, *op cit* note 147, at 67-91.

¹⁵⁴ *Ibid* at 100.

¹⁵⁵ S Sarantakos, ‘Children in three contexts: Family, education and social development’ (1996) 21 *Children Australia*, 23.

other children. Married couples had closer relationships with the school and homosexual couples the weakest. In terms of sex identity, in general, children of homosexual couples were described by teachers as more expressive, more effeminate (irrespective of their gender) and more confused about their gender than children of heterosexual couples. Children of homosexual parents were ridiculed or harassed because of their parents sexual orientation and teachers reported that such children suffered significantly as a result. Sarantakos warns:¹⁵⁶

However, these findings must be treated with caution. Before one jumps to conclusions encouraging homophobia and traditionalism, other relevant factors must be considered. There are many other factors which can cause or contribute to the trends demonstrated above in addition to the life-style of the parents.

He acknowledged that techniques of data collection may favour one life-style more than another.¹⁵⁷

The criteria of assessment ... Might have been biased – consciously and/or unconsciously – by the personal views and beliefs of the teachers. In this sense, the attributes of children described in this study might reflect *perceptions* of attributes rather than *actual* attributes of differences. Such perceptions might have favoured children of married couples more than children of other couples.

Parental divorce may also have in part explained the differences in educational development of the children in the three contexts as the majority of children of cohabiting homosexual and heterosexual couples had experienced parental divorce, and divorce, as a factor in education and social development, is far from irrelevant.¹⁵⁸

Wardle argues researchers have ignored significant potential effects of gay childrearing on children, including increased development of homosexual orientation in children, emotional and cognitive disadvantages caused by the absence of opposite-sex parents and economic security. Because of the methodological flaws in the studies, he concedes these concerns are not conclusive, but he argues they raise questions that need to be examined. Again criticism was directed at the Issues Paper for its failure to mention Wardle's article.¹⁵⁹

In the Issues Paper two major reviews of research were relied upon. First, Charlotte Patterson's reviews, 'Empirical Studies on Lesbian and Gay Parenting' and 'Children of Lesbian and Gay Parents'¹⁶⁰ and secondly the work of an Australian, Jenni Millbank, whose 2002 review of refereed articles was published in *Meet the Parents* for the Gay and Lesbian Rights Lobby (NSW). Both of these authors have published work on gay parenting in refereed journals. In fact Charlotte Patterson's review, 'Children of Lesbian and Gay Parents' has 111 Web of Science citations. In contrast neither Lerner and Nagai nor Morgan have published refereed articles with Web of Science citations on the subject of lesbian and gay parenting.

The Institute concedes that the Issues Paper failed to sufficiently emphasise the methodological problems with the social science research on same sex parenting. Flaws in the research were acknowledged but perhaps without sufficient emphasis. The critiques by Lerner and Nagai and Morgan were not picked up by the authors because of they were not published in refereed journals. It is not surprising that the paper reported no significant differences in outcomes between lesbian and gay parenting and heterosexual parenting when, as Morgan states:¹⁶¹

The only definite outcome of the research is the overwhelmingly one-sided position being taken in the social science literature in support of homosexual parenting.

Similarly, Wardle, an opponent of same sex marriage and adoption acknowledges:¹⁶²

Within the past decade, ... , it has become a very popular topic in the professional, especially social science, literature. Most of this new literature is supportive, much of it self-affirming, of homosexual parenting.

¹⁵⁶ *Ibid* at 30.

¹⁵⁷ *Ibid* (our emphasis).

¹⁵⁸ *Ibid*.

¹⁵⁹ For example, The Catholic Women's League, p 4; Marie Nibbs, p 1; Australian Family Association, p 2.

¹⁶⁰ (1992) 63 *Child Development* 1025-1042.

¹⁶¹ P Morgan, *Children as Trophies*, The Christian Institute, 2001 at p 47.

¹⁶² L Wardle, 'The Potential Impact of Homosexual Parenting on Children' (1997) *University of Illinois Law Review* 833 at 844.

Critics of the critics

Wardle's critique of law review articles and social science research attracted a strongly argued response from Carlos Ball and Janice Farrell Pea.¹⁶³ Ball and Pea conduct a point-by-point rebuttal of Wardle's assessment of the social science literature that has studied families headed by gays and lesbians. They contend that the research does not support Wardle's view that children are harmed by the sexual orientation of their parents. They are also sceptical of the accusation that there is an 'intellectual taboo' in the legal academy that silences anti-gay rights views, pointing out that Wardle fails to point to any article critical of same sex marriage or families submitted but not published.¹⁶⁴ In responding to his criticisms of the social science research they make a number of points. First, that most of the methodological flaws in the social science research reviewed by Wardle are discussed in the studies themselves:¹⁶⁵

For example, Charlotte Patterson, in her exhaustive (and often quoted) review of the literature conducted in 1992, noted that there are several weaknesses in the literature, including comparing children raised by lesbian and their partners with single heterosexual mothers; a lack of studies on family processes and interactions (as opposed to assessments of child adjustment); a lack of studies on gays and lesbians who had or adopted children after they became open about their sexual orientation; and a lack of longitudinal studies. Researchers have also acknowledged many of the other limitations discussed by Wardle, including study participants who are self selected and few in number, as well as a lack of racial and socio-economic diversity within the samples.

Secondly, the type of methodological flaws that Wardle discussed in his article are by no means limited to the study of gay and lesbian families. Producing a representative sample is expensive and particularly difficult in the context of lesbian and gay parents because many subjects are unwilling to identify themselves as lesbian or gay. Thirdly, it is simplistic to argue that there is biased and unbiased social science research. The view that totally value-free work will be actually achieved has been criticised for some time. Fourthly, there are ongoing efforts to address some of the methodological problems noted by Wardle, such as longitudinal studies. Moreover there are now a sufficient number of studies of gay and lesbian families to make meta-analyses of the data possible to reduce the possibilities of sample error. While not conclusive, the meta-analysis by Allen and Burrell in 1996 using 18 studies shows no significant differences between homosexual and heterosexual parenting. Ball and Pea's conclusion is that:¹⁶⁶

the social science literature, despite its shortcomings, supports the rather limited proposition that gay and lesbian parents (or prospective parents) are entitled to be evaluated individually on the basis of their ability to be good parents instead of being assessed based on assumptions about their sexual orientation. In other words, the social science literature neutralizes the negative inferences that society often makes about gays and lesbians and provides persuasive support for preventing such inferences from being carried over into lawmaking ... regarding ... adoption.

Wardle's claim – that the social science studies raise serious concerns about the potential harm for children of same-sex parenting – is disputed by Ball and Pea. They point out that differences are not necessarily deficits and some of the findings of the studies are misrepresented in claims that some studies ignore or gloss over relevant differences. An example is the finding that daughters of lesbian mothers are more likely than the daughters of heterosexual mothers to cross-dress (dress in boys clothes) and to choose traditionally masculine jobs (such as doctor, engineer or astronaut) and to engage in rough and tumble play. This is interpreted by Bellcastro and relied upon by Wardle as a difference in gender identity even though there was no difference between the two groups of girls in interest in marriage and parenthood.¹⁶⁷

¹⁶³ C A Ball and J F Pea, 'Warring with Wardle: Morality, Social Science, and Gay and Lesbian Parents' [1998] *University of Illinois Law Review* 253.

¹⁶⁴ *Ibid* at 256.

¹⁶⁵ *Ibid* at 272 (footnotes omitted).

¹⁶⁶ *Ibid* at 277.

¹⁶⁷ *Ibid* at 292 referring to Wardle *op cit* note 145 at 852. Wardle's response to Ball and Pea clarifies his central proposal, namely that there in parenting disputes courts should make a rebuttable presumption (rebuttable upon the lowest burden of proof – mere preponderance) that ongoing homosexual relations by and adult claiming parental rights is not in the best interests of the child. He stresses that he is not opposed to individualises parenting determinations. If that is the case he would not oppose removal of what amounts to an irrebuttable presumption against same sex adoption, namely legislation which denies same sex couples eligibility to adopt.

It should also be noted that Lerner and Nagai (authors of *No Basis*, discussed above) have not escaped criticism. In a report published by the American Civil Liberties Union it is alleged that they were funded by an anti-gay group to write *No Basis*. It is also asserted that:¹⁶⁸

Lerner and Nagai are not credible: they are researchers-for-hire who make their living writing studies for conservative organisations and finding results that support conservative organisations and finding results that support conservative social policies. One such organisation funded a Lerner study that found that African Americans were over three times more likely to be acquitted of rape charges than whites. To reach this conclusion Lerner looked at a mere five jury trials involving black defendants. (Roger Parloff, 'Speaking of Junk Science,' *The American Lawyer*, January 1997.) This is the same man who dismissed a study of over two-dozen gay parents for having an insufficient sample size and clearly someone who will conclude whatever he is paid to conclude.

Paul Cameron, cited by a number of respondents in support of the claim that studies show gay parenting harms children, is, it is alleged, a discredited figure. Professor Judith Stacey, a sociologist and scholar in the field of lesbian and gay parenting is quoted as saying:¹⁶⁹

Paul Cameron is the primary disreputable and discredited figure in this literature. He was expelled from the APA [American Psychological Association] and censored by the ASA [American Sociological Association] for unethical scholarly practices, such as selective, misleading representations of research and making claims that could not be substantiated.

Where does this Institute stand on this debate?

Clearly the critics of the social science research have a valid point. The research is flawed in many respects. This is conceded by those conducting the research. It is also true that it is embryonic. There is relatively little of it, particularly on gay fathers, and there are no separate branches of literature dealing with the development of boys with lesbian parents, girls with lesbian parents, boys with gay parents and girls with gay parents. Does it follow that the research is of no evidentiary value? That even meta-analyses of the data from multiple studies prove nothing because you cannot combine any number of badly flawed studies to produce one super one that is less flawed?¹⁷⁰ If it is of no evidentiary value, why were so many worthless studies accepted for publication in well-respected, peer-reviewed academic journals? Is the suggestion of bias and intellectual taboo against criticism of the studies a plausible possibility?

The social science research on lesbian and gay parenting is clearly controversial. However, it has been relied upon by many prestigious and influential bodies including the Child Welfare League of America, the North American Council on Adoptable Children, the American Academy of Pediatrics, the American Psychiatric Association and the American Psychological Association.¹⁷¹ The Child Welfare League of America's review 'Too High a Price' states:¹⁷²

The professionals whose full time concern is the safety and well-being of children – from child psychologists to social workers to pediatricians – find these studies to be credible and reliable enough to base their child policies on the information they provide. If the experts on children find that the social science studies make a strong case against restricting gay parents, then so should lawmakers and courts.

The debate between Wardle and Ball and Pea, Morgan's interpretation of the social science research and the position taken by US professional bodies indicates that there are differing assessments of the social science

¹⁶⁸ American Civil Liberties Union Lesbian and Gay Rights Project, *Too High a Price: The Case Against Restricting Gay Parenting*, 2002, 112.

¹⁶⁹ *Ibid*, 49. It is also alleged that he has advocated exterminating male homosexuals as well as the forcible tattooing of people with AIDS, see *Too High a Price*, *ibid* at 109-110.citing M Pietrzyk, 'Paul Cameron, professional sham' *The New Republic*, October 3, 1994 .

¹⁷⁰ As Morgan asserts, *op cit* note 147 at 51.

¹⁷¹ *Ibid* 22-30.

¹⁷² *Ibid* 44.

research. Stacey's response to the criticisms of the social science research on lesbian and gay parenting is worth quoting:¹⁷³

The studies that have been conducted are certainly not perfect – virtually no study is. It's almost never possible to transform complex social relationships, such as parent-child relationships, into adequate, quantifiable measures, and because many lesbian and gay men remain in the closet, we cannot know if the participants in the studies are representative of all gay people. However, the studies we reviewed [see Stacey and Biblarz, discussed below] are just as reliable and respected as studies in other areas of child development and psychology. So, most of those so-called experts are really levelling attacks on well-accepted social science methods. Yet they do not raise objections to studies that are even less rigorous or generalizable on such issues as the impact of divorce upon children. It seems evident that the critics employ a double standard. They attack these particular studies not because the research methods differ from or are inferior to most studies of family relationships but because these critics politically oppose equal family rights for lesbians and gays.

Recently, Stacey and Biblarz have undertaken a highly persuasive and critical analysis of the social science research and the competing claims that are made about it by those hostile to same sex adoption and those in favour.¹⁷⁴ They criticise both camps and argue that deeply rooted 'heteronormative convictions' about what constitutes healthy and moral gender identity, sexual orientation and family composition hinders research. They assert that because anti-gay scholars regard homosexuality as a form of pathology, they interpret any evidence of difference as evidence of harm. Those sympathetic to lesbian and gay parenting proceed from a highly defensive posture that accepts heterosexual parenting as the gold standard and investigates whether lesbian and gay parents are inferior. This model implies that differences are deficits. Too often this approach leads scholars supportive of gay and lesbian parenting to gloss over and down play any differences in parenting or child outcomes and they are hesitant to theorise about such differences. Stacey and Biblarz demonstrated this by a review of 21 psychological studies that they considered best equipped to address questions about how parental sexual orientation matters to children. While the authors of the 21 studies uniformly claim no differences in measures of parenting or child outcomes, Stacey and Biblarz found:¹⁷⁵

In contrast, our careful scrutiny of the findings they report suggests that on some dimensions – particularly those related to gender and sexuality – the sexual orientations of those parents matter somewhat more for their children than the researchers claim.

The Institute's view is that it does not have to be satisfied ('by unambiguous and robust evidence'¹⁷⁶) that homosexual parenting *in general* is as good for children as being raised by a married heterosexual couple before recommending gay and lesbian couples be eligible for adoption. Adoption is not a matter of randomly allocating children to heterosexual or gay and lesbian couples. It is our position that it is in the best interests of children for parents to be evaluated individually on the basis of their ability to be good parents and not to be assessed on assumptions based on their sexual orientation. If the social science research on gay and lesbian parenting is so flawed as to be valueless then it presents no obstacles to same sex adoption which involves decisions made on a case-by-case basis. It is also worth noting that the reality is that most children, for whom applications will be made by same sex couples, will be brought up by a gay or lesbian couple in any event, whether adopted or not.

Because adoption decisions are made on a case-by-case basis, it is not necessary for the Institute to engage in the debate about whether or not the social science research on same sex parenting demonstrates a potential for harm. Allegations of greater instability,¹⁷⁷ promiscuity and higher levels of violence in same sex couples are irrelevant given that in cases of adoption the relationship of the prospective adoptive couple will be rigorously assessed. The issue of increased bullying and teasing of the children of gay and lesbian

¹⁷³ *Ibid* 48-49.

¹⁷⁴ J Stacey and T Biblarz, '(How) does the sexual orientation of parents matter?' (2001) 66 *American Sociological Review* 159

¹⁷⁵ *Ibid* at 7 (electronic copy).

¹⁷⁶ See submission of J Prichard and J Prichard, p 7.

¹⁷⁷ The Issues Paper it was argued that same sex relationships are no more likely to end in breakdown than heterosexual relationships (see p 31-32). If this is wrong and same sex relationships are more likely to end, it is argued that a higher dissolution rate is correlated with but not causally related to sexual orientation and the correlation can be explained in terms of the fact that same sex couples lack the institutional pressures and support for commitment that marriage provides: see J Stacey and T Biblarz, '(How) does ... ' at 13 (electronic copy).

couples is disturbing, whether or not it has long term effects on self-esteem or mental health.¹⁷⁸ In the Institute's view, evidence of increased bullying and harassment demonstrates the need for attitudinal change to counter prejudice and stigma. It supports the claim that laws, which discriminate against same sex couples, discriminate against their children. Given the prominence in responses received to the Issues Paper to the alleged harm of an increased likelihood of growing up gay or lesbian, the increased risk of sexual abuse and the need for a mother and a father the Institute should express a view on these points.

¹⁷⁸ Studies cited in the Issues Paper suggest no such effects (see p 36) eg see S L Huggins, 'A comparative study of the self-esteem of adolescent children of divorced lesbian mothers and divorced homosexual mothers' (1989) 18 *Journal of Homosexuality* 123; see also P Morgan, *op cit* note 147, at 73-76. See also the review of studies by J Stacey and T Biblarz, '(How) does 'finding no significant differences in psychological well-being between children of lesbian mothers and children of heterosexual mothers.

The likelihood of growing up to be gay or lesbian

The main perceived risk of same sex parenting relates to homosexual development of the child. This is viewed as a harm in itself and also as having the potential for further problems such as contracting HIV/AIDS or a serious sexually transmitted disease.

There are two answers to this. The first is to deny that the risk of growing up to be gay or homosexual is in fact a harm. As the Issues Paper pointed out, there is prejudice in such an assumption and it is offensive to gay and lesbian people.¹⁷⁹ However, it is an unfortunate reality that many people do view homosexuality as an undesirable characteristic, so the argument will be dealt with directly. There is no clear evidence that children raised by lesbian and gay parents are more likely to be gay. Most studies have only examined the sexual orientation of children of gay and lesbian parents as children. The majority of these studies reported no differences in terms of gender identity or sexual orientation.¹⁸⁰ Sarantakos' Australian study of children in three contexts reports that teachers assessed the children of gays and lesbians as more effeminate but this, as the author acknowledges, could be due to the teacher's perception than to actual differences. Some critics of same sex parenting have re-interpreted the results of some pieces of research as pointing to problems of gender identity. The reliance by Wardle on Belcastro's reinterpretation of Green's finding that girls were more likely to aspire to a masculine career (doctor, lawyer, engineer or astronaut), more likely to cross-dress (wear boyish clothes) and engage in rough and tumble play is an example of misleading characterising of findings.¹⁸¹ A study by Golombok and Tasker (1996),¹⁸² was also relied upon by respondents to the Issues Paper in support of the argument that same sex parenting makes children more likely to be gay or lesbian. This study traced children of single and divorced lesbian mothers from childhood to adulthood. No significant differences were found in terms of actual self identification as gay or lesbian and no significant differences were found in terms of reported same sex sexual attraction. However, there were differences in two areas. Participants raised by lesbians were more likely to have had a sexual relationship with someone from the same sex and significantly more of the daughters of lesbians had considered the possibility of a same sex relationship. Some commentators rely upon this study as supporting the proposition that the children of lesbians and gays are more likely be gay or lesbian. However, this is disputed by the fact that there were no differences in self identification of the children as lesbian or gay. Stacey disputes the social science findings that children of lesbians and gays are more likely to be gay themselves. She states:¹⁸³

Sexuality is far more complicated than that. Most gay adults, after all, were brought up by straight parents. We are still in the dark ages when it comes to understanding the roots of specific sexual attractions. Regardless of the relative impact of nature and nurture, it seems likely that growing up with gay parents should reduce a child's reluctance to acknowledge, accept or act upon same-sex sexual desires if they experience them. Because the first generation of children parented by self-identified lesbians or gay men is only now reaching adulthood, it seems too soon to know if the finding in that one study will prove to be generally true.

Morgan cites a number of surveys of the post adolescent off-spring of gay and lesbian parents in support of her suggestion that the children of gays and lesbians are more likely to be gay.¹⁸⁴ The difficulty in interpreting these surveys is that what is or is not consistent with population norms is a matter of dispute; in other words it is not known exactly what proportion of the general population is lesbian or gay.

While Stacey disputes that social science research demonstrates that children of gays and lesbians are more likely to be gay, she does not deny that such children are more likely to engage in homosexual activity. In their review of 21 studies, Stacey and Bilbartz state:¹⁸⁵

The evidence, while scanty and underanalysed, hints that parental sexual orientation is positively associated with the possibility that children will be more likely to attain a similar orientation – and theory and common

¹⁷⁹ See Issues Paper at 35.

¹⁸⁰ *Ibid.*

¹⁸¹ See Ball and Pea, *op cit* note 163 at 292-293.

¹⁸² S Golombok and F Tasker, 'Do Parents Influence the Sexual Orientation of Their Children? Finding from a Longitudinal Study of Lesbian Families' (1996) 32 *Developmental Psychology* 3.

¹⁸³ American Civil Liberties Union Lesbian and Gay Rights Project, *Too High a Price: The Case Against Restricting Gay Parenting*, 2002, 50-51.

¹⁸⁴ *Op cit* note 147 at 78-80.

¹⁸⁵ *Op cit* note 98 at 14 (electronic copy).

sense support such a view, Children raised by lesbian co-parents should and do seem to grow up to be more open to homoerotic relationships. This may be partly due to genetic and family socialisation processes, but what sociologists refer to as 'contextual effects'¹⁸⁶ may also be important.

While there is no clear evidence one way or the other on this issue, the possibility that children raised by gays or lesbians may be more likely to be homosexual does not, in the Institute's view, mean that allowing same sex couples to adopt is against the best interests of children.

The increased risk of sexual abuse

The argument outlined above, that the children of gays are at greater risk of child sexual abuse – because gays or bisexuals are more likely to be paedophiles than heterosexuals are – is mere conjecture. We just do not know how many homosexual paedophiles there are in the population and it is by no means certain, even if they over-represented in the gay or bi-sexual population, that they are over-represented in the gay and lesbian *community*. Just how many homosexual paedophiles marry (or enter the priesthood for example) to hide their boy-sex preferences is unknown.

It seems the only evidence that the children of lesbian and gays are more likely to be sexually abused is Cameron's report that 29% of children raised by at least one homosexual parent report having sex with that parent. This was a study of 5,182 adults from six US cities, of whom 17 answered a questionnaire indicating they had a homosexual parent. These 17 disproportionately reported sexual relations with parents (five reported sex with the homosexual parent) relatives and other caregivers as well as reporting that their first sexual experience was homosexual.¹⁸⁷ Such a small sample is far from convincing. In the Institute's view there is no connection between gay or lesbian parenting and paedophilia which justifies denying same sex couples eligibility to adopt.¹⁸⁸

The need for a mother and a father

The argument that children develop best when raised by both a mother and father – that they need male and female role models – is one that resonates with many. It is used by opponents of same sex adoption such as Wardle, Morgan and Cameron. The study by Sarantakos is also relied upon to support this position. Wardle relies on writers such as Blankenhorn¹⁸⁹ and Popenoe¹⁹⁰ and quotes a passage from the latter that was included in the response sent in by 957 people (see above see p 42-43). The risks associated with fatherlessness were emphasised by a number of respondents.¹⁹¹ However, even though the research on maternal and paternal deprivation is much more extensive than the research on gay and lesbian parenting, it is no less controversial.¹⁹² It is argued that it is inappropriate to extrapolate from research on single mother families to portray children of lesbians as more vulnerable to everything from delinquency, teen pregnancy, substance abuse, school drop-out etc. Nor is it appropriate to extrapolate from studies of institutionalised children. In the family structure literature on maternal and paternal deprivation, lesbian and gay parent groups have not been a comparison group. This leaves us with the research studies on gay and lesbian parenting. Stacey and Biblarz conclude, on the basis of their careful scrutiny of 21 studies:¹⁹³

¹⁸⁶ Contextual effects refer to the social context. It is theorised that gays and lesbians are more likely to live in cities and neighbourhoods which are more tolerant of homosexuality.

¹⁸⁷ P Cameron and K Cameron, 'Homosexual Parents' (1996) 31 *Adolescence* 124 cited by P Morgan, *op cit* note 147 at 79.

¹⁸⁸ See also W Morgan and K Walker, 'Rejecting (In)tolerance: Tolerance and Homosexuality' (1995) 20 *Melbourne University Law Review*, 214; J Carole, 'Are Children at Risk for Sexual Abuse by Homosexuals?' (1994) 94 *Paediatric* 41.

¹⁸⁹ *Op cit* note 131 at 859.

¹⁹⁰ *Ibid* at 863.

¹⁹¹ For example, J Prichard and J Prichard at 4 and 5.

¹⁹² See Stacey J and Biblarz T, '(How) does the sexual orientation of parents matter' (2001) 66 *American Sociological Review* 159 at 15 (electronic version); Silverstein L and Auerbach C, 'Deconstructing the Essential Father' (1995) 54 *American Psychologist* 397.

¹⁹³ *Ibid* at 12.

Because every relevant study to date shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on the children's mental health or social adjustment, there is no evidentiary basis for considering parental sexual orientation in decisions about children's "best interest".

It is the Institute's view, that whilst the research on gay and lesbian parenting is flawed, it does support this limited proposition. Gay and lesbian couples are entitled to be evaluated individually as suitable for a particular child instead of being denied eligibility because of their sexual orientation.

A final point on this issue is that even if it is accepted that the social science research demonstrates the superiority of dual-gender parenting over same sex parenting, this does not support the imposition of an across the board legal disability affecting gay and lesbian people. One only needs to point to the case of hard-to-place special needs child who is being fostered by a same sex couple to illustrate this. And while there is a possibility that a particular same sex couple could be the best choice for an individual child, to open the possibility of adoption in such a case is surely in the child's best interests.

Denying same sex couples eligibility to adopt is not discriminatory

Opponents of same sex adoption reject the claim that our adoption laws are unfairly discriminatory on a number of grounds. It was argued that discrimination is justified because adoption is not a right but a process that requires the interests of children to be the primary consideration.¹⁹⁴ One submission asserted:¹⁹⁵

If adoption was a right there may be a case to argue discrimination but it is not. Adoption is a privilege and therefore very discriminatory, as it should be, to protect the best interests of the child.

Another that:

The issue of adoption is not about the prospective parents, It is about the baby. It is not a matter of 'rights' for the parents – or a discussion of why same-sex parents have a 'right' to adopt so they can be equal to everyone else.

The submission of the Baptist Churches of Tasmania stated:

This subject is often portrayed as a 'gay and lesbian rights' issue. We strongly disagree. No-one has a 'right' to children. To imply that this is so is to reduce children to the status of commodities – living toys for grown-ups. Parenthood is a privilege and a responsibility, but never a right. ... It is right and proper that the interests of the child should be the overriding consideration in the approval of adoption.

This argument reduces to the point about what is or is not in the best interests of children. What appears to be a more complex version of this argument is that excluding same sex couples from adoption is not discriminatory because discrimination is an issue of justice (in the Aristotelian sense of commutative justice or justice between individuals or groups). It is argued that the relationship between a parent and child flows from love through the value of piety, not justice. This kind of love is essential to child rearing and can only exist in a married relationship with the capacity 'to beget life'.¹⁹⁶

In the Institute's view, this argument tends to confuse rather than advance the debate. It either amounts to an assertion that adoption is about the best interests of the child rather than the rights of parents, or that it is unnatural for same sex parents to rear children (they cannot beget life) or that it is not in the best interests of a child for them to do so (a child needs a mother and a father). The second and third points have been dealt with. The point that the best interests of the child are the dominant consideration in adoption is fully supported. This reform is not about finding children for same sex couples, it is about finding safe and secure home and family environments for children. The Institute takes issue with the argument that adoption raises no issues of discrimination because it raises no issues of justice. The most relevant aspect of justice in the context of adoption is distributive justice rather than commutative justice.¹⁹⁷ Distributive justice 'concerns

¹⁹⁴ Baptist Churches of Tasmania, Assemblies of God in Tasmania, Salt Shakers and others.

¹⁹⁵ Martin Filleul.

¹⁹⁶ Kilby and Chapman.

¹⁹⁷ Commutative justice is relevant to relationships 'in which neither the requirements or incidents of communal enterprise nor the distribution of ... a common stock are directly at stake, but in which there can be a question of what is fitting, fair and just between the parties to the relationship' (J

the ethical appropriateness of which recipients get which benefits and burdens'¹⁹⁸ and these kind of benefits
extend to include the access to

Finnis, *Natural Law and Natural Rights*, Clarendon Press, Oxford, 1980, p 178). It is relevant in areas such as tort and contract and sometimes to the criminal law but not to the issues raised by same sex adoption.

¹⁹⁸ T Honderich (ed), *The Oxford Companion to Philosophy*, Oxford University Press, 1995 at 433.

opportunities, which in the context of adoption would include:

- a child's opportunity to be adopted
- the applicants' opportunity to apply to adopt a child.

The purpose of the distribution or allocation of an adoptive child to a couple by the State is the need to serve the best interests of the child. From the standpoint of distributive justice, it would be unjust to the child, in a case where the exclusion was based only on the sexual orientation of the couple, to exclude him or her from being adopted by a same sex couple if that adoption would best serve the interests of that child. By the same token, it would be distributively unjust to the couple to exclude them from the opportunity to apply to become adoptive parents, simply on the grounds of their sexual orientation. It has therefore been argued by the Institute that there are no grounds for discriminating against same sex couples and that a couple's sexual orientation is not a morally relevant reason for singling them out for exclusion from the opportunity to adopt.

It was also argued that it is not discriminatory to endorse what is natural.¹⁹⁹ Whether homosexuality is or is not 'natural' is not relevant to the issue of discrimination. Another point supporting discrimination suggested that adoption discriminates against smokers, obese and older candidates on the basis of health and life expectancy and for the same reasons we should discriminate against gay and lesbians. However, even if homosexual couples do have poorer health and shorter life expectancy, the adoption process can deal with this on a case-by-case basis to assess the health and life expectancy of an applicant couple without the clumsy expedient of excluding a whole category of applicants. Another point was that as a majority of the public is against same sex adoption by same sex couples, it is not discriminatory.²⁰⁰ This misunderstands the nature of discrimination and the thrust of anti-discrimination measures, the whole idea of which is to protect minority groups from being treated differently on the basis of sex, race, religion or sexual orientation.

There is no need for reform

Apart from the assertion that there is no case for law reform, some respondents argued that there is no need for law reform because the numbers of parents wanting to adopt exceeds the number of children available.²⁰¹ The existing barriers to known child adoptions by step-parents in a married relationship would apply equally to a same sex relationship, making this an unattractive option. It was also argued that the small number of same sex couples and the lack of evidence that they wish to adopt means that investigating law reform in this area is a waste of resources. On behalf of the Catholic Church of Tasmania, Archbishop Doyle argued:

Given the lack of children available for adoption in Tasmania, and given the minuscule percentage of the Tasmanian population likely to be affected by the laws, and given the lack of evidence in the Paper as to the demand of same sex couples for babies, on the basis of a cost benefit analysis, how can the Attorney-General or the Institute, justify putting the Tasmanian Parliament to the time and expense of such reforms?

His Grace also relied upon research that showed that gay and lesbian couples had rarely utilised their access to property division laws in the ACT, hypothesised to be because they are reluctant to use formal legal mechanisms, to support the argument that reforms are unnecessary.²⁰²

The Institute is well aware that there are now few babies available for adoption and that inter-country adoptions would not be available to same sex couples. It is also a valid point that step-parent adoption is not an attractive option for same sex couples because of the obstacles to this form of adoption for all couples including heterosexual couples. However as Archbishop Doyle pointed out in his response, 'each child deserves to be considered as important and unique, and to have the full protection of the law when their future is at stake'. The Institute's point is that there are some babies/children who may benefit by being

¹⁹⁹ Assemblies of God in Tasmania, M de Vries.

²⁰⁰ Dr Amanda Harman.

²⁰¹ See Appendix A.

²⁰² At 5-7 of his response quoting Millbank J, 'Domestic Rifts: Who is using the Domestic Relationships Act 1994 (ACT) (2000) 14 *Australian Family Law Journal* 163; and T Summerfield, 'Understanding the Law of the Family: A Question of Practice, Not Interpretation' (2002) 11 *Griffith Law Review* 44. His Grace also criticised the authors of the Issues Paper for omitting to refer to these studies.

adopted by a same sex couple and this possibility should not be foreclosed to them. As for the ‘miniscule number of same sex’ couples in Tasmania, the small number – how small is a matter of some debate – does not justify ignoring the issue of reform. To adopt the Tasmanian Gay and Lesbian Rights Groups response to Archbishop Doyle, ‘A church which upholds the dignity of the individual should understand that injustice demands our attention no matter how few people it disadvantages’. While lesbian and gay people may well be wary of bringing their relationship to the attention of the law by utilising it in disputes or even applying for adoption, this does not mean that reforms allowing them to do so should not be entertained. Again, to quote the Tasmanian Gay and Lesbian Rights Groups response:

The case for reform is that legal discrimination and the trauma it causes is an extremely important issue for those it affects. Reform is not about imitating marriage, it’s about gay and lesbian parents and their children leading happier lives.

Moreover the number of responses that the Issues Paper received and the intensity of the debate aroused by the topic suggests that from a symbolic point of view the issue is a very important one.

Lack of public support

Some respondents argued that there was little public support for same sex adoption reforms and that the law should not be changed to reflect the opinion of a vocal minority. One respondent cited a poll said to demonstrate that 68% of Tasmanians oppose same sex adoption.²⁰³ The Tasmanian Government has, by referring the issue of same sex adoption to the Law Reform Institute, provided the opportunity for public debate and input on the issue. The media attention the issue has attracted and the number of responses to the Issues Paper demonstrate that there is widespread awareness of the possibility of changes to the law on this issue and that many have taken the opportunity to express their views. The Institute has carefully analysed and considered the responses and evaluated the arguments. It is the Institutes’ view that the law should be changed irrespective of public opinion. On contentious and emotive issues where there is no clear consensus in a community, the government has the responsibility to seek advice and make a decision that does not necessarily reflect the majority view. It has the duty to lead and not merely follow public opinion on such issues. Much of the apprehension about gay and lesbian parenting and adoption is based on an inability to view gays and lesbians other than through a prism of sexuality and sexual conduct. There is the view that a gay and lesbian relationship is not normal and that parenting in such a context cannot be in the best interests of a child. The Institute contests this assertion.

Adverse effects of the adoption process

The concern that same sex adoption would discourage parents from putting a child up for adoption was mentioned by at least one respondent. This concern, which is also reflected in the DHHS response, is one which, even if conceded, is not fatal to the case for same sex adoption. The Institute is aware of the need for relinquishing parents to have complete confidence in the adoption process. This is considered in Part 4 of this Report in relation to disclosing sexual orientation of prospective adoptive parents in the profile given to relinquishing parents and in relation to the counselling relinquishing parents receive prior to giving consent to adoption.

The Institute has also considered the argument that allowing same sex couples to apply for assessment to adopt will jeopardise inter-country adoptions. The submission from the Baptist Churches of Tasmania asserted:²⁰⁴

Our source countries for overseas adoptions are not prepared to see their children in same-sex placements. To permit such adoptions may put at risk a program on which the future of children in dire needs depends. This would be renegeing on our obligations under the UN Convention on the Rights of the Child.

²⁰³ M Davis referring to a recent Roy Morgan Gallup Poll. The only Roy Morgan Poll found reported 64% of Tasmanians disagreeing with the statement, ‘Homosexual couples should be allowed to adopt children’: Finding No 3378 published in the Bulletin, 6 March 2001, available at <http://www.roymorgan.com.au>

²⁰⁴ At p 12.

The Tasmanian Branch of the Australian Family Association and Accepting Children Everywhere, an inter-country adoption support group, had similar concerns.²⁰⁵ The Institute has made enquiries in Western Australia and the United Kingdom to ascertain the impact of same sex adoption on inter-country adoptions in these countries. In Western Australia there has been no such effect. In the United Kingdom the legislation allowing same sex adoption has not yet come into force and so any impact is unknown. The criteria imposed by overseas countries will remain unaffected by any changes to Tasmanian laws. Making it clear to such countries that inter-country adoptions are unaffected by changes to domestic laws will prevent any impact on the placement of overseas children for adoption in Tasmania.

Recommendation

The Institute has carefully considered the Issues Paper, the responses received and relevant literature. For the reasons given above it is of the view that s 20(1) of the *Adoption Act* should be amended to permit a couple to apply for adoption regardless of the gender and marital status of the partners making up the couple.

Recommendation 1:

That s 20(1) of the *Adoption Act* be amended to permit a couple to apply for adoption regardless of the gender and marital status of the partners making up the couple.

²⁰⁵ See also Appendix A.

Part 4

The profile of applicants for adoption and birth parents' preferences

Introduction

As explained in Part 2, in the case of placement adoptions, parents who are relinquishing their child for adoption can express their wishes regarding characteristics of the adoptive family selected for the placement of the child. In addition they are shown non-identifying profiles of families considered suitable to adopt their child. Section 24(1)(b) of the *Adoption Act* requires that before making an order for adoption, the court must be satisfied that, so far as practicable, the wishes of the birth parents have been taken into account, particularly in relation to religion, race or ethnic background. While it is recognised there is little scope for same sex couples to adopt a child through placement adoption, the issue needs to be addressed of whether the sexual orientation of prospective adoptive parents should be included in the profile and whether the wishes of birth parents in this respect should be taken into account. Because s 24(1)(b) of *the Adoption Act 1988* indicates that *any* wishes expressed by birth parents should be taken into account this would include sexual orientation of the prospective adoptive parents if s 20 were amended to allow same sex couples to be considered for adoption. Similarly, the profile of families considered suitable for a placement adoption could include sexual orientation under the description of family makeup.

Question 1 (b) in the Issues Paper asked the question:

If [the Adoption Act is amended to permit an order for adoption to be made in favour of same sex couples] should the non-identifying profile of adopting parents specify the sexuality of the couple and should the birth parents be able to express a preference about the sexuality of the adopting parents.

This issue was addressed in many of the responses to the issues paper. Predictably, opponents of same sex adoption, who addressed this issue, argued that birth parents should be able to specify the sexual orientation of adoptive parents.²⁰⁶ Of those who supported law reform, opinion on this issue was divided with a majority against both the disclosure of sexual orientation in profiles and taking into account relinquishing parents' preferences as to sexual orientation of adoptive parents. However, some supporters of same sex adoption had different views on profiles and preferences.

In favour of profiles disclosing sexuality and relinquishing parents expressing a preference

Many respondents considered that specifying the sexuality of adopting parents was the right of a relinquishing parent. For some this was a necessary prerequisite to an informed consent. Others argued that if wishes in relation to race, religion and ethnic background can be taken into account it would be unreasonable to deny birth parents the right to express their preference in relation to the sexual orientation of parents. This was the main reason given by opponents of same sex adoption for giving an affirmative answer in relation to Question 1(b). It was also the main reason given by those in favour of same sex

²⁰⁶ With one exception, one response gave a negative answer to this question (1(b)) because birth parents should not be able to choose a homosexual couple.

adoption who gave an affirmative response to this question such as the Family Practitioners Association of Tasmania and Pflag. Pflag submitted:²⁰⁷

It seems to me that adopting out one's child is not an easy process. I think that for that reason it is only fair that the birth parents have access to information about the sexuality of the adopting couple and are given the opportunity to express a preference. I look forward to a future where the genders of the adopting couple will not be an issue for anyone. However, we do not live in a perfect world free of all prejudices, and I think that it is the right of the parents to have their child placed in an environment that they feel most comfortable with.

The Department of Health and Health Services raised the issue of the importance of relinquishing parents having trust in the adoption process. If the sexual orientation of a same sex couple was to be omitted from the profile of a same sex couple this would have the potential to reduce the trust relinquishing parents have in the process:²⁰⁸

Adoption officers spend considerable time discussing with relinquishing parents the type of family life and parenting they wish for their child. It is important that the trust placed in the Department by relinquishing parents at a time of emotional and possibly physical vulnerability must be met with honesty. To discuss placement with a couple without revealing the complete facts of the relationship would dishonour that trust and the Department's responsibility.

TasCAHRD's submission admitted to no definitive answer to Question 1(b) in the Issues Paper but suggested openness supports disclosure:

Sexuality however is something that shouldn't have to be hidden. By not including it on a profile makes a same sex couple once again into a 'dirty' topic.

One response argued that involvement of the relinquishing parents in choosing the type of family and upbringing of the child was important because it aids their recovery from the trauma of relinquishment.²⁰⁹ In addition the knowledge that natural parents were involved in selection of adoptive parents helps adopted children deal with identity and self worth issues. Father Kilby and Sister Chapman asserted:²¹⁰

It is critical knowledge for the adopted child that their parent/s actually chose their adopted family. It is therefore essential that all possible information about the prospective adoptive family is available to the biological parent/s so that they can make an informed choice about the most precious thing in life – their child.

Not all responses favoured both profiles including sexual orientation and taking into account birth parents preferences. The Commissioner for Children argued that birth parents should be able to express their preference about the sexuality of adopting parents (but this should not be given undue weight), she suggested that potential adoptive parents be given the option of disclosing their sexuality given that it is essentially a non-relevant issue in terms of their ability to provide for the interests and welfare of the child.²¹¹ Wayne Morgan also stressed that any preference in relation to sexuality of the adoptive parents should not be given undue weight (and argued against parenting profiles including a reference to sexuality):

I would suggest that it is appropriate to allow relinquishing parents to state a *preference* in regards to sexuality, however, this preference should be non-determinative. It should be simply one factor, amongst all the others, which the adoption agency takes into account in making its determination.

Others stressed the need for education in the adoption process so that same sex couples are not discriminated against by relinquishing parents.

One supporter of same sex adoption argued that the relinquishing parents should only be able to express a preference in favour of same sex adopting parents. Barbara Baird argued:

On the other hand, there are some parallels between a biological parent's preference for adoptive parents of the same minority race, ethnic or religious background and a preference for a lesbian or gay adoptive family for their child. A biological mother who identifies as a lesbian, or who has come from a lesbian family herself, for example, may wish for her child to be raised in a similar family, for reasons indeed similar to those

²⁰⁷ Els McIntosh, on behalf of Pflag (Parents, Family and Friends of Lesbians and Gays) at p 2.

²⁰⁸ Submission of the Department of Health and Human Services.

²⁰⁹ Kilby and Chapman

²¹⁰ *Ibid.*

²¹¹ The Children's Commissioner at 4.

hypothesized above in relation to minority race, ethnic or religious communities. That is, such a biological parent may wish for her child the same minority cultural background as that in which she was raised, and/or she may wish to support the social strength and presence of lesbian and gay families.

Against profiles disclosing sexuality and relinquishing parents expressing a preference

Many of the advocates of same sex adoption argued that an even-handed and non-discriminatory approach to adoption suggests that sexual orientation should not be one of the factors in relinquishing parents' preferences and that accordingly, there is little point in including it in the profile of a prospective adoptive couple. For example Kristen Walker argued:²¹²

once it is accepted that the best interests of the child may be served by placing the child in a same-sex family, there is simply no basis for permitting relinquishing parents to dictate the sexual preference of the adopting parents. In other areas of life we do not permit individuals to dictate discriminatory policies to government agencies and adoption should be no different.

A point raised by many advocates of same sex adoption who opposed including sexual orientation in the profile of adopting parents was that it is a factor that differs importantly from factors like religion, socio-economic background, language, ethnicity and race. The Tasmanian Lesbian and Gay Rights Group argued:

Religion, socio-economic background and language are all features of individual personality and identity which are culturally endowed, making it necessary to place children in particular home environments for them to acquire these characteristics. Sexual orientation on the other hand is a deeply set part of an individual's personality which is not determined by his or her cultural inheritance or home environment. ...

Like sexual orientation ethnicity and race are more fixed, but unlike sexual orientation which is only evident at puberty, and sometimes long after, ethnicity and race are evident, and part of an individual's identity from birth. This means that, in contrast to racial identity, it is impossible at least until adolescence to know what particular family type, if any, will have the most beneficial effect on the development of a child's sexual identity.

Barbara Baird also argued that it differs from factors like music, sport and gardening:²¹³

Nor is a preference for heterosexual or non-heterosexual adoptive parents like, for example, a preference for adoptive parents who are musical, or enjoy sport or gardening, qualities which a biological parent may wish their child to be given special opportunities to develop. ... If biological parents do express preference for such cultural qualities in adopting families, for sentimental or any reasons, these preferences are not loaded with the cultural baggage that expressing preferences for heterosexual adoptive parents is. I cannot imagine any situation where biological parents could justifiably express any preference for heterosexual parents.

In other words, because sexual orientation of parents is not a factor relevant to the up-bringing of a child in the manner that religion or language is, or even music or sport, it should not be included in the profile of potential adoptive parents or the preferences of relinquishing parents. Nor is it relevant to the child's identity in the way that race or ethnicity is. A desire that a child be brought up in the same culture as the birth parents is acceptable and is not the same as specifying that a child be raised by a heterosexual couple.

One response supported a negative response to Question 1(b) by pointing out that the assumption that a married couple is necessarily heterosexual is flawed:²¹⁴

A married couple seeking adoption would not necessarily acknowledge (or consider it relevant) to announce their own bisexuality, homosexuality or asexuality when entering applications for adoption – so why should sexuality be stated by other couples?

It was also argued that allowing relinquishing parents to express a preference in relation to sexual orientation of parents encourages intolerance of sexual diversity and reinforces myths about gays and lesbians being a threat to children. Jenni Millbank submitted:

²¹² Kristen Walker, Senior Lecturer in Law, the University of Melbourne, p 7.

²¹³ Barbara Baird, Co-ordinator, Women's Studies Program, University of Tasmania, p 2.

²¹⁴ Names withheld.

This option would encourage discrimination by relinquishing parents: it suggests that there is something wrong or second rate about lesbian and gay adoptive parents. There is still widespread community prejudice and misunderstanding about lesbians and gay men as parents and this option could effectively prevent any children being placed with them.

And Barbara Baird argued:

Allowing birth parents to express a preference for parents of a particular gender combination may be only allowing, and perhaps encouraging, ill-informed and prejudiced beliefs about parenting, because it has no basis in terms of the best interests of the child.

As Peter Hammond succinctly put it, allowing birth parents to prefer a heterosexual couple will merely 'enshrine bias and bigotry'.

The Institute's view

The Institute is sympathetic to the arguments opposing the inclusion of sexual orientation in the profile of potential adoptive parents and to excluding sexual orientation preferences as a consideration in selecting an adoptive couple. Sexual orientation is not a factor that bears on the upbringing of a child like religion, nor is it a factor relating to the development of a child's identity as is race or ethnicity. It is a valid concern that allowing relinquishing parents to, in effect, veto adoption by a same sex couple will do nothing to counter intolerance of sexual diversity. However, it is important that confidence is maintained in the adoption process. This may not be assisted by the knowledge that parenting profiles do not specify the sexual orientation of applicants. The Department's concerns about this have been noted. For this reason, the Institute is of the view both that parent profiles should include this factor and that parents should be able to state their preferences in relation to this.

In Western Australia the Ministerial Committee acknowledged that 'birth parents have a right to choose how their children are reared'. Accordingly they recognised that birth parents should be able to stipulate the preferred attributes of the adoptive parents including their sexual orientation even though this may materially disadvantage same sex couples.²¹⁵ However, notwithstanding the right of the relinquishing parent to specify the kind of family they would like their child placed with, the Western Australian position is that there should be no discrimination against people of same sex orientation in the identification of same sex couples in profiling forms.²¹⁶

While the Institute recommends including sexual orientation in the profile of potential adoptive parents and considering relinquishing parents preferences in relation to the sexual orientation of prospective parents, the importance of accepting sexual diversity should be addressed by adoption agencies. When counselling relinquishing parents, the issue should be dealt with in a way which promotes tolerance. It is equally important when assessing potential adoptive parents. A minority of adopted children will grow up to be gay or lesbian whether or not their adoptive parents are lesbian or gay. These children will need a home environment which is accepting of sexual diversity. This need is demonstrated by the much higher than average rate of suicide ideation, drug and alcohol misuse, homelessness and conflict with peers and parents currently experienced by gay and lesbian adolescents. It is also important that the majority of adopted children who grow up to be heterosexual understand the importance of accepting sexual diversity.²¹⁷

Recommendation 2

The Institute recommends:

- (a) that the profile of potential adoptive parents include the sexual orientation of the adoptive couple, and**
- (b) that the preferences of relinquishing parents as to sexual orientation of the adoptive couple be taken into account in the selection of adoptive parents.**

²¹⁵ *Lesbian and Gay Law Reform*, Report of the Ministerial Committee, Western Australia, June 2001, p 103.

²¹⁶ Submission from Hon Louise Pratt MLC.

²¹⁷ Tasmanian Gay & Lesbian Rights Group, p 6.

Part 5

Known Child Adoption Only?

Introduction

In the event of a negative response to the question, ‘Should the Adoption Act be amended to permit an order for adoption to be made in favour of any couple regardless of the gender of the ... couple’, Question 1(c) of the Issues Paper asked if s 20(6) of the Act should be amended to allow known child adoption orders to be made in favour of any couple regardless of the gender or marital status of the couple. In retrospect this question was not entirely clear. Section 20(6) only allows for an order to be made in favour of the spouse of a natural parent, the order is not made in favour of a couple because there is no need for an order in relation to the natural parent. Secondly, s 20(6) only covers one kind of known child adoption, namely step-parent adoptions. Known child adoption orders can occur in favour of relatives, foster parents and carers. In other words it may not have been clear whether this question referred to all known child adoptions or just to known child adoption in favour of the partner of a natural parent. In responding to the Issues Paper, submissions focussed on known child adoptions by a partner of the natural parent, i.e. either in the case of adoption of a child born to a previous heterosexual relationship (step-parent adoption), or conceived through donor insemination in a lesbian relationship (co-parent adoption), or conceived in a surrogacy arrangement and relinquished by the surrogate mother to a gay couple.]

All but one of the respondents who opposed same sex adoption generally, also opposed it in the case of known child adoptions (under s 20(6)). Some respondents in favour of same sex adoption generally expressed a view on the issue of allowing it in the case of known child adoptions only. Most opposed this option, whilst four were in favour of it as a second preference. These respondents saw known child adoption as the best way of ensuring full recognition of non-biological co-parents as parents under the law.²¹⁸ In summary there was only one respondent who favoured allowing known child adoptions by same sex couples only as a first preference.

Advocates of same sex adoption who opposed allowing it only in cases of known child adoption argued that to so limit adoption would not address the issues of stigmatisation of lesbian and gay people and their children, nor the issues of human rights and discrimination.²¹⁹ The Family Law Practitioners’ Association of Tasmania opposed only allowing same sex adoption in the known child category because of the obstacles in the *Adoption Act* to this type of adoption order posed by the need to prove both special circumstances and that an adoption would be better than a residence order in securing the best interests of the child.

Those opposing same sex adoption in general, who commented on the issue of known child adoption only, reiterated their arguments why same sex adoption was not in the child’s best interests with reasons such as lack of role models and identity problems. But they also raised a number of reasons for disallowing same sex couples eligibility to adopt which specifically relate to known child adoptions by the same sex partner of a natural parent. These were:

- encouragement of IVF, sperm trading and surrogacy
- problems with the rights of birth parents and the problem of genealogical bewilderment
- adoption is not the optimal choice in such cases
- fictions on birth certificates

In the light of Recommendation 1 it is clear that the Institute does not recommend allowing same sex adoption in the known child category only. The Institute agrees with those respondents to the Issues Paper who argued that to so limit adoption would not address the issues of stigmatisation of lesbian and gay people and their children in particular, nor the issues of human rights and discrimination. Moreover, the

²¹⁸ Eg Kristen Walker, p 7.

²¹⁹ Eg Submission of Tasmanian Gay and Lesbian Right Group, p 5.

Adoption Act does not use the terminology ‘known child’ and known child adoptions are not confined to relative adoptions under s 21 or step-parent adoptions by the spouse of a natural parent under s 20(6). Foster parents or others having the care of a child can apply for an adoption order to be made under s 20(1) if a married couple or under s 20(4) if a single person.

Because Recommendation 1 embraces known child adoption as well as placement adoptions, the four points of concern raised by the responses to the Issues Paper on the issue of known child adoptions should be addressed by the Institute.

Issues in relation to known child adoption

Encouragement of IVF, sperm trading and surrogacy

Some respondents argued that allowing a person to adopt the natural child of their same sex partner would open the way for trading in male sperm and surrogacy and would treat children as commodities. Encouragement of Artificial Insemination and the use of IVF by lesbian couples was also advanced as a reason against known child adoptions by same sex couples.

There is evidence that some lesbian couples enter into private arrangements to acquire donor sperm or find other ways to become pregnant and that children are born and raised by lesbian parents as a result. IVF services using donor sperm are available to same sex couples in Tasmania and in the Institute’s view this should be encouraged and private arrangements discouraged. This means making these services accessible. Using registered medical providers has advantages in terms of the health of the mother and baby. It also has advantages in terms of the opportunity for providing counselling and appropriate referrals to avoid disputes between sperm donors and co-parents. There is no basis for the assertion that allowing a lesbian co-parent to adopt her partner’s biological child will encourage ‘sperm trading’.

The argument that allowing same sex adoptions would encourage surrogacy arrangements between gay couples and surrogate mothers was also raised as an argument against same sex adoption in the known child category. However, any contract in relation to a surrogacy arrangement is unenforceable and any payment for the soliciting of a surrogacy arrangement is illegal.²²⁰ The argument that adoption could encourage surrogacy is about as plausible an argument against same sex adoption as the argument that all adoption should be abolished because it encourages surrogacy.

Problems with rights of birth parents and ‘genealogical bewilderment’

Concerns were expressed by the Department of Health and Human Services related to the rights of birth parents in a surrogacy or donor insemination arrangement.²²¹

Private arrangements for adoption were prohibited by the 1969 legislation as the birth parents and children were viewed as commodities and their human rights ignored or abused. To deny the rights of birth parents in a surrogacy or Donor Insemination arrangement would risk a return to these unacceptable practices of the past.

Issues relating to the rights of the biological father in the case of a known sperm donor can cause problems and disputes. However these problems exist already and will not be exacerbated by allowing same sex adoptions. Conversely, legal recognition of co-mothers and access to counselling through the legal system prior to known donor arrangements is likely to help pre-empt such disputes. The Archbishop of Tasmania cited the tragic case of *Re Patrick*²²² and criticised the Issues Paper for not exploring this issue. In *Re Patrick* the lesbian mothers sought to restrict the access of the known sperm donor to their child. When the court refused the orders sought by the mothers and put in place orders to gradually increase the amount of

²²⁰ *Surrogacy Contracts Act 1993* (Tas).

²²¹ At p 3.

²²² [2002] FamCA 193.

contact the biological father had with the child, the biological mother killed both herself and the child.²²³ This case demonstrates the fact that these difficulties already exist. It also highlights the difficulties caused by non-recognition of lesbian and gay parenting. Commenting on this case Jenni Millbank explains:²²⁴

In a non-discriminatory legal system, perhaps the mothers would have used an anonymous donor, perhaps the father would have adopted a child. This is by no means certain, but the parents would have been faced with a far greater range of choices and may have elected to follow one that more closely fitted their needs. The judge himself acknowledged that if fertility services in Victoria had been accessible to the parties, they would have at least had the benefit of the routine counselling that such services require and provide prior to insemination. Such a process would have helped to clarify expectations and avoid what followed.

The DHHS submission appears to be concerned that allowing same sex couples to adopt a known child would result in denying birth parents rights in a surrogacy or donor insemination situation and risk returning to private arrangements which treat birth parents and children as commodities. In relation to a child born as a result of an anonymous sperm donation, the donor has no right to residence or contact orders in relation to a child. Why this should be different in the case of a lesbian couple is not clear from the submission. In the case of a known sperm donor who has a close and ongoing relationship with the child, he has the right to apply to the Family Court for a parenting order in the form of a contact order or a residence order in the event of an adoption order being made in favour of the lesbian co-mother.

As for the rights of birth parents in a surrogacy arrangement, the basic issues are no different whether the couple wanting the baby are heterosexual or gay. A surrogacy agreement is illegal whether it involves payment or not and it is void and unenforceable.²²⁵ A married couple who agree to accept a child from its surrogate mother could, in theory, apply for an adoption order. There is no reason in relation to rights of the biological mother or concerns in relation to commodification of children to deny the same right to apply to a same sex couple. The issue in each case would be the best interests of the child.

The DHHS submission referred to the importance of adopted children knowing their genetic identity and the unacceptability of secrecy in relation to this. For this reason adoption legislation allows a child to access information in relation to their relinquishing parents when they reach the age of 18 years. (References) The response warned against adoption being used to hide the circumstances of the birth of a child:

The right of any child to know their genetic history must be protected, including in circumstances where same sex couples were given the option of adoption. This would require records of Donor Insemination to be preserved and made available to the child in the same way adopted people are given access to their history.

The need for a child to know his or her biological history is a problem that the law is grappling with in the context of ART (Assisted Reproductive Technology) and anonymous sperm donors. Victoria has provided for the right for offspring of donor procedures to access identifying information about their biological parent when they are 18 years of age.²²⁶ In Tasmania there is no such legislation. However, NHMRC Guidelines require donor records to be maintained in line with the commitment that children born from the use of ART procedures are entitled to know their biological parents.²²⁷ This issue is controversial²²⁸ but it is no more problematic in the case of a child of a same sex couple than in the case of a heterosexual couple.

Adoption not the optimal choice

A number of responses argued that alternatives other than adoption provided a better means of securing the best interests of the child. The difficulties confronting step-parents in obtaining adoption orders – particularly where the paternity of the father is established – were stressed. And secondly, it was asserted

²²³ While an anonymous sperm donor has no parental rights (Status of Children Act 1974 (Tas) s 10C(2)), known sperm donors (and co-mothers) can apply to the Family Court for residence and contact orders if they have a close and on-going relationship with the child.

²²⁴ J Millbank, 'From Here to Maternity: A Review of the Research on Lesbian and Gay Families' forthcoming 2003 *Australian Journal of Social Issues* at 42.

²²⁵ *Surrogacy Contracts Act 1993* (Tas).

²²⁶ *Infertility Treatment Act 1995* (Vic) s 79.

²²⁷ NHMRC, *Ethical Guidelines on Assisted Reproduction Terminology*, AGPS, Canberra, 1996, p 6.

²²⁸ See Helen Szoke, 'Regulation of Assisted Reproductive Technology: the State of Play in Australia' in I Freckleton and K Peterson, *Controversies in Health Law*, Sydney, The Federation Press, 240 at 254.

that other types of court orders, such as family court orders, have the advantage of flexibility. As the DHHS submission argued:²²⁹

Orders made by the Family Court are able to be varied, reflecting the child's changing development needs. An Adoption Order does not have this flexibility. It is therefore important to ensure any change that is contemplated to a child's legal identity will be permanently in the best interests of the child. This can be a difficult if not impossible task.

A number of respondents in favour of same sex adoption argued that a known child adoption order was not the optimal choice for a lesbian couple seeking an adoption order to formalise the co-mother's relationship with a child born as a result of donor insemination. Adoption is a time consuming, costly and intimidating process. It was argued that a better alternative in this situation would be to amend the *Status of Children Act* to extend the presumptive recognition from birth that applies to the husband of a woman who conceives using donor sperm to the same sex partner of such a woman.²³⁰ While supporting this, one respondent also argued that adoption should also be an available option.²³¹

In the Institute's view adoption should be available even if it may not always be the most appropriate option. If an order from the Family Court relating to parenting, residence or contact would adequately serve the welfare and interests of the child, then the court must refuse an adoption order in the case of an application by a step-parent or relative. Adoption orders are considered on a case-by-case basis. In some cases an adoption order may better serve the welfare and interests of the child. The matter should be left to the court rather than having legislation which precludes the court from making an order that would serve the child's best interests.

However, those respondents – such as the Family Law Practitioners Association – who oppose limiting same sex adoption to the known child category because of the difficulty of obtaining such orders have a point. The step-parent provisions assume that there is a biological parent and relatives whose relationship with the child is being severed and that the unrelated adopted parent is a later partner of the mother. This is not true of lesbian couples with donor-inseminated children where both partners are equal parents from birth, i.e. co-parents.²³² In the Institute's view a more appropriate legal response in such a situation is presumptive recognition of both parents from birth. This is what has occurred in Western Australia²³³ and South Africa.

Fictions on birth certificates

The Department of Health and Human Services raised the concern that allowing same sex adoption orders would create the fiction on birth certificates of showing two parents of the same sex.

Replacing the names of the birth parent(s) with adoptive parents and reissuing a birth certificate²³⁴ is a legal fiction. The presumption that the husband of a woman who conceives a child by ART is the father of the child is also a legal fiction. Arguably there is less secrecy about the fact of adoption rather than more if same sex couples are entered on the birth certificate. In the Institute's view the fiction of having a same sex couple on a birth certificate is not a plausible objection to same sex adoption.

Recommendation 3

The Institute recommends:

- (a) that both step-parent and relative adoption should be available to the same sex partner of a parent or relative of a child and**

²²⁹ At p 2.

²³⁰ Jenni Millbank.

²³¹ Wayne Morgan.

²³² Submission from J Millbank.

²³³ *Artificial Conception Act 1985* (WA) s 6A.

²³⁴ See *Adoption Act 1988* (Tas) s 63.

- (b) that the *Status of Children Act 1974* s 10C be amended to apply the conclusive presumption of parenthood to the same sex partner of a woman who, with her partner's consent, conceives a child as the result of an artificial fertilisation procedure.

Part 6

Additional Qualifications: length of the relationship

The agreed terms of reference required the Institute to consider whether, in the event of the abolition of the marriage and gender qualifications for adoption, there should be any additional legal qualifications for adopting couples, particularly qualifications relating to the length of their relationship. The *Adoption Act 1988* s 20(1) requires that a couple be married for at least 3 years before an adoption order can be made in their favour. However, a de facto relationship of up to 2 years may be counted towards this 3-year period.

The Issues Paper outlined the following arguments against extending the period:

First, every aspect of a couple's relationship comes under scrutiny in the assessment process of adoption. It must be kept in mind that the stability of the couple's relationship in addition to this initial 3-year period of commitment will always form part of the eligibility criteria when assessing that couple's capacity to provide a nurturing family home.²³⁵ The quality of a couple's relationship is of more importance than its length when considering a couple's suitability to adopt. As far as marriage goes, 10.7 years is the median length of a marriage ending in divorce.²³⁶ This suggests that even a 10 year relationship is far from a guarantee of a life-long relationship.

Secondly, extending the length of time a couple must be in a relationship before becoming eligible to adopt has implications in view of changing societal trends surrounding marriage. Both brides and grooms are older now than they were in the 1960s and 1970s. In 1993 the median age of brides was 26 years and grooms 29 years.²³⁷ In addition to this women are starting their child bearing later. In 1994 women aged between 25-34 accounted for 63% of births in Australia and peak fertility was among 29-year-old women.²³⁸ Age has an effect upon a women's ability to become pregnant as fertility decreases with age.²³⁹ In addition, fertility treatments are less successful in older women and miscarriage becomes increasingly common with age.²⁴⁰ If people marry later and seek to have children later the likelihood of success in becoming pregnant is diminished. The upshot of this is that people are exploring the possibility of adoption at a later stage in their lives than previously was the case. Increasing the length of the relationship required may have the effect of making applicants ineligible to adopt due to their age. Couples who might be committed and loving parents face the possibility that they will not be able to adopt. Existing guidelines require a prospective parent to be no more than 40 years older than the first child they adopt if they do not already have a child in their care.

Thirdly, a 3-year period is regarded by those expert in adoption assessments as adequate for the purpose of assessing the stability and quality of the relationship.²⁴¹ Any further period would cause unnecessary distress to hopeful applicants.

Finally, a survey of Australian legislation demonstrates that a three-year period is the standard length of a relationship required for eligibility to adopt. Couples must demonstrate a relationship of 3 years duration

²³⁵ Gael Moffat (personal communication 20/12/2002), Department of Health and Human Services, Adoption and Information Service.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ 'Australian Social Trends 1996 – Family Formation: Trends in Fertility' Australian Bureau of Statistics <http://www.abs.gov.au/ausstats>

²³⁹ Infertility Articles – 'Age and Fertility' The Australian Infertility Support Group, <http://nor.com.au/community/asig/index.html> The article can be found under the heading of literature.

²⁴⁰ *Ibid.*

²⁴¹ Gael Moffat (personal communication 20/12/2002), Department of Health and Human Services, Adoption and Information Service.

before adopting in New South Wales, Western Australia, and the Australian Capital Territory.²⁴² Victoria, Queensland and the Northern Territory require a relationship of not less than 2 years.²⁴³ South Australia requires that a couple cohabit in a marriage relationship for a continuous period of at least 5 years.²⁴⁴

Most responses to the Issues Paper which considered this issue did not consider that the length of the relationship should be extended to qualify to apply for adoption. A small number of submissions opposing same sex adoption considered that the length of the relationship should be extended to 5 years or longer in cases of an unmarried or same sex couple. Two respondents who supported same sex adoption argued that the period should be reduced to 2 years.

The only suggestion for additional qualifications or eligibility criteria was that adoptive parents be required to undergo parenting education or, if the couple already has parenting experience, that they be required to demonstrate parenting skills.

The Institute agrees with the view expressed in the Issues Paper that there is no reason to extend the length of the relationship required by the *Adoption Act* for eligibility to apply for adoption. There should be no different requirements for married couples, de facto heterosexual or same sex couples. Nor are their grounds for adding criteria. The parenting skills or potential of applicants is rigorously assessed by the adoption agencies as part of the assessment process.

Recommendation 4:

That the length of the relationship of adoptive couples remain at 3 years for eligibility to adopt and that no qualifications be required in addition to the current qualifications.

²⁴² *Adoption Act*, 2000 (NSW) s 28; *Adoption Act*, 1994 (WA) s 39; *Adoption Act*, 1993 (ACT) s 18.

²⁴³ *Adoption Act*, 1984 (Vic) s 11; *Adoption of Children Regulation*, 1999 (Qld) reg 7; *Adoption of Children Act*, 1995 (NT) s 13.

²⁴⁴ *Adoption Act*, 1988 (SA) s 12.

Appendix A

Summary of responses to Issues Paper, Question 1(a):

Should the *Adoption Act* s 20(1) be amended to permit an order for adoption to be made in favour of any couple regardless of the gender of the partners making up the couple?

Respondents in favour of same sex adoption

Sixty-one respondents were in favour of amending the *Adoption Act* to allow same sex couples to adopt children. The main arguments advanced by respondents for amending the Act were:

- that it would be in the best interests of children;
- that current adoption law discriminates against same sex couples and their children;
- that amending the Act would accommodate the reality of changed family structures; and
- and that arguments against extending adoption eligibility to same sex couples are flawed.

Best interests of children

Many respondents were in favour of changing the law to allow adoption by same sex couples because of their belief that this would be in the best interests of children. The basic position of the Tasmanian Gay and Lesbian Rights Group was that ‘the over-riding reason for allowing same sex couples to be assessed as potential adoptive parents is that it is in the best interests of the children involved.’ Respondents argued that there is no evidence that same sex couples have less parenting capacity than heterosexual couples, or that children with same sex parents suffer negative developmental or other consequences. Respondents argued that there is, however, research showing that there is no difference in parenting capacity of same sex and heterosexual couples, and that same sex parenting does not adversely affect the development of children. A number of respondents cited Millbank’s²⁴⁵ review of same sex parenting research to support these claims.

Respondents argued that granting same sex couples eligibility to adopt would be in the best interests of children for three main reasons:

1. it would allow same sex step-parents and foster parents to adopt, thereby providing legal and financial security and stability to children;
2. it would widen the pool of potential adoptive parents to choose from; and
3. children raised by same sex parents are more tolerant of difference and diversity than other children.

The Tasmanian Sexual Assault Support Service was in favour of allowing adoption by same sex couples and submitted that there is no evidence of higher sexual assault in same sex families. Senator Brian Greig, on behalf of the Australian Democrats, argued that, in contrast with the claims of opponents of reform, research shows that there is no link between sexuality of parents and sexuality of children, and that sexual orientation is probably determined in the womb or by age four. ‘Working it Out’, a lesbian, gay, bisexual and transgender support group, claimed that studies have also found that same sex relationships demonstrate a similar level of stability to heterosexual relationships, and that, particularly in the context of artificial insemination processes, same sex couples have demonstrated, ‘a high level of commitment to the welfare of children.’ According to Kristen Walker, a senior law lecturer at the University of Melbourne, one of the key reasons that other jurisdictions have permitted same sex adoption ‘is the increasing recognition by researchers and health care professionals that same-sex couples can offer a stable and loving environment in

²⁴⁵ Millbank J *And Then the Brides Changed Nappies* Final Report, Gay and Lesbian Rights Lobby, April 2003.

which to bring up children.’ The Tasmanian Gay and Lesbian Rights Group drew the following conclusion from the same sex parenting research:

The overwhelming weight of independent and methodologically-sound research shows conclusively that children raised by same sex couples are not more likely to grow up gay or lesbian, to experience gender confusion, to be teased or abused or to experience any kind of social, intellectual, emotional or sexual disadvantage. If anything the research shows that children raised by same sex couples are more likely to have an open and tolerant disposition towards difference and diversity.

Dr Barbara Baird, coordinator of the Women’s Studies Program at the University of Tasmania School of Philosophy, submitted:

The Issues Paper is based on assessment of the currently available research from a wide range of reputable sources. It would be inconsistent for any government interested in acting fairly and reasonably, with reference to up-to-date academic research, to take a path other than to go ahead and remove the unjustified privilege and advantage that married couples currently enjoy in Tasmania with respect to adoption ... If the government chooses any other option for reform it will be ignoring the clearly documented evidence that shows there is no rational basis not to reform the law so as to allow same sex couples access to adoption.

Submissions from Jen Van-Achteren and the Tasmanian Gay and Lesbian Rights Group both noted that same sex adoption is supported by a wide range of child welfare organisations and professional bodies. The Tasmanian Gay and Lesbian Rights Group submitted that in America, these include, the Child Welfare League of America (America’s oldest and largest child welfare organization), the North American Council on Adoptable Children, the American Academy of Paediatrics, the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers. Two respondents – Martine Delaney and Jason Hoare – asserted that there is no evidence from countries that have allowed same sex adoption that lesbian, gay, bisexual or transgender people make bad parents or that children are disadvantaged by living in unconventional family structures.

Many respondents submitted that the criteria for assessing the suitability of potential adoptive parents should not include sexual orientation as research shows that this is not a determinant of parenting capability. Rather, the main criteria should be the couple’s capacity to love and care for the child, and to provide a stable and supportive home environment. For example, Jan Vonsee asserted that the most important parenting qualities are love and care – these can be provided as ably by lesbian or gay couples as by heterosexual couples. Similarly Brian Greig, on behalf of the Australian Democrats, argued:

... the only quality required for parents to best raise children is that they want, love and care for them. Children need a happy home, and heterosexual people do not have a monopoly on that.

The Family Law Practitioners’ Association of Tasmania expressed their support for the approach of the Family Court to assessing parenting capacity, which has recognised that emotional security, stability and criteria assessing best interests of the child are the ideal basis for decisions regarding residence rather than marriage or sexual orientation. The Association submitted that this approach should be followed in adoption legislation.

A number of respondents submitted that prospective same sex adoptive parents may, in some cases, have superior parenting capacity to their heterosexual counterparts. The Tasmanian Gay and Lesbian Rights Group and the Tasmanian Greens both submitted that, in some instances, a same sex couple would provide ‘the most nurturing and supportive home environment available’ to a child up for local placement adoption, and the Tasmanian Gay and Lesbian Rights Group further submitted that same sex couples raise children who are ‘tolerant of and open to diversity.’ Julian Punch claimed that ‘same sex couples have developed more flexible and appropriate ways of caring for their children because they have eradicated discrimination and the resulting forms of internalised and externalised violence in their children.’ Gail May asserted that children should not be denied the opportunity of being adopted by those same sex couples whom would make excellent parents.

Benedict Bartl pointed out that all prospective adoptive parents must undergo rigorous tests and meet stringent criteria as part of the adoption assessment process. This process, he argued, would be equally

rigorous for same sex couples as for heterosexual couples and would therefore exclude unsuitable same sex applicants. The Tasmanian Gay and Lesbian Rights Group argued that, ‘the decision about who will make the best parents for any child should be placed in the hands of the experts employed by adoption agencies to make such decisions, and not left up to a clumsy law which excludes an entire class of people simply because of their sexual orientation.’ Patricia Bock complained that it is unfair to children to let prejudice interfere with finding the most appropriate adoptive parents, and that current adoption law prioritises prejudice and homophobia over the welfare of children.

Many respondents argued that the proposed reforms would be in the best interests of children already living with same sex parents, such as children who have a natural parent in a same sex relationship or children who are in the foster care of a same sex couple. This is because the reforms would allow known child adoption of such children by their step-parents or carers, which would give stability and legal security to existing living arrangements and, in the event of death or disability of one or both parents, would protect the interests of children in regards to matters such as intestacy and residence. Respondents argued that the current law inadequately deals with the rights and responsibilities of same sex parents and their children, and that children with same sex parents lack clear legal status.

The Secretary of the Department of Justice and Industrial Relations, Richard Bingham, submitted that ‘it is in the best interest of the child for the law to recognise the relationships that exist between same-sex couples and the children they raise.’ Leanna Wilson expressed concern that, under current law, if the biological parent of children living with same sex parents dies, ‘children could be shipped off to a distant relative or worse a complete stranger instead of an adult who they have lived with most or all of their lives.’ Phillip Reeve argued that the amended laws would almost exclusively be used in cases where a biological parent enters a same sex relationship. He argued:

In these cases the children are already living with same sex parents. The effect of the legislation will merely improve their security in the eyes of the law – it won’t actually change any existing living arrangement. Fairly obvious then, the consequences of the change will be overwhelmingly positive.

Dr Barbara Baird submitted that another important issue not dealt with by the Issues Paper is the legal status of children with respect to their siblings. Dr Baird suggested that children of different biological mothers who understand each other as siblings but who are not legally recognised as such may be unfairly treated by current adoption law, and that this may have detrimental effects in certain situations.

Current adoption law discriminates against same sex couples and their children

Many respondents were in favour of amending the *Adoption Act* because they believe that the Act as it currently stands unfairly discriminates against same sex couples and their children. Respondents argued that the Act discriminates against same sex couples because it precludes them from adoption eligibility solely on the grounds of gender or sexual orientation without any reasonable basis. A number of respondents, including Pflag (a support group for the parents and families of gay, lesbian, bi-sexual or transgender people), argued that the Act also discriminates against children living with same sex parents because it precludes ‘known’ child adoption of such children by their step-parents, yet this option is available to children living with heterosexual step-parents.

Dr Barbara Baird argued that the adoption privileges and advantages that married couples enjoy in Tasmania are unjustified and based on the influence of tradition and certain religions. Hayley Tristram submitted that the rights to adopt and to parent are no different from the rights to be in a relationship, to work or to have housing. She argued that ‘to not allow [same sex] adoption would be striking a note of contradiction in the heart of our laws.’ Benedict Bartl argued that in any other area, discrimination on them grounds of gender or sexual orientation would be contrary to anti-discrimination legislation. According to Julieanne Richards, ‘amending the legislation would mean equality, not special privileges’. Julian Punch submitted that, ‘gay and lesbian people are equal in the ‘sight of God’ and should not be treated as inferior beings but have the same rights to love and be loved with equal respect in our families and communities.’

Four respondents contended that current adoption law is contrary to International Human Rights Law, namely, Article 26 of the International Covenant on Civil and Political Rights, to which Australia is a signatory, which states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. The Tasmanian Gay and Lesbian Rights Group cited the decision of the United Nations Human Rights Commission in *Toonen v Australia*, that discrimination on the grounds of sexual orientation is prohibited by the Covenant. They argued that Tasmania must eliminate all sexuality discrimination from its statutes, including discrimination in family life and parenting – areas of human rights which the Covenant establishes that everyone is entitled to, in order to conform to international human rights standards. Patricia Bock claimed that if the government decides not to amend the Act to remove discriminatory clauses, it will be acting 'contrary to the spirit and intention of Tasmania's own Anti-Discrimination Act.'

Several respondents submitted that failure to grant adoption eligibility to same sex couples will perpetuate discrimination against same sex couples and other homosexual people and will reinforce homophobic myths. 5 respondents included the following statement in their submissions:

Anything but full equality in the law will send out the negative and destructive message that lesbian, gay, bisexual and transgender people are second-rate parents. This message will stigmatise not only the parents concerned but also their children.

Julian Punch warned that unless same sex couples are granted equal rights in *all* areas, 'same sex couples will continue to experience emotional trauma, financial disadvantage and long term depression,' and that withholding equal rights from gay and lesbian people in certain areas such as adoption 'proposes that gay and lesbian people are still abnormal and not capable of the most essential human characteristics.' The Tasmanian Gay and Lesbian Rights Group submitted the following:

One of the reasons deep concern persists in parts of the community about same sex couple adoption, despite the wealth of research demonstrating the parenting capacity of lesbian and gay people, are often unspoken but nonetheless powerful myths and stereotypes about gay and lesbian people being a threat to children.

While the old, wrong and highly offensive association between homosexuality and paedophilia may no longer be as current in Tasmania as it once was, there are still completely unfounded beliefs that gay and lesbian people cannot be trusted with children.

If the Adoption Act is not amended to give full legal equality to same sex couples Tasmanian law will continue to reflect and re-inforce these distressing and damaging myths. Indeed the removal of discrimination against same sex couples in other areas, as proposed by the current Government, will only highlight prejudice against gay and lesbian parenting, if, at the same time, reform does not include complete equality in adoption law.

A number of respondents argued that giving same sex couples equal adoption privileges would have wider positive consequences, including reduced discrimination against gay and lesbian people and increased social acceptance of same sex relationships and living arrangements. Richard Bingham, the Secretary of the Department of Justice and Industrial Relations, submitted that although relatively few local children are available for adoption, making this category of adoption available to same sex couples would be an important step in reducing discrimination. Dr Barbara Baird argued that such reform is important 'for the message it sends, beyond any literal application of the law, that lesbian and gay relationships and families are valid and legitimate.' Julian Punch contended that 'societies that remove discrimination against minority groups benefit from the wealth of recognising and valuing diversity in the community,' and Jason Hoare claimed that 'legal equality for all citizens leads to improvements in community attitudes, values and behaviours.' Damian Voss largely attributes Tasmania's tourism boom to 'awareness that Tasmanian attitudes have progressed in areas of social justice and acceptance.'

Pflag were optimistic that all children would ultimately benefit from the proposed reforms because they would help to break down rigid gender roles and behavioural norms. They submitted:

The discrimination that gay and lesbian parents and their children are still facing, enforces on society rigid gender roles. Thus, any child will feel insecure when they feel they do not measure up to the accepted norms

of behaviour for their sex. Gay and lesbian children and heterosexual children alike will experience a greater freedom to develop into the unique individuals they are meant to be, when society accepts that there are variations in sexual preference amongst any group of individuals and that this is normal.

Accommodating the reality of changed family structures

Another argument advanced in favour of law reform was that the law should reflect modern social conditions, and should therefore recognise new family forms and the reality of same sex families. Respondents argued that current adoption law is based on outdated stereotypes and norms. Richard Bingham, the Secretary of the Department of Justice and Industrial Relations, argued:

The legislation's current use of marriage and gender as criteria...does not accurately reflect the changing form of the family in Tasmanian society. Our laws must move with the times to reflect that change.

The Hobart Women's Health Centre put forward a similar submission:

The reality of families in our community today is that they are diverse and include parents who consider themselves lesbian, gay, bisexual and transgender. Amending the Act will bring it closer to reflecting the reality that already exists.

The Tasmanian Gay and Lesbian Rights Group argued that same sex couples have been at the forefront of developing new, innovative and effective parenting arrangements and strategies that are contributing in a positive way to the diversity of contemporary family structures. They see this as an important contribution to our society's resilience and durability that should be recognised and fostered by the law.

Stephen Couling urged Tasmania to take a progressive approach by giving equal adoption privileges to all citizens. The Northern Sexual Assault Support Service submitted that this should be the goal of a progressive, egalitarian society. A large number of respondents argued that Tasmania should follow the lead of other jurisdictions, such as Western Australia, many US states, European countries and South Africa, by amending the *Adoption Act* to allow same sex adoption. Patricia Bock argued that the government has an opportunity 'to pro-actively lead the world in acknowledging the humanity of gay and lesbian people as parents and citizens and to build an international reputation for Tasmania as striving to create a fair and just society.'

Problems with arguments against extending adoption eligibility to same sex couples

A number of respondents highlighted specific flaws in the arguments advanced by same sex adoption opponents to support their claim that it is in the child's best interests to be raised by a mother and father. Julian Punch criticised the 'moralistic' argument that male and female roles are essential to successful parenting on the grounds that this argument 'denies the capacity of all human beings to either have both male and female attributes or to acquire and balance them in their relationship with their children.' He argued that same sex parents consciously adjust this balance, often allowing them to achieve a better balance than many heterosexual married couples. Els McIntosh, on behalf of Pflag, reasoned that same sex adoption opponents' concern that same sex couples are unable to provide children with a balanced sex education may apply equally to heterosexual couples. She argued that this is demonstrated by her personal experience as the mother of a gay son: when her son 'came out' at 17 years of age, she realised that she and her husband had provided him with an 'incomplete, i.e. heterosexual, sex education,' that did not include 'that some boys love other boys and some girls love girls.'

Kristen Walker, Senior Lecturer in Law at University of Melbourne, provided a detailed critique of the assumption that children need a mother and father to provide masculine and feminine role models. She argued that studies showing that a mother and a father are essential for the development of 'appropriate' masculine and feminine roles for boys and girls use indicators of masculinity and femininity that are problematic and unexamined for cultural bias. For example, indicators of masculinity often include aggressive doll play, higher maths ability than verbal ability, physical activity or prowess, independence, assertiveness, and competitiveness, while indicators of femininity often include passivity, dependency, timidity, narcissism, irresponsibility, use of emotion and fantasy rather than thought and action, and sensitivity to other's needs. Ms Walker questioned what is positive about girls developing to be passive, dependent, timid, narcissistic and irresponsible, or about boys developing to be aggressive. Ms Walker argued that the assumption that it is a developmental problem for boys to be feminine or for girls to be masculine is based on rigid notions of appropriate gender behaviour, but regardless, that social science

research does not support the idea that the presence of a mother and father is necessary for ‘appropriate’ gender development in children. She further submitted that, in any event, absent male or female role models can be provided by teachers, extended family, friends, sport coaches or media representatives. This latter point was also made by Philip Reeve.

Kristen Walker’s submission also critiqued the claim that lesbians and gay men will have a negative impact on their child’s development. She argued that the fear that same sex parents might produce homosexual children is problematic because it is based on the view that this is would be a problem, and regardless, is not supported by social science research. She asserted that there is also no evidence to support the claim that children with same sex parents experience more teasing and bullying than children with heterosexual parents.

Kristen Walker and the Tasmanian Gay and Lesbian Rights Group both attacked the claim that gay men are more likely than heterosexual men to be paedophiles and to sexually abuse their children. Kristen Walker dismissed the claim as being ‘completely unfounded and based on prejudice’. The Tasmanian Gay and Lesbian Rights Group described the association between homosexuality and paedophilia as ‘wrong and highly offensive.’ Kristen Walker argued that both heterosexual and gay men sexually abuse children, and thus that excluding gay men from adoption is an inadequate method for preventing sexual abuse of adopted children. She submitted that assessment of prospective adoptive parents for likelihood of abuse on an individual basis is required.

The Tasmanian Gay and Lesbian Rights Group reviewed the argument, often advanced by same sex adoption opponents, that the law has a role in promoting traditional family values and that allowing same sex adoption will undermine this role. The Group asserted that it is hard to define ‘traditional family values’ and dangerous to assign the law a role in promoting any value system. However, if we accept a role for the law in promoting values and define family values as love, care, support, and commitment, it is arguable that these values should be fostered amongst all families, not just nuclear heterosexual families. The Group argued that limiting adoption to nuclear heterosexual families does nothing to promote these family values.

The Tasmanian Gay and Lesbian Rights Group also criticised the reliance of same sex adoption opponents on findings by Sarantakos²⁴⁶ and Lerner and Nagai²⁴⁷ to support their claims. The Group noted that Sarantakos states in his article that his findings must be treated with caution and that before one jumps to conclusions encouraging homophobia and traditionalism, other relevant factors must be considered. The Group also submitted that the Lerner and Nagai study was funded by a conservative Christian organisation and has no credibility amongst social scientists.

Respondents opposed to adoption by same sex couples

One hundred and thirty-four original respondents were opposed to amendment of the *Adoption Act* to allow same sex adoption. The main reasons given by the respondents were:

- that homosexuality (or homosexual parenting) is wrong and unnatural;
- that same sex adoption is not in the best interests of children;
- and would be detrimental to society;
- that current adoption law is not discriminatory;
- that proposed changes to adoption law would lack public support;
- and would have adverse effects on the adoption process;
- that social science studies cited in support of same sex adoption are flawed and prove nothing or that they were selectively cited and interpreted; and

²⁴⁶ Sarantakos s ‘Children in three contexts’ (1996) 21 *Children in Australia* 23.

²⁴⁷ Lerner R and Nagai A, *Out of nothing comes nothing; Homosexual and heterosexual marriage not shown to be equivalent for raising children* Washington: Ethics and Public Policy Center 2000.

- that there is no need for reform.

Homosexuality (or homosexual parenting) is wrong and unnatural

Many respondents were opposed to amendment of the *Adoption Act* to allow adoption by same sex couples because of their belief that homosexuality is wrong per se. Respondents argued that homosexuality is wrong, immoral, unnatural, deviant, perverted, harmful, unhealthy, anti-family or socially destructive. Other respondents were opposed to adoption by same sex couples because they believe homosexuality or homosexual parenting to be contrary to God's intentions, the Bible and Christian principles. Because of these beliefs, respondents argued that homosexual couples should not receive legal recognition, protection or privileges. Many respondents expressed concern that amendment of the Act to allow same sex adoption would legitimise and promote homosexual relationships, and that children adopted by same sex parents would be exposed to the homosexual lifestyle and influenced or coerced to become homosexual.

A large number of respondents argued that same sex couples should not be able to adopt because they are biologically unable to have children. Some respondents simply argued that this shows that same sex parenting or homosexuality per se is unnatural or contrary to God's intention. For example, William T Edmondson claimed that, 'same sex parenting goes against all laws of nature,' Catherine Priest argued that same sex parenting is, '... against the grain of natural design,' and Mrs Wendy Burbury argued that if God had intended same sex couples to have children, He would have given them the ability to procreate. Fr. Clem Kilby for the Archdiocese of Hobart and Sr. Philippa Chapman for Centacare Tasmania Welfare Services submitted that, 'same sex couples by the very nature of their relationship cannot beget new life. They are therefore precluded from providing the appropriate environment for the proper growth towards mature identity of children who are born of a heterosexual relationship.' Forty-five signatories to a petition claimed that 'same sex couples cannot procreate making this an unnatural union' and that same sex adoption is 'against God's will.' Brigitte Connor argued that children should be adopted by a mother and a father because this most accurately replicates natural conception.

The Baptist Churches of Tasmania submitted that the fact that same sex couples are naturally unable to have children indicates that they should not be parents, because, depending on one's belief system, it is either a consequence of God's intention, or of evolution. Their submission stated:

... if lesbian or gay people consistently follow that orientation they are *incapable* of becoming parents (good or bad) by natural means. Whether one regards this as a consequence of divine design, as Christians do, or merely as the outcome of aeons of the survival of the fittest it is an inescapable fact – there must be good reasons for it.

Several respondents argued that same sex couples' inability to have children is a consequence of their choice to be homosexual and to live in a same sex relationship, and, that they should not be allowed to adopt for this reason. The Australian Christian Lobby asserted that '... those who take the decision to live in a same sex relationship must accept that they cannot naturally have children.' According to Olga Scully, 'Homosexuals have chosen a life of sterility, yet they want to enjoy the fruits of normal sexual relationships.' Similarly the Australian Family Association argued that:

[Same sex couples'] 'lived' sexuality is a barren sexuality which should be acknowledged as such ... Homosexual and lesbian couples should not pressure society into supplying them (whether by adoption, reproductive technology, surrogacy, or other means) with children since the very essence of their sexuality precludes such an outcome.

The implication of these arguments seems to be that same sex couples can be distinguished from infertile heterosexual couples on the basis that same sex couples' inability to have children is the result of their choice to be homosexual. Same sex couples could have children if they chose to be heterosexual, whereas infertile heterosexual couples' inability to have children does not involve a choice. The Australian Christian Lobby argued that extending adoption eligibility to same sex couples would 'limit the number of children available for adoption by married couples who genuinely cannot have children for physiological reasons.' Two respondents – Marie Nibbs and Bernie Tarr – were concerned that, since homosexual people cannot reproduce, if the Act is amended, adoption may be used by the homosexual community as a means for 'recruiting' 'new members'.

Another common theme of the submissions opposed to same sex adoption was that same sex relationships are fundamentally different to heterosexual relationships and should not be treated equally. According to the Catholic Women's League, '... marriage and same sex relationships are in no way equivalent...comparing the quality of relationships between two women or two men with heterosexual marriage is impossible.' The Baptist Churches of Tasmania stated that '... the reality is that, whatever good things may be said about such [same sex] partnerships, by their very nature they are not and cannot ever be equal to genuine marriage.' Kilby and Chapman argued that, 'same sex couples differ in kind to heterosexual relationships ...' and that 'the love between a male and a female couple, committed to each other for life in a marriage relationship, is of a different order to love between a same sex couple. The love between the first begets life and does not exclude it.' According to Gareth Higgins, the idea that homosexual relationships are equal to heterosexual relationships is 'an offensive concept to many in the community'.

Three respondents argued that same sex couples should not be allowed to adopt children as they do not come within the true meaning of family. Brett O'Shannesy argued that the meaning of family involves a man and a woman bearing a child. Since same sex couples cannot bear children, they cannot come within this definition and are excluded from adopting children. Margaret Watts claimed that children being raised by two homosexuals is '... not a family but a simulation of a family.' Adam Dunn asserted that 'homosexual marriage' is an oxymoron because marriage means the joining of man and woman for the purpose of founding a family. The Department of Health and Human Services was concerned that it would be a legal fiction for birth certificates of adopted children to show two parents of the same sex.

Same sex adoption is not in the best interests of children

Nearly all respondents opposed to same sex adoption emphasised that the primary consideration with respect to adoption is the best interests of children, and vehemently argued that it is not in the best interests of children to be adopted by same sex parents. Respondents argued that children raised by same sex parents suffer disadvantages including, severance from normal society, absence of support from extended family and community, absence of a male or female role model, gender and sexual identity problems, teasing and stigmatization by peers, reduced self esteem, and later psychological problems.

Four responses, submitted by Peter and Jenny Stokes, Erin Woolley, John Tongue and Les Whittle, argued that since adopted children must already deal with identity and abandonment issues associated with being adopted, they should not be subject to any extra problems associated with having same sex parents. Erin Woolley submitted:

Adopted children have enough struggle with coping during adolescence, coming to terms with the fact that their biological parents don't want them. They don't need the added burden of 'which sexual type am I', 'why are my adopted parents so different from the majority of other parents', and the emotionally disturbing fact about how they were 'conceived'.

Many respondents were opposed to same sex adoption because of their belief that exposure to the homosexual lifestyle would be detrimental or harmful to children. Thirty-four respondents claimed that same sex relationships are less stable than heterosexual relationships and, therefore, that children adopted by same sex couples would be at greater risk of being subject to the negative effects of parental relationship breakdown. Fourteen respondents asserted that homosexual people are more promiscuous than heterosexual people and set a poor example for children. Eleven respondents argued that children with same sex parents are at increased risk of sexual abuse because child sexual abuse is more likely to be perpetrated by homosexual than by heterosexual people. The Festival of Light Australia argued that even if same sex parents are not paedophiles, their children are at greater risk of contact with paedophiles because they are exposed to the gay community. Two respondents claimed that homosexual people are more likely than heterosexual to have been victims of sexual abuse and that this would affect parenting capacity. Fourteen respondents expressed concern that homosexual people have poorer health and shorter life expectancies than heterosexual people because they suffer disproportionately from HIV/Aids and other sexually transmitted diseases. Respondents argued that poor health is likely to affect parenting capacity and may place children

at risk. Roger, Anne and James Brewer argued that since smokers, obese and older adoption applicants are discriminated against on the basis of reduced life expectancy, homosexual applicants should also be discriminated against on this basis. Six respondents were concerned that there is a higher incidence of alcohol and drug abuse by homosexual than by heterosexual people, and some respondents were concerned that there is a higher incidence of domestic violence in homosexual than in heterosexual relationships. Respondents cited various Australian and American social research findings to support these claims.

Another common reason for opposing same sex adoption was the belief that the traditional family is the best environment for raising children. Respondents justified this argument by reference to nature, history, other societies and cultures, the Bible and Christianity, and empirical research. Some respondents argued that the fact that nature requires a man and woman to create a child shows that the traditional heterosexual family is the best parenting model. Respondents also argued that child rearing within the traditional family has been the norm throughout history, and across all societies and cultures. For example, the Baptist Churches of Tasmania submitted that, 'not only our society, but countless others have over the centuries found that a family environment including both a mother and a father provides the best conditions for the protection, nurture, and healthy physical, psychological and social development of children.' Kilby and Chapman submitted that '[i]n our culture, marriage and the family is and has always been regarded as the most appropriate unit for the rearing of children.' According to Mrs Marie Nibbs:

Almost all societies and cultures throughout history have recognised the importance that the institutions of marriage and family offer to society. Especially in the raising, teaching and protection of children, families, preferably cemented by marriage, offer the most secure, stable and loving context for preparing the next generation for their role in society.

Many respondents argued that children need both a mother and father for role modeling, healthy development, and in order to grow into well balanced adults. Respondents typically argued that this is because mothers and fathers play unique roles in the rearing and caring of children, and provide complementary gender characteristics and influences: the mother plays the role of nurturer, while the father plays the role of authoritarian and protector. Dr Max Polak, the Catholic Chaplain to the University of Tasmania, submitted:

Children who lack father or mother invariably do experience that as a loss, or absence. Such is true not only because they compare themselves to other children. Sooner or later they become aware that they do not have a proximate role model and guide for the development of their own gendered personality.

Marie Nibbs, Daryl and Szenena Cook, and Mrs Mieke de Vries respectively submitted that children need a mother and father in order 'to see how men and women interact', to learn about 'normal heterosexual love and relationships,' and 'to understand 'maleness' and 'femaleness'.' Bill and Rosemary Fox argued that a child lacking a mother or a father would 'grow up with a character deficit and unbalanced emotions,' while Rosemary Van Emmerik was concerned that such a child would experience difficulty relating to the sex not represented in the family. The Baptist Churches of Tasmania asserted that, contrary to the claims of same sex adoption proponents, contact with adult relatives and friends does not compensate for the absence of a live in male or female model.

Patricia Dove expressed her belief that it would be the wish of an adopted child to have both a mother and father, while Hazel Elaine Bushby claimed that this would be the wish of the relinquishing parent. The Department of Health and Human Services noted in its submission that the reason given by many relinquishing parents for placing a child up for adoption is the wish for the child to have a mother and a father. Six respondents argued that it is a child's right to have both a mother and a father. The Australian Christian Lobby claimed that children who are adopted by same sex parents may have a legal cause of action against the State Government for contravening their right to start life with a mother and father and for breaching its duty to protect the interests of children.

Many respondents cited empirical evidence to refute the claims made in the Issues Paper that no discernable differences have been found between children with same sex parents and children with heterosexual parents in relation to their personal and psychological development, self esteem or their relationship with their peers, and that same sex parents and heterosexual parents have similar capacity to parent. Respondents cited

research findings of various problems experienced by children with same sex parents, including, Wardle's (1997) finding of confusion about sexuality and gender identity, Nicolosi's finding (cited in Ebert (1994)) of emotional and social trauma, Cameron's (1999) finding of poorer adult and peer relationships, emotional instability with reduced interest in natalivity, and increased likelihood of being sexually precocious and promiscuous, and Morgan's (2002) finding of increased likelihood of bullying and teasing, relationship problems because children fear that people actually or potentially know of their parents' homosexuality, and feelings of shame and embarrassment causing a retreat into secrecy. Several respondents referred to findings by Bailey, Bobrow, Wolf & Mikach (1997), Tasker & Golombok (1997), Wardle (1997), Cameron (1999), Stacey & Bilbartz (2001) and Morgan (2002) that children with same sex parents are more likely to become homosexual or engage in homosexual behaviour than children with heterosexual parents. Some respondents also cited findings of problems associated with fatherlessness, most commonly Wardle's (1997) finding of a link between fatherlessness and youth violence.

Twenty-four respondents referred to studies which found that children raised by married heterosexual couples do better than children raised in other households. The most commonly cited study was Sarantakos' (1996) comparison of Australian primary school children living with married heterosexual, de facto, or same sex parents. The study found that children living with married heterosexual parents performed the best of the three groups in language, mathematics, social studies, sport, sociability and popularity, and attitudes to learning, while children living with same sex parents performed the worst on these measures.

Same sex adoption is detrimental to marriage and to society

A large number of respondents argued that the traditional family, constituting a married heterosexual couple and their children, is a fundamental unit of society. Some respondents, including Archbishop Doyle, cited international instruments to which Australia is a signatory which aim to uphold marriage and the family. Many respondents expressed concern that amendment of the Act to allow same sex adoption would lead to the erosion of marriage and the traditional family as fundamental social institutions. The Australian Christian Lobby argued that 'the continued push to recognise same sex couples – at law – as a relationship that is no different to marriage, is in our view, a process that not only erodes the institution of marriage but which undermines our entire social fabric.' The Baptist Churches of Tasmania submitted:

... the government's sweeping proposal to effectively extend the privileges of marriage to a range of very different relationships would have major and wide-reaching consequences, mostly harmful...[the Baptist Churches of Tasmania's] concern mainly relates to the devaluation and discouragement of traditional marriage in favour of other relationships involving commitment of an entirely different nature and level.

On behalf of the Catholic Church of Tasmania, the Archbishop of Hobart, Adrian L. Doyle, claimed that the unstated object of the reforms is '...the formal abolition of the distinction between marriage, as recognized in Australian domestic law... and other relationships, and the 'abolition of the institution of marriage for all relevant purposes.' His Grace further argued that the proposed amendments may be constitutionally invalid because they are inconsistent with Commonwealth legislation, such as ss 46(1) and 69 of the *Marriage Act 1961* and s 43 of the *Family Law Act 1974*, which aim to promote and preserve the institution of marriage. Kilby and Chapman argued that allowing same sex couples to adopt would necessarily involve according same sex relationships the status of marriage, and that this would require not legal reform but 'a fundamental social revolution.'

Other respondents argued more generally that same sex adoption would be detrimental to society. For example, Dr Max Polak argued that legal reforms such as the proposed reforms to allow same sex adoption '... are setting in place trends that will greatly weaken our future social fabric and resilience as a society and put more children in difficult or fragile family environments.' Mary Wright expressed her belief that '...the social status of society is becoming very shaky and unstable as more and more legislation is passed to allow freedoms and equal right to minority groups who have chosen a pathway of living that is causing decay and moral decline.' She argued that amendment of the *Adoption Act* to allow same sex adoption would be '... the thin edge of the wedge that opens the door to further legislation causing moral decline and leading to a

decadent society.’ The Catholic Women’s League was opposed to same sex adoption because of its members’ belief that it would ‘... undermine the very cultural and spiritual basis of our society.’

Denying same sex couples eligibility to adopt is not discriminatory

Many respondents argued that the issues of discrimination and gay and lesbian rights are not relevant to adoption because the paramount consideration in respect of adoption is the best interests of children. In this case, discrimination against same sex couples is justified because it promotes the welfare of children. Respondents argued that adoption is a privilege not a right, thus denying adoption rights to same sex couples does not constitute discrimination or a human rights contravention.

For example Jacqueline and Jeremy Prichard submitted that the issue, ‘should not be dominated by the wish to grant homosexual couples new rights or new recognitions, well intended as that may be. Adoption is not a right for adults.’ Rosemary Laredo asked in her submission, ‘why is it discriminatory to choose the welfare and interest of the child above the interest of the applying couple?’, and Martin Filleul argued that, ‘if adoption was a right there may be a case to argue discrimination but it is not. Adoption is a privilege and therefore *very* discriminatory, as it should be, to protect the interests of the child.’ The Assemblies of God in Tasmania argued that the *Adoption Act* does not *unfairly* discriminate against same sex couples because research shows that married couples provide the best parenting arrangement. They argued that it is not discriminatory ‘to acknowledge and recognise that there is a difference between same sex couples and married parents when it comes to parenting outcomes.’ The Baptist Churches of Tasmania submitted:

The issue has been crowded by lobby groups who see it as a gay and lesbian rights issue. Gays and lesbians do have certain rights by virtue of their essential humanity, but the right to adopt is not one of these.

They further submitted:

Many other categories of people including older people, criminals, minors, and those in poor health are excluded because it is considered that they would not provide the best chance for a child to grow up in a favourable environment. Yet no one argues that they should be eligible to adopt ‘by virtue of their essential humanity’.

Respondents argued that adoption is being treated as a rights issue, and that this reduces the status of children to that of commodities, or trophies for social acceptance. The Baptist Churches of Tasmania submitted:

This subject is often portrayed as a ‘gay and lesbian rights’ issue. We strongly disagree. No one has a ‘right’ to children. To imply this is to reduce children to the status of commodities - living toys for grown-ups.

Some respondents argued that current adoption law is not discriminatory because it recognises the reality that same sex couples cannot naturally have children. Mieke de Vries argued that excluding same sex couples from adoption is not discriminatory because their ‘lifestyle itself precludes the natural way of conceiving children.’ The Assemblies of God in Tasmania submitted that, ‘adoption gives a child what they are *naturally* deprived of (a father and a mother). The current *Adoption Act* reflects this. Therefore it is not discriminatory to endorse what is most natural.’ Dr Amanda Harman argued that current law is not discriminatory because the majority of the public is opposed to adoption by same sex couples.

Kilby and Chapman offered a more complex argument that current adoption law is not discriminatory, based on Aristotelian concepts of justice which have been adopted by the Christian tradition. According to their submission, same sex couples claim that they are subject of ‘Legal Discrimination’ on the basis of principles of commutative justice. However, this argument cannot apply to adoption because the relationship between parent and child is governed by piety rather than commutative justice. Commutative justice governs relations between individuals and groups and relates to ownership and possession of property.

Lack of public support

Many respondents claimed that the *Adoption Act* should not be amended because the majority of the public is against adoption by same sex couples. One respondent, Mike Davis, cited a recent Roy Morgan Gallup Poll that he said found that 68% of Tasmanians were opposed to the proposed reforms. Reg Livermore stated: 'I am fully opposed to this legislation and so are the majority of Tasmanians, if letters to the Editor in Tasmanian newspapers are concerned,' and William Edmondson claimed that: 'The clear majority of Australians do not approve of homosexual marriage or adoption rights.'

Respondents argued that homosexual people only represent a very small minority of the population – less than 2% of the population – and that the law should not be changed to reflect minority opinion. Sirna McDonald argued; '[m]inority groups such as homosexual couples wanting to adopt children are very vocal, but they do not represent the vast majority of Tasmanians.' Dr Max Polak asked: '[a]re we simply responding to a small but adamant minority instead of putting the interests of the general public first?' Mrs Ursula Clarke and Steven Nicholson argued that the Tasmanian government has no mandate to amend the *Adoption Act* as the reforms were not forecast at the last state election.

Adverse effects on the adoption process

Some respondents were concerned that amendment of the *Adoption Act* to allow same sex adoption would adversely affect the local and inter-country adoption processes. J.D. McCarthy expressed concern that amendment of the Act would discourage parents from making children available for adoption and thereby further diminish the pool of available children. Dr Max Polak warned that amendment may give rise to pressure to endorse the 'right' of same sex couples to adopt, leading to favouritism of same sex couples over other prospective adoptive parents in the adoption process. Anne Vincent argued that amendment would lead to an increase in adoption by unmarried heterosexual people and single people, and that this would have negative consequences for children and families.

Several respondents, including the Department of Health and Human Services and 'Accepting Children Everywhere' – an inter-country adoption support group, warned that amendment of the Act to allow same sex adoption may jeopardise the access of Tasmanians to the inter-country adoption process because countries that do not allow same sex adoption would be reluctant to relinquish children to Tasmanians or would no longer include Tasmania in inter-country adoption programs. The Australian Christian Lobby noted that no inter-country adoptions have taken place in Western Australia following reforms to allow adoption by same sex couples. The Australian Christian Lobby also submitted that inter-country adoption by same sex couples would complicate the international adoption process and raise international law problems because it would contradict the implied intent of the *Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption*, to which Australia is a signatory.

Social science studies cited in support of same sex adoption are flawed, or were selectively cited and interpreted

Many respondents argued that most social science studies which have found that children are not adversely affected by living with same sex parents suffer from major methodological flaws. Respondents cited studies by Belcastro (1993), Lerner and Nagai (2000), Stacey & Biblarz (2001) and Morgan (2002) which found methodological flaws in research supporting same sex parenting, some of which was relied on in the Issues Paper. The main flaws noted were small sample sizes, non-random samples, self-reporting, absence of or inadequate controls, neglect of extraneous variables, unclear or inadequate hypotheses, studies designed to prove the null hypothesis, lack of longitudinal analysis, and measurement error. Some respondents alleged that research supporting same sex parenting is biased because it was undertaken by parties who are sympathetic to the gay and lesbian rights movement. Some respondents also alleged that the authors of the Issues Paper were biased towards allowing same sex adoption and selectively cited and interpreted the research to support their viewpoint. Jacqueline and Jeremy Prichard's submission reviewed the research on same sex parenting and concluded that it is insufficient because only a relatively small amount has been undertaken, the research lacks diversity and specificity, the research fails to engage relevant research in

other fields, no systematic longitudinal studies have been undertaken, and because the research has been criticised for methodological weakness and bias.

There is no need for reform

A number of respondents simply submitted that current adoption law adequately provides for the best interests of children and does not require reform. Mike Davis simply pleaded: ‘if it isn’t broken, don’t fix it.’ Other respondents urged caution and argued that further research is required. The Department of Health and Human Services submitted that given the success of the existing system, amendments should only be made slowly after thorough, considered research. Jacqueline and Jeremy Prichard submitted that there is a heavy onus on the State to prove that children adopted by same sex parents will experience no negative consequences and that adoption laws should not be changed without unambiguous and robust evidence of this. Many respondents argued that the Issues Paper did not put forward a sufficient case for reform because it did not conclusively establish that current adoption law is not in the best interests of children. For example, The Australian Christian Lobby asserted that there is no credible or substantive evidence that the heterosexual couple is not the best parental model, and that the status quo must remain in the absence of such evidence. Sirna McDonald, William Edmondson, and the Baptist Churches of Tasmania maintained that children should not be used as guinea pigs.

Several respondents argued that there is no need for amendment of the *Adoption Act* to allow adoption by same sex couples because the small number of same sex couples in Tasmania, the fact that existing barriers to ‘known’ child adoption by married stepparents would apply equally to same sex parents, and the lack of evidence of same sex couples wanting to adopt, indicates that there would be little likelihood of same sex couples adopting children in practice. Respondents argued that investigating reform in this area is a waste of resources and that there is more pressing need for investigation of reform in other areas. The Department of Health and Human Services submitted that it would be likely to be rare in practice for the Family Court to allow known child adoption by the same sex partner of a natural parent because it is currently rare for the Court to allow known child adoptions in favour of married heterosexual stepparents. The Department also thought that inter-country adoption by same sex couples would be rare because many countries would refuse to relinquish children to same sex couples. Archbishop Doyle, on behalf of the Catholic Church, relied on research showing that same sex couples rarely use ACT property division legislation to which they have access to argue that lesbians and gay men are generally reluctant to use formal legal mechanisms. His Grace submitted that this research shows that Tasmanian same sex couples would be unlikely to apply for adoption under amended adoption laws. His grace posed the following question:

Given the lack of children available for adoption in Tasmania, and given the miniscule percentage of the Tasmanian population likely to be affected by the laws, and given the lack of evidence in the Paper as to the demand of same sex couples for babies, on the basis of a cost benefit analysis, how can the Attorney-General or the Institute justify putting the Tasmanian Parliament to the time and expense of investigating such reforms?

Other respondents submitted that since many married heterosexual couples are available to adopt children, there is no need to widen the criteria for adoption eligibility to include same sex couples. Respondents argued that regardless of whether some same sex couples may be capable parents, the interests of children would always be better served by being adopted by a heterosexual couple. ‘Why saddle children with the extra handicap of having same sex parents when there are many married heterosexual couples ready and willing to adopt?’ asked R.A. and C.I. Waller. Archbishop Doyle thought that it was ironic that the Attorney-General and the Institute are proposing to widen the field of potential adoptive parents given that they recently promoted the liberalisation of Tasmanian abortion laws which, according to His Grace, is likely to further diminish the pool of available children.

Several respondents alleged that the impetus for reform in this area was the homosexual lobby group’s push for legal and social recognition of homosexual relationships, rather than the best interests of children. According to the Baptist Churches of Tasmania, the primary objective of gay and lesbian lobbyists ‘is not the maximization of children’s welfare but the gaining of political and social recognition of same sex partnerships as equal to marriage.’ Peter and Jenny Stokes expressed their belief that law reform is being investigated ‘because a vocal and organised minority group has set out to implement their radical agenda.’ Similarly Alan Greenwood, principal of the Community Christian Academy, argued that proponents of reform ‘are in truth pursuing an agenda of equal rights as opposed to the best possible outcome for children.’ Kilby and Chapman claimed that, in contrast to past adoption reforms allowing adoptees access to

birth records and open adoption, calls for reform to allow same sex adoption have not come from within the adoption field and have not been made by people who have been through the adoption process.

A number of respondents argued that the fact that same sex adoption is permitted in other jurisdictions does not mean that Tasmania should follow suit. Respondents argued that Tasmania should follow the majority of jurisdictions which do not allow same sex adoption. The Assemblies of God in Tasmania submitted that many overseas jurisdictions have maintained adoption laws which preclude adoption by same sex couples or have legislated to this effect, and that countries which do allow same sex adoption are more liberal than Australia on a wide range of issues. They claimed that 38 US states have legislated to prevent same sex adoption. Brian Beswick, on behalf of the Australian Christian Lobby, claimed that the amendments to Western Australian adoption laws to allow same sex adoption were rushed through with little public debate and as a result of deals between parties regarding changes in electoral boundaries. The Australian Christian Lobby argued that the Western Australian reforms have made the adoption process more onerous and bureaucratic and have made it difficult to construct an equitable policy for assessing parenting suitability. The Lobby cited anecdotal evidence that married couples have withdrawn from the adoption process because it has become too complicated.

Appendix B

Summary of responses to Issues Paper, Questions 1(b) - 3

Question 1(b):

If so, should the non-identifying profile of adopting parents specify the sexuality of the couple and should the birth parents be able to express a preference about the sexuality of the adopting parents?

The majority of respondents submitted that, if the Adoption Act is amended to permit adoption by same sex couples, the non-identifying profile of adopting parents should specify the sexuality of the couple and that the birth parents should be able to express a preference about the sexuality of the adopting parents. All the respondents but one²⁴⁸ who were opposed to same sex adoption, and a minority of respondents who favoured same sex adoption, took this position. The main argument advanced by respondents to support this position was that since birth parents are able to express a preference about race, religion and ethnic background, they should also be able to express a preference about sexuality. Another common argument was that consent to adoption by birth parents should be informed consent - birth parents should be given all relevant information about prospective adoptive parents before they consent to relinquishing their child. A number of respondents, including the Department of Health and Human Services, argued that the motivation of many or most birth parents for relinquishing their child is the desire for the child to have a mother and a father.

Many respondents – mainly opponents of same sex adoption - believed that birth parents should have the right to choose the sexuality of adoptive parents, rather than to merely express a preference about sexuality. Other respondents who were in favour of same sex adoption agreed that birth parents should be able to express a preference about sexual orientation as they can in relation to characteristics such as race, ethnicity and religion, but stressed that this should not be given undue weight. They argued that sexual orientation should just be one criterion that is considered along with other criteria, and should not be a disqualifying factor. Miranda Morris stressed that information about sexual orientation should not be presented to birth parents in a way that implies that it might be a problem or that same sex couples are less desirable than heterosexual couples. Some supporters of same sex adoption, including the Commissioner for Children, were in favour of allowing birth parents to express a preference about sexuality of adoptive parents but did not think that adoption applicants should be compelled to disclose their sexuality on non-identifying profiles. TasCAHRD, the Tasmanian Council on Aids, Hepatitis and Related Diseases, were undecided on this issue, but expressed concern that not including sexuality on the non-identifying profile of adoptive parents would make a same sex couple a ‘dirty’ topic, and that sexuality should not have to be hidden.

The Department of Health and Human Services and the Australian Family Association were both concerned that it would undermine the trust of relinquishing parents not to disclose the sexual orientation of prospective adoptive parents. The Department stressed that it is important that relinquishing parents be able to trust Department adoption officials when discussing adoption as it was a time of vulnerability for relinquishing parents. The Department noted that non-identifying profiles of couples specify many characteristics including age, family composition, length of marriage, occupation, religious practice, hobbies, sporting activities, region of residence, personality, ideas on parenting and attitudes towards contact or exchange of information. The Department submitted that sexual orientation of a prospective adoptive parent “is clearly an important part of that person’s make up.”

²⁴⁸ Peter and Judy Gross – see below.

Kilby and Chapman argued that involvement of relinquishing parents in choosing the type of adoptive family and upbringing that their child would receive is a basic right and aids recovery from the trauma of relinquishment. They further submitted that the knowledge that birth parents were involved in the selection of adoptive parents helps adopted children deal with identity and self worth issues. Pflag, supporters of same sex adoption, believed that it was fair for birth parents to have access to information and the opportunity to specify a preference about the sexuality of adopting parents because “adopting out one’s child is not an easy process”. On behalf of Pflag, Els McIntosh submitted:

I look forward to a future where the genders of the adopting couple will not be an issue for anyone. However, we do not live in a perfect world free of all prejudices, and I think that it is the right of the parents to have their child placed in an environment that they feel most comfortable with.

Gail May, also a supporter of same sex adoption, was in favour of specifying sexuality of adoptive parents on their non-identifying profile and allowing birth parents to express a preference about sexuality because this would allow for positive discrimination in favour of same sex couples. However, she argued that the adoption assessment process should involve educating birth parents that same sex couples are no different to other parents, and should be checked for inadvertent or covert discrimination against same sex couples.

A minority of respondents did not think that the non-identifying profile of adopting parents should specify the sexuality of the couple or that birth parents should be able to express a preference about the sexuality of the adopting parents. All of these respondents were supporters of same sex adoption, except Peter and Judy Gross who did not think birth parents should be able to express a preference about sexuality of adopting parents because this would allow birth parents to choose to give a child to a homosexual couple.

The main argument advanced by respondents was that sexuality is irrelevant to parenting capacity. Therefore, there is no need to include sexuality on adoptive parents’ non-identifying profiles and it would be discriminatory to allow birth parents to express a preference about sexuality of adoptive parents. An anonymous respondent argued that sexuality does not indicate a family’s culture, way of life, or attitudes to children, family and parenting. The respondent argued that married adoptive parents may be bisexual, homosexual or asexual but they are not required to disclose this, thus it would be unreasonable to require other couples to disclose their sexuality. Kristen Walker argued that relinquishing parents should have no right to discriminate against others on irrational bases. She hypothesised that the wish of a relinquishing parent that her child not be adopted by an Asian family would not be respected, and that for an adopting agency to act in accordance with such a wish might constitute a breach of the Commonwealth *Racial Discrimination Act 1974*. She submitted:

Thus, once it is accepted that the best interests of the child may be served by placing the child in a same-sex family, there is simply no basis for permitting relinquishing parents to dictate the sexual preference of the adopting parents. In other areas of life we do not permit individuals to dictate discriminatory policies to government agencies and adoption should be no different.

Ms Walker further argued that birth parents should not be allowed to express a preference about sexuality of adopting parents because the fundamental purpose of the Adoption Act is to give effect to the best interests of children rather than the wishes of relinquishing parents. The Hobart Women’s Health Centre and Hayley Tristram also made this point.

Some respondents were concerned that allowing birth parents to express a preference about sexuality of adoptive parents would encourage prejudice and discrimination against same sex couples. Dr Barbara Baird argued that this would ‘allow and encourage ill-informed and prejudiced beliefs about parenting’, while Peter Hammond submitted: ‘If the birth parent’s preference is permitted to be based on discriminatory criteria then the amended law will merely legally enshrine bias and bigotry.’

The Tasmanian Greens submitted that the fact that religion, race and ethnic background may be specified on adoptive parents’ non-identifying profiles is not justification for allowing sexuality to be specified. The Greens argued that the specification of these factors may be discriminatory, and that this may be a separate issue that the Institute should investigate in the future. The Tasmanian Gay and Lesbian Rights Group

argued that sexuality can be distinguished from other characteristics that are currently specified on non-identifying profiles. They submitted:

Religion, socio-economic background and language are all features of individual personality and identity which are culturally endowed, making it necessary to place children in particular home environments in order for them to acquire these characteristics. Sexual orientation, on the other hand, is a deeply set part of an individual's personality which is not determined by his or her cultural inheritance or home environment. This means that placement of a child with any particular family type has no influence or bearing on that child's sexual orientation.

Like sexual orientation, ethnicity and race are more fixed, but unlike sexual orientation, which is only evident at puberty, and sometimes long after, ethnicity and race are evident, and part of an individual's identity, from birth. This means that, in contrast to a child's racial identity, it is impossible at least until adolescence to know what particular family type, if any, will have the most beneficial effect on the development of a child's sexual identity. The stress here is on "if any". Most gay and lesbian people grow up with heterosexual parents and most children of gay and lesbian people grow up to be heterosexual, in the overwhelming number of cases without any detrimental effects on the children involved.

In short family make-up and sexual orientation is, in and of itself, completely irrelevant to what an adoptive child's sexual orientation will be, what sexual identity she or he will form and how well adjusted that sexual identity will be

Dr Barbara Baird advanced similar arguments to support her position that relinquishing parents should *only* be able to express a preference in favour of same sex adoptive parents. According to her argument, religion, race and ethnicity are 'aspects of culture that parents pass to their children'. Birth parents of minority religion, race or ethnicity may want their child to be raised in their culture "in order to continue and strengthen the social presence of that culture, or to sustain a link for the child to the culture of its biological parents." Conversely, sexual identity is not something that parents pass to their children since sexuality of parents has no bearing on sexuality of children. She also distinguished sexuality from factors such as music, sport and gardening on the grounds that 'they are not loaded with the cultural baggage that expressing preferences for heterosexual adoptive parents is.'

On the other hand, Dr Baird argued that parallels can be drawn between expressing a preference for a lesbian or gay adoptive family and expressing a preference for adoptive parents of the same religion, race or ethnicity. She submitted:

A biological mother who identifies as a lesbian, or who has come from a lesbian or gay family herself, for example, may wish for her child to be raised in a similar family, for reasons indeed similar to those I hypothesised above in relation to minority race, ethnic or religious communities. That is, such a biological parent may wish for her child the same minority cultural background as that in which she was raised, and/or she may wish to support the social strength and presence of gay and lesbian families.

Question 1(c):

If not, should the *Adoption Act s 20(6)* be amended to allow 'known' child adoption orders to be made in favour of any couple regardless of the genders of the partners making up the couple?

Some respondents were in favour of amending the Adoption Act to allow 'known' child adoption orders to be made in favour of the same sex partner of a child's natural parent in the event that the Act is not amended to allow adoption by same sex couples generally. All of these respondents were supporters of same sex adoption generally, except for Jo Kelder who argued that this is a "special case" in which same sex adoption is suitable because it provides legal protection to existing situations. However, many of these respondents stressed that this reform option was not as desirable as reform to allow adoption by same sex couples generally, and some respondents did not seem to realise that this option was proposed as an alternative rather than a supplementary reform option.

The main reason respondents supported amendment of the Adoption Act to allow 'known' child same sex adoption was that it would give legal recognition and protection to children and parents already living in same sex families. This point was also commonly argued in support of same sex adoption generally and is outlined in more detail above.

Other respondents were opposed to this reform. 4 of these respondents were supporters of same sex adoption generally, but they did not agree with amending the Act to make 'known' child adoption the only circumstance in which same sex parents may adopt, even as a second preference to amending the Act to allow same sex adoption generally. The Hobart Women's Health Centre, the Tasmanian Gay and Lesbian Rights Group and Gay Mail argued that this reform would be discriminatory, and would not address issues such as homophobia and discrimination against same sex parents and their children. The Tasmanian Gay and Lesbian Rights Group argued that "full equality is essential." The Family Law Practitioners' Association of Tasmania was opposed to this reform because of the low likelihood that 'known' child adoption orders would be made in favour of same sex couples in practice. The Association's experience is that 'known' child adoption orders are uncommon because it is difficult to show that an adoption order would better serve the welfare of the child than a residence order in the Family Court and because it is difficult to prove 'special circumstances' as required by the Act. The Department of Health and Human Services also submitted that obstacles to 'known' child adoption orders would make such orders in favour of same sex parents unlikely.

The remainder of respondents opposed to this reform were also opposed to adoption by same sex couples generally. These respondents mainly relied on the same arguments posed in opposition to same sex adoption generally. However, some arguments specific to 'known' child adoption by same sex couples were raised.

A number of respondents were concerned that allowing 'known' child adoption by same sex partners of natural parents would encourage IVF, sperm trading and surrogacy. Respondents argued that these practices treat children as commodities, and that children conceived by these methods suffer long-term identity problems because they lack knowledge of their genetic history.

The Department of Health and Human Services expressed concern that 'known' child adoption may be used to hide from a child the truth about the circumstances of his or her birth, and that the rights of birth parents might be denied. The Department submitted that if the Act is amended to allow 'known' child adoption by the same sex partners of natural parents, the right of a child who is the subject of a known child adoption order to know its genetic history should be protected.

The Department argued that adoption of a 'known' child by the same sex partner of a natural parent would create the legal fiction that the child's birth certificate would record the child as having two parents of the same sex. The Department, along with several other respondents, also submitted that there are superior alternatives to 'known' child adoption orders, such as Family Court parenting and residence orders, which provide greater flexibility.

Question 2:

Should the length of the relationship for eligibility for adoption be changed?

All respondents but two were opposed to, or ambivalent about, changing the length of the relationship for eligibility for adoption. Peter Tierney and the Salt Shakers – opponents of same sex adoption – thought that the length of relationship should be extended if adoption eligibility is granted to same sex couples. Peter Tierney thought that it should be extended to five years for unmarried couples, while the Salt Shakers submitted that it should be 'MUCH longer.' Peter Tierney argued that a longer period is necessary in the absence of the formal requirements of marriage which act as safeguards for stability of relationships and certainty of living arrangements. The Department of Health and Human Services was ambivalent,

submitting that a longer length of relationship would provide greater assurance of, but would not guarantee, stability.

Many respondents expressed opposition to changing the required length of relationship. Most respondent simply asserted that the current length is reasonable. Some respondents argued that the stability rather than length of relationship should be the focus of adoption assessment. Proponents of same sex adoption were only concerned that the length of relationship requirement be the same for same sex as for heterosexual couples. TasCAHRD argued that most jurisdictions have a two or three year requirement, and suggested that extension of the requirement is only being considered because of the possibility of same sex adoption and the perception that same sex relationships are not as enduring as heterosexual relationships.

Question 3:

Should any other qualifications for adopting couples be included in the Act?

Only two respondents proposed additional qualifications for adopting couples. Lindsay Smith suggested that adopting couples should be required to undergo parenting education, or, if they already have parenting experience, they should be required to demonstrate that they have developed parenting skills. Dennis Cook recommended that adopting parents be required to undergo blood tests and health checks.

Appendix C

List of original respondents to Issues Paper

IN FAVOUR OF REFORM

Responses over 3 pages

1. Benedict Bartl
2. Dion Butler; tasCAHRD
3. Rodney Croome; the Tasmanian Gay and Lesbian Rights Group
4. Sandra Mackintosh and Mauria Sutherland
5. Els McIntosh, West Hobart; Pflag
6. Nick McKim; the Tasmanian Greens
7. Julian Punch
8. Kristen Walker
9. Commissioner for Children

Responses less than 3 pages

10. Alex Bainbridge
11. Barbara Baird
12. Barbara Baker; The Family Law Practitioners Association of Tasmania
13. Juliet Behrens
14. Richard Bingham; Department of Justice and Industrial Relations
15. Patricia Bock
16. Wanda Buza; Women Tasmania
17. Julieanne Campbell; the Women's Health Centre
18. Stephen Couling
19. Peter de Waal
20. Martine Delaney
21. Peter Dowde
22. Jane Dunsford
23. Paul Fleming
24. Felicity Gifford
25. Wallace Gorell
26. Brian Greig; Australian Democrats, WA
27. Peter Hammond

28. Theresa Hanson
29. Sandra Harvey
30. Sue Henderson
31. Jason Hoare
32. Roslyn Houston
33. Sherrill Ives
34. Janine Kemp
35. Janet Long and Shirley Robertson
36. Roger Lovell
37. Jenni Millbank
38. Gail May
39. Shelley Moor
40. Wayne Morgan
41. Miranda Morris
42. Pamela Neeson
43. Louise Pratt
44. Phillip Reeve
45. Julieanne Richards
46. Emma Schneiders
47. Mara Schneiders
48. Jenni Sharman
49. Bec Star
50. Judy and David Thirkell
51. Rebecca Thompson
52. Hayley Tristram
53. Jennifer Van-Achteren
54. Jan Von See
55. Damian Voss
56. Karen Willis
57. Paul Willis and Johnathan Pare; Working It Out
58. Leanna Wilson
59. Daniel Witthaus
60. Marg, Marita, Marion and Jo; Northern Sexual Assault Support Service
61. Shannon and Elizabeth
62. Anonymous

AGAINST REFORM

63. – 71. responses sent in by multiple people (list of names in Appendix D)
72. Adrian Doyle, Archdiocese of Hobart

73. Patricia Gartlan, the Catholic Women's Legue (Tas)
74. Peter and Judy Gross
75. Clem Kilby, and Archdiocese of Hobart
76. Eric Lockett, Baptist Churches of Tasmania
77. Marie Nibbs
78. Geoffrey and Jennifer Powell
79. Jacqueline and Jeremy Prichard
80. J Ramsey, Department of Health and Human Services
81. Lindsey Smith
82. Eris Smyth, Australian Family Association - Tasmanian Branch
83. Matias Socorro
84. Peter and Jenny Stokes
85. Ron Wilson, The Assemblies of God
86. Erin Wooley
87. Mary Wright
88. The Australian Christian Lobby
89. The Festival of Light

Responses less than 3 pages

90. B Archer
91. Bruce and Bernadette Archer,
92. Les Batchelor
93. Brian Beswick
94. Brian Bosveld
95. Wayne Brooks
96. Roger, Anne and James Brewer
97. Rosevears
98. Mark Brown
99. Wendy Burbury
100. C and A Burger
101. Hazel Bushby
102. Lorraine Cairns
103. Pria Cairns
104. Ursula Clarke
105. Briget Connor, Sandy Bay
106. Darryl and Snezana Cook,
107. Lenah Valley
108. Dennis Cook, Loria

- | | | |
|------------------------------------|----------------------------------|----------------------------------|
| 109. Y Curwen | 139. Johanna Korieczewski | 169. Keith and Judith Starkey |
| 110. M Davis | 140. Rosemary Laredo | 170. Marcus and Marie Steel |
| 111. Mieke de Vries, | 141. Gregory Lewis | 171. Bernie Tarr |
| 112. Karen Dickson, | 142. Reg Livermore | 172. Dustin Thompson |
| 113. Patricia Dove, | 143. Shane Matthews | 173. Peter Tierney |
| 114. Adam Dunn, | 144. J McCarthy | 174. Yvonne Tilley |
| 115. Pamela Edmondson, | 145. Danielle McConn | 175. John Tongue |
| 116. William Edmondson, | 146. Dianna McCormack | 176. Graeme Townsend |
| 117. Chris Evenhuis, | 147. Johanna McDonald | 177. Janice Troughton |
| 118. Michael Ferguson, | 148. Sirpa McDonald | 178. S Turner |
| 119. Martin Filleul, | 149. Jon Nairn | 179. Rosemary van Emmerick, |
| 120. H Featherstone | 150. Steve Nicholson | 180. Anne Vincent |
| 121. Jane Flach, | 151. Jenny North | 181. Michael Vos |
| 122. Bill and Rosemary Fox | 152. Brett O'Shannesy | 182. Walter Wagner |
| 123. Peter Gill, Sandy Bay | 153. Debbie Parnell, Hobart | 183. Carol Walker |
| 124. Alan Greenwood, Launceston | 154. Anthea Patterson | 184. R and C Waller |
| 125. J Guinane, New Town | 155. Peter Pinder, | 185. Derek Walter |
| 126. Win and Alan Gurr, Riversidel | 156. and the City Baptist Church | 186. Margaret Watts |
| 127. Patricia Harb, Sandy Bay | 157. Graeme Pitt, | 187. Dan Wheeler, |
| 128. Amanda Harman, Riverside | 158. Max Polak, | 188. Les Whittle |
| 129. D Hatton | 159. James Poland, | 189. David Wiggins |
| 130. Ebony Hawkins | 160. Geoffrey Powell, | 190. Max Wills |
| 131. Rachelle Hawkins | 161. Phil and Elizabeth Prebble | 191. Gordon Yearsley |
| 132. Gareth Higgins | 162. Ken and Gae Preece, | 192. Wendy Young |
| 133. Hilde Hoogenhout | 163. Catherine Priest, | 193. 5 anonymous or confidential |
| 134. Ian and Jan Howard | 164. Margaret and John Randall | respondents |
| 135. Lorna Hutchin | 165. Mark Salmon, | |
| 136. Diana Hutchinson | 166. Olga Scully, | |
| 137. Jillian Jubb | 167. John and Joan Slater | |
| 138. Jo Kelder | 168. R Smith, | |

Appendix D

List of people who sent multiple responses or signed a petition

Letter sent by 957 people:

1. B and W Adams, Bridport
2. Amanda Adams, Newnham
3. P Akam
4. Chris Anderson, Youngtown
5. Dale Anderson, Youngtown
6. Lyn Anderson, Prospect
7. Robyn Anderson
8. W Anderson, Riverside
9. Lara Anthony, Launceston
10. Peter Arnot, Kings Meadows
11. Fiona Artis, Kings Meadows
12. Diana Ashdown, Legana
13. Christine Ashton, Launceston
14. Hayley Atkinson, Longford
15. Robyn Atkinson, Trevallyn
16. Arnold Austin
17. Barbara Austin, Legana
18. James Austin, Trevallyn
19. Rodney Badcock, Westbury
20. Colin Bailey, Deviot
21. Anne Bailey
22. Maureen Bailey, Deviot
23. Patrick Bailey
24. Caroline Bain, Trevallyn
25. Darryl Bain, Trevallyn
26. Ken Baker, Blackstone Heights
27. David and Linda Barber
28. E Barber
29. Danny Barker, Launceston
30. Mary Barnard, Bridport
31. Claire Barnes, Moonah
32. Don Barns, Youngtown
33. Adrian Baron, Kings Meadows
34. Shirley Barry, Prospect
35. C Bassen, Launceston
36. Byron Bassett, Newnham
37. B Beatie, Blackmans Bay
38. Greg Beeston, Launceston
39. Phillip Beeston, Newnham
40. Rebecca Beeston, Newnham
41. Rosalie Beeston, Youngtown
42. Blanche Bejah, Grindelwald
43. Ebony Bejah, Grindelwald
44. Richard Bejah, Grindelwald
45. Whitley Bejah, Grindelwald
46. P Bellinger, Westbury
47. L Bennefield, Invermay
48. Andrew Bennett
49. Henry Bennett
50. Margaret Bennett
51. Ricky Bennion, Waterloo
52. Vanessa Berezansky, Rosny Point
53. C Bergman, Riverside
54. L P Bergman, Riverside
55. Julie Berry, Glenorchy
56. Janine Bester, New Norfolk
57. Kriste Bester, Newnham
58. Alex Bigham, West Launceston
59. Barbara and John Bigham, Mt Direction
60. Jeanette Bigham, West Launceston
61. Peter Bigham, West Launceston
62. L Bird, Geeveston
63. S Bird, Mt. Stuart
64. Anne Bishop, Rokeby
65. Alison Blackberry
66. Pauline Blackberry, Birralea
67. Audrey Blake, Blackstone Heights
68. Derek Blake, Blackstone Heights
69. Nick Blaubaum, Launceston
70. Beverly Blazely, Riverside
71. Esa Blazely, West Launceston
72. Gregory Blazely, West Launceston
73. Patricia Blazely, Hadspen
74. Wayne Blazely, Hadspen
75. Phillip Blenkiron, Launceston
76. C L B Blundell, South Launceston
77. R M Blundell, South Launceston
78. Geoff and Alicia Bongers, Legana
79. Emily Booth, St Leonards
80. Rachel Boric, Prospect
81. Timothy Boric, Prospect
82. L Bosker, Launceston
83. N and H Bosker, Grindelwald
84. Clare Bosveld, Riverside
85. Edward Bosveld, Legana
86. Joel Bosveld, Riverside
87. Melinda Bosveld, Riverside
88. Nathan Bosveld, Riverside
89. Susanna Bowden, Launceston
90. Janette Boyle, Lanena
91. Tony Boyle, Lanena
92. Y Bradford, West Launceston
93. J and Marc, Brain Riverside
94. Florence, Brooks
95. K Brooks, Launceston
96. Lyn Brown, Launceston
97. R Brown, Norwood
98. Sue Brown, Trevallyn
99. T Brown, Lucaston
100. Marion Brumby, Launceston
101. Jean Brunning, Legana
102. Richard Brunning, Legana
103. Debbie Buckland, Winkleigh
104. Brenda Burgess, Lindisfarne
105. GH Burgess, Lindisfarne
106. S and W Burgess
107. C A Burk, Trevallyn
108. Catherine Burk, Trevallyn
109. Richard Burk, Trevallyn
110. L Burns, Geeveston
111. Timothy Burns, Mowbray
112. D and L Burt, Lauderdale
113. Harold Bushby, Beaconsfield
114. Catherine Butler, Norwood
115. R Butler, Norwood
116. Elaine Butters, Riverside
117. Tony Butters, Riverside
118. Peter Button
119. Cathryn Bye, Newnham
120. Ross Byers, West Launceston
121. Shirley and Donald, Caeloas
122. A Cairns, Hillwood
123. P Calder, Lenah Valley
124. Paul Calverly, Blackmans Bay
125. Noel Cameron, Launceston
126. Alan Campbell, Georgetown
127. Ian Campbell, West Launceston
128. Jean Campbell
129. Natalie Campbell, West Launceston
130. J Candelone, Blackmans Bay
131. C Cannon, Launceston
132. Leonard Cannon, Launceston
133. P and M Carey, Launceston
134. Wesley Carpenter, South Hobart
135. Anne Carr, Launceston
136. Elizabeth Carr, Launceston
137. Marion Carter, Geeveston
138. Richard Carter
139. Samuel Carter, Geeveston
140. Lisa Casey, Dover
141. Daniel Cawthorn
142. Lisa-Marie Chamberlin, Riverside
143. Matri Chamberlin, Riverside
144. H Chesterman, Dover
145. R Chesterman, Dover
146. David Chew, Launceston
147. Peh Choon Whee, Mowbray
148. Reg Chopping, Ellendale
149. Kylie Christian, Rosny Park
150. Ann Clark, Summerhill
151. Wendy Clark, Old Beach
152. Ernest Clarke, Youngtown
153. Gary Clarke, Launceston
154. Helen Clarke, Launceston
155. Jane Clarke, Kingston
156. Tobias Clarke, Newnham
157. J Clayton, Launceston
158. Mervyn and Pat Clayton, Launceston
159. Donald Cleaver, South Launceston
160. L Cleaver, Howrah
161. Peggy Cleaver, South Launceston
162. Rosanne Cleaver, Dover
163. Phill and Louise Clifford, Youngtown
164. Christine Cloudsdale, Georgetown
165. Erin Cloudsdale
166. James Cloudsdale, Georgetown
167. Jaymes Coad, Margate
168. Katie Colebrook, West Launceston
169. Bernice Coleman, Lenah Valley
170. Ian Colgrave, Launceston
171. Adam Collings, Legana
172. Ann Collings, Legana
173. David Collings, Legana
174. Matthew Collings, Legana
175. Amy Colman, Launceston
176. Stuart Comer, Launceston
177. Florence Connon, Gagebrook
178. Adrian Cooper, Summerhill
179. Heather Cooper, Summerhill
180. Leonie Cooper-Baker, Blackstone Heights
181. Kim Corbett, Trevallyn
182. Jo Cornish, Newstead
183. Richard Cossins, Invermay
184. Ryan Cottrell, Newstead
185. Stuart Cottrell, Launceston
186. Heather Cox, Riverside

187. Paul Cox, Riverside
188. Bruce Crawford, Kings Meadows
189. Ruth Crawford, North Hobart
190. Kath Crawford, Kings Meadows
191. D Creise
192. Josephine Crisp, Invermay
193. M Crump
194. Hilary Cure, Sandy Bay
195. Anita Curwen, Riverside
196. B Curwen
197. Linda Curwen
198. Peter Cuthbertson, Riverside
199. S Cuthertson, Launceston
200. S Dale, Roches Beach
201. Steve Dale, Roches Beach
202. A Daly
203. Jennifer Daniel, Launceston
204. Thelma Daniel, Launceston
205. A Daniels
206. Barbara Davidson, Launceston
207. BJ Davidson, Howrah
208. D Davis, Launceston
209. S Davis, Trevallyn
210. J Davison
211. Harry and Anne De Jong
212. Cathy de la Motte, Ravenswood
213. Glenn de la Motte, Ravenswood
214. M Deadon
215. Andrew Dean, Newnham
216. C Dean
217. Rachel Dean, Youngtown
218. CC Debrah
219. Alistar Denholm, Newstead
220. Anita Denholm, Newstead
221. Ewan Denholm, Newstead
222. Paul Deresso
223. Karl Devine, South Launceston
224. Linda Dewar, Invermay
225. Ronald Dickman, Latrobe
226. K Dickson, Rosevears
227. Peter Dix, Blackstone Heights
228. Trish Dix, Blackstone Heights
229. William Dobson, Launceston
230. Peter Doddy, Trevallyn
231. Anita Donald, Prospect
232. Ron Donges, Perth
233. Ian Donnarch, Launceston
234. Claire Donohue, Poatina
235. Kevin Donohue, Georgetown
236. Rebecca Doumouras, Blackstone Heights
237. AM Dreissen, Geeveston
238. G Danbury Drew, Riverside
239. Kirsten Drew Glen, Waverley
240. Helen Driessen, Franklin
241. W Driessen, Franklin
242. John Drummond, Glenorchy
243. A Drury, Riverside
244. Rhona Drury
245. Henry Dubbeld, Trevallyn
246. Lee Duetzmann, West Launceston
247. J Duff
248. Rowena Duffy, Blackmans Bay
249. Jeremy Dunham
250. Jessica Dunnings, Newnham
251. J Dunston
252. P Dunston
253. Gordon Dutton
254. Olive Dutton
255. A Dykman
256. JM Dylotra, Lower Longley
257. Jody East, Windermere
258. Summer Edmunds, Norwood
259. Edwards, Old Beach
260. Peter and Rosemary, Emmerik
261. BL Evans
262. Mark Evans, South Launceston
263. Melinda Evans, Riverside
264. Andrew Fair, Launceston
265. Ann Fair, Launceston
266. Ben Fair, Launceston
267. Emma Fair, Newstead
268. Jason Faulkner, Prospect
269. Rosemary Faulkner, Prospect
270. Glenda Fellow, Newstead
271. Glenn Ferguson, Geilston Bay
272. Mark and Pamela, Ferretti
273. M Filleul, Legana
274. Ian Findlay
275. K Fisher, Sorell
276. Karen Fitzallen, Trevallyn
277. Stephen Fitzallen, Launceston
278. R Fitzpatrick, West Moonah
279. Hedley Fleming, Legana
280. Joan Fleming, Legana
281. Geoffrey Foot
282. Mollie Foot
283. Kerry Forrest, East Launceston
284. Annette Foster, Port Huon
285. Jeffrey Foster, Riverside
286. Kathleen Foster, Riverside
287. Rick Foster, Port Huon
288. Rod Fowe, Sandy Bay
289. Glennis Fox, Youngtown
290. K Francis
291. Philip Francis
292. Joshua Fry, Riverside
293. Kathy Fry, Launceston
294. Irene Fulton, Riverside
295. L Fulton, Riverside
296. K Gangell, Bellerive
297. Jemma Gardam, Trevallyn
298. Jenny Gardam, Launceston
299. Phenton Gardam, Launceston
300. Mathew Gardner
301. G Garney, Dover
302. Elizabeth Garwood
303. Karen Gaubutt, Sorell
304. L.K Gaurly, Moonah
305. Heather Geater, Launceston
306. Anthony Geeves, Launceston
307. Ellena Geeves, South Launceston
308. Simon George, Moonah
309. Shirley Gibson, West Launceston
310. S and R Goeist, Riverside
311. Kathryn Goldstone-James, Launceston
312. P Goldstone-James, Kings Meadows
313. Dorothy Goodfrey, Hobart
314. Gail Gordon, Cradoc
315. J Graafland, Legana
316. Brian Grandfield, Beauty Point
317. J Grandfield, Beauty Point
318. B Graueley, Lindisfarne
319. J Gray, Mowbray
320. T Gray
321. Dainne Green, Summerhill
322. David Green, Greens Beach
323. Jeffrey Green, Newstead
324. Michelle Green, Newstead
325. Dianne Greeney, Kingston
326. Mark Greeney, Kingston
327. Caroline Greenwood, Norwood
328. Lachlan Grierson, Oakdowns
329. Peter Grimditch, Underwood
330. W Grossman, Norwood
331. M Grubb, Riverside
332. Sarah Grubb, Riverside
333. John Hallam, St Leonards
334. Anthony Halley, St Leonards
335. Jenny Halley, St Leonards
336. Geoffrey Hamilton
337. J Hamilton
338. M Hamilton
339. Mick Hammond, Kings Meadows
340. John and Denise Hannaford, Legana
341. Anne-Marie Harback, Trevallyn
342. Anon
343. Din Harcourt
344. Stephen Harding, South Launceston
345. Mark Hardy, Newnham
346. Tina Hardy, Newnham
347. Alan Harris, Riverside
348. Joye Harris, Launceston
349. Paul Hart, Penguin
350. S Hart, Legana
351. Z Hartley, Legana
352. B and S, Hartoe Kingston
353. Halina Haslam, Summerhill
354. D Hatton, St Helens
355. J Hatton, St Helens
356. Catherine Hayden, West Launceston
357. Ivan Haynes, Newstead
358. G Hays, Youngtown
359. M Hays, Youngtown
360. Aaron Heier, Mt Nelson
361. C Heier, Norwood
362. Coral Heier
363. Dean Heine, Launceston
364. Leonie Hemelarr, Riverside
365. Michael Hicks, Prospect
366. Colin Hill, Riverside
367. Katie Hill, Riverside
368. Lisa Hill, Riverside
369. R L Hill, Riverside
370. Stephen Hill, West Launceston
371. Greg Hillier, Norwood
372. Joshua, Hilton
373. Greg Hingston, Newnham
374. Jossie Hocking, Norwood
375. Anthony Hocton, Riverside
376. Linda Hohnke, West Launceston
377. Karyn Holbein, Newnham
378. Elaine Holl, Howrah
379. H Holl, Howrah
380. J Holliday, Deloraine
381. A Holloway, Norwood
382. David Holloway, Launceston
383. Anthony Homelaar
384. Anthony Hoogenhout, Blackmans Bay
385. Hilde Hoogenhout, Riverside
386. Benjamin Horder, Legana
387. KE Horder, Blackwall
388. Rachel Houston, Kingston
389. GC Houston, Kings Meadows
390. Nathan How, Kingston
391. Alan Howard, Seven Mile Beach
392. Anthony Howard, Summerhill
393. Belinda Howard, Launceston
394. Owen Howard, Launceston
395. S Howard
396. M Howell, Newstead
397. R Howell, Newstead
398. Austin Hudson, Summerhill
399. Jenny Hughes, Hadspen
400. M Humphries, Newstead
401. Cynthia Hurst, Lutana
402. Owen Ingles, Swanport
403. B Irvine, Launceston
404. Pamela J
405. Jack Bellerive
406. Robert Jackway
407. Jesse Jaconetti, Margate

408. D and J Jacques, Mornington
 409. A James, Old Beach
 410. Alanna Jansen, East Launceston
 411. John Janssen, Blackmans Bay
 412. Debbie Jefferies, Nabowla
 413. Kritina Jessup, Launceston
 414. Robyn Jessup, Riverside
 415. G Jones, Spreyton
 416. H D Jones, Devonport
 417. J Jones, Prospect
 418. Julie Jones, Legana
 419. Rev Kevin Jones, Spreyton
 420. Constance Joostie
 421. Michael Josephson, West Launceston
 422. Renne Josephson, West Launceston
 423. David Kaluber, Trevallyn
 424. JK Kean, Lauderdale
 425. C Keeling
 426. Paul Keety, South Hobart
 427. H Kelly, Riverside
 428. Joan Kelly, Riverside
 429. T Kelp, Mowbray
 430. D Kemp, Prospect
 431. Joy Kemp, Prospect
 432. Constance Kennedy, Norwood
 433. Julie Kenny, West Launceston
 434. Paul Kenny, West Launceston
 435. A Kent, Riverside
 436. Edna Kent, Exeter
 437. Greg Kent, Riverside
 438. Walter Kent, Exeter
 439. Janet Kerrison, Trevallyn
 440. Nicole Kerrison, Riverside
 441. Wayne Kerrison, Launceston
 442. Ivan Khoo, Burnie
 443. Lynda Khoo, Burnie
 444. A and M King, Riverside
 445. Michelle King, West Launceston
 446. Colin Kitto, Riverside
 447. Nita Kitto, Rokeby
 448. Alison Knight, Windermere
 449. Greg Knight, Windermere
 450. Ben Kromkamp, Newnham
 451. Katie Kromkamp, Newnham
 452. Daniel Kroon, Mowbray
 453. Fiona Kuhl, Riverside
 454. Howard Kuhl, Riverside
 455. Margaret Kuhl, Riverside
 456. Paul Kulla
 457. Sari Kuronen
 458. Ann Lade, Launceston
 459. Michela Lance, West Launceston
 460. Mark Lane, West Launceston
 461. Wendy Lane, West Launceston
 462. Joanne Lang
 463. Anne Langlois, Acton Park
 464. Luke Langlois, Acton Park
 465. David Laning, Kingston
 466. H Laning, Kingston Beach
 467. Nicholas Laning, Kingston
 468. Brain Latta, Hillwood
 469. Linda Latta, Hillwood
 470. James Lauham, Launceston
 471. Claire Lawrence, South Launceston
 472. Colin Lawrence, Trevallyn
 473. Danielle Le Rossignol, West Launceston
 474. Amy Lees
 475. Lindy Lees, Riverside
 476. Sally Leeson, Newstead
 477. Jann Lefeure, Launceston
 478. Ann Leggett, West Launceston
 479. Bill Leggett, West Launceston
 480. Denise Leggett
 481. Diane Lennon, West Launceston
 482. Dianne Leslie
 483. W Leslie
 484. Margaret Letter, Legana
 485. TS and JG Levett, Burnie
 486. JA Levis
 487. Faye Lewis, Gagebrook
 488. Tanya Lewis, Launceston
 489. Sarah Li, Riverside
 490. M and C Lichendonk, Riverside
 491. Marissa Lichendonk, Riverside
 492. B and C Lichtenjonk, Riverside
 493. Dan Lockhart
 494. Deanna Lockhart
 495. Richard Lockhart, Launceston
 496. George Loughborough, Beaconsfield
 497. K Loughborough, Greens Beach
 498. Margaret Loughborough, Beaconsfield
 499. Issac Lucas, Kingston
 500. N Luciani, Launceston
 501. Maureen Luck, Norwood
 502. Trevor Luck, Norwood
 503. Bonny Lunnon, Riverside
 504. Tim Lunnon, Launceston
 505. Timothy Lunnon, Riverside
 506. Kardyn Lunson, Newnham
 507. Chris Macausland
 508. RM Macausland
 509. S MacKenzie
 510. Merylyn Mackrill, Newnham
 511. Murray MacPherson, Trevallyn
 512. Maxine Madden, Devon Hills
 513. Rachael Madden, Mt Nelson
 514. Robert Madden, Devon Hills
 515. Stephen Madden, Devon Hills
 516. Karen Mahlen, Sorell
 517. Dion Maker, Launceston
 518. Robbie Manning, Huonville
 519. DW Marsh, Mayfield
 520. Christine Marshall, Prospect
 521. Angela Martin, Grindelwald
 522. Linden Martin, Grindelwald
 523. Patricia Mason, Summerhill
 524. Troy Mason, Summerhill
 525. John Masterman, Launceston
 526. Marlene Masterman, Launceston
 527. Gene Mawer, Newstead
 528. Julia McAvay, Newstead
 529. Amy McCabe, Rosevears
 530. Cathy McCabe, Rosevears
 531. Kurt McCabe, Rosevears
 532. D McCauley
 533. Sue McClarren, Trevallyn
 534. Mark Mccrorie, West Moonah
 535. Christine McCullagh, Legana
 536. Shane McCullagh, Legana
 537. Alec McGregor, Norwood
 538. W McGrelloch, Geilston Bay
 539. Judy McKensie, Invermay
 540. Chantelle McKenzie, Launceston
 541. Debbie McKenzie, Launceston
 542. Barbara McMillan, Exeter
 543. JR McQueen, Newstead
 544. Kay McQueen, Mowbray
 545. Hamish McWilliam, Highton, Victoria
 546. D Meech, Launceston
 547. Lucy Meech, Norwood
 548. L Mellows, Exeter
 549. R Mellows, Exeter
 550. Dorothy Menzies, Deviot
 551. Phil Merrigan, Sandford
 552. Maryann Midson, Norwood
 553. Rodney Midson
 554. Stuart Midson Norwood
 555. John Mieterion, Launceston
 556. B Miller, Strathblane
 557. Caroline Miller, Newnham
 558. Daniel Miller, Strathblane
 559. George Miller, Raminea
 560. Hannah Miller
 561. Isobel Miller, Raminea
 562. Naomi Miller, Dover
 563. Sarah Miller
 564. Daniel Misdom, South Launceston
 565. Heather Misdom, Newnham
 566. Kristie-Lee Misdom, South Launceston
 567. Amy Moody, Waverly
 568. L Moore
 569. Shane Moore, Margate
 570. John Moorhouse, Launceston
 571. Jarryd Moran, Blackmans Bay
 572. R Morgan, Newstead
 573. Elspeth Moroni, Norwood
 574. Paul Morrison, Prospect
 575. Ruth Morrison, Launceston
 576. Graham Mulligan, Launceston
 577. K Munro, Norwood
 578. Lisa Murphy, Riverside
 579. A Muskett, Howrah
 580. George Muskett, Lauderdale
 581. Patricia Muskett, Lauderdale
 582. Kevin Newbold, Newnham
 583. Glenn Noble, Claremont
 584. Lyn Normington, Trevallyn
 585. Mike Normington, Trevallyn
 586. Pamela Norris, Dover
 587. J Nott, Norwood
 588. Barbara Nunn, Rokeby
 589. Andrew Oakman, Youngtown
 590. Joanne Oakman, Youngtown
 591. Jarrah O'Brian, Newnham
 592. Michelle O'Donovan, Legana
 593. Gary O'Keefe, Prospect
 594. Allan Orr, Kings Meadows
 595. D Orr, Kings Meadows
 596. Adele Osborne, West Launceston
 597. Terry Osborne, West Launceston
 598. S Otaroan, Rosevears
 599. David Overeem, Blackmans Bay
 600. Helen Overeem, Blackmans Bay
 601. Michael Overeem, Kingston
 602. Janice and David Page
 603. Sally Page Hagley
 604. Chris Pannonity, Devon Hills
 605. Kirsten Pannowitz, Devon Hills
 606. M Parish, Norwood
 607. Margaret Parish, Norwood
 608. Greg Parsons
 609. N D Parsons, Trevallyn
 610. Barry Partridge, West Launceston
 611. Jane Partridge, Launceston
 612. Angeline Pary, St Leonards
 613. E Patterson, Invermay
 614. Peter Peachey, Riverside
 615. Dr Derek Pearcher, Legana
 616. Chris Peart, Riverside
 617. Colleen Peart, Riverside
 618. J Peelen
 619. EJ Percy, Gravelly Beach
 620. MJ Percy, Gravelly Beach
 621. Daniel Perry, Mowbray
 622. Stephaine Perry, Prospect
 623. Darren Peucker, Kings Meadows
 624. Jennifer Phillips, Launceston
 625. Carl Philpott, Legana
 626. Timothy Phythian, Kingston
 627. M Phythzan, Risdon Vale
 628. Catherine Piper, Norwood

629. J Piper, Youngtown
630. Norman Piper, Norwood
631. Suzenne Piper, Norwood
632. Louise Polden, Invermay
633. Christopher Polis, Riverside
634. Natalie Polis, Riverside
635. Luke Porter, Rosevears
636. Nathan Porter, Ambleside
637. Collene Post, Port Huon
638. John Potts, Mayfield
639. John Powell, Launceston
640. Prue Power, Launceston
641. Michele Price, West Launceston
642. Leonie Priest, Launceston
643. Stuart Priest, Launceston
644. Andrea Prins, Mowbray
645. Marcia Pritchard, Norwood
646. Elaine Pryor, Youngtown
647. Graham Pryor
648. Rick Pullen, Sandhill
649. Daniel Pythian, Kingston
650. Rebekah Pythian, Kingston
651. Alan Quill, Summerhill
652. Margaret Quill, Summerhill
653. Margaret Quilliam, West Launceston
654. Michael Quilliam, Launceston
655. John Quinn, Trevallyn
656. Brian Radford, Summerhill
657. E Radford, Summerhill
658. June Rainbow, Norwood
659. Tony Rainbow, Norwood
660. Georgie Randell, Launceston
661. Jenny Rattray, Perth
662. John Rawlings, Launceston
663. Sandra Rawson, Kings Meadows
664. Challis Redman, Raminea
665. Sheryn Rehrmann, Riverside
666. Armin and Elizabeth Rehrmann, Legana
667. Jonathan Rehrmann, Riverside
668. Joanne Reid, Launceston
669. Brenton Reimann, Invermay
670. David Riches, Riverside
671. Linda Rickinson, Georgetown
672. J Robinson, Launceston
673. Kevin Robinson, Huonville
674. S Robinson, Huonville
675. Johnathon Rock, Launceston
676. Amanda Rockliffe, Trevallyn
677. Don and Margaret Rockliffe, Scottsdale
678. Phil Rockliffe, Trevallyn
679. Peter Rodman, Mt. Stuart
680. Jenny Rogers, St Leonards
681. Mattew Rogers, St Leonards
682. MSM Rogers, Riverside
683. Shora Rollins, Launceston
684. Lyn Rosendale
685. Chris Rowe Waterloo
686. Robert Rowlands, Newnham
687. A Rowlings Austins, Ferry
688. Katrina Rubenach, Riverside
689. A Russell, Bridport
690. Dorothy Russell, Launceston
691. E Ruthitely
692. Graham Ryan, Newstead
693. Harry Savage
694. Jennifer Savage, Strathblane
695. Hans Schmidt, Newnham
696. John Schmidt
697. Noela Schmidt, Newnham
698. W and G Schoenmaker, Launceston
699. David Scholes, Launceston
700. Pat Scholes, Cambridge
701. Abraham Schultink, Newnham
702. Natalie Scott, Sandy Bay
703. Jared Scull, Mowbray
704. Robert Searon, East Launceston
705. D Sheehan, Newnham
706. MD Shepard
707. Jenny Shepherd
708. Beverly Shipway, Ravenswood
709. Catherine Shreeve, Kingston
710. S Shreeve, Kingston
711. James Simpson, Burnie
712. Cameron Skirving, Norwood
713. Alec Skrinnikoff, Youngtown
714. J Skrinnikoff, Mt. Direction
715. J Slater, Riverside
716. Michael Slater, Launceston
717. Shane Slocombe, Riverside
718. J Slom, Bellerive
719. Adam Smith, Longford
720. Brian Smith, St Leonards
721. E Smith, Norwood
722. Joan Smith, Norwood
723. K Smith, St Leonards
724. Kate Smith, Riverside
725. Marc Smith
726. Sharon Smith
727. Steven Smith, Launceston
728. Tom Smith, Kingston
729. Luke Snare, Trevallyn
730. Lorilee Snook, Norwood
731. Trevor Sofield, Riverside
732. Rob Southam, Riverside
733. Angela Sparrow, Lanena
734. Cameron Spaulding, Norwood
735. Lloyde and Joyce Spencer, Youngtown
736. R Spinks, Kings Meadows
737. Ralph Spinks, Kings Meadows
738. Graeme Stafford
739. Matthew Stennings, Legana
740. Amelia Stent, Sandhill
741. D Stephenson, Kingston
742. J Stephenson
743. David Steven, Bellerive
744. Heather Steven, Bellerive
745. Emily Stevens, Burnie
746. M Stewart, Norwood
747. Issac Stingle, Lindisfarne
748. Bruce Stocks, Prospect
749. J Stocks, Prospect
750. Jared Stocks, Prospect
751. Judith Stocks, Prospect
752. Benjamin Stokes, Prospect
753. David Stott, Newnham
754. Elizabeth Stott, Newnham
755. Jennifer Stott, Newnham
756. Neville Stott, Newnham
757. Alistair Strating, Grindelwald
758. Bert Strating, Grindelwald
759. Bessie Strating, Grindelwald
760. Jeannette Strating, Grindelwald
761. Bridgette Street
762. M Summers, South Launceston
763. Chris Sundstrup, Riverside
764. D Sura, West Launceston
765. Andrew Swift, South Launceston
766. Kate Swift, South Launceston
767. Amy Symington, Mowbray
768. Keona Tann, West Hobart
769. Maree Tatnell, South Launceston
770. Matthew Tatnell, South Launceston
771. James Tattam, Moonah
772. C S Tattersall, Launceston
773. Christopher Taylor, Launceston
774. David Taylor, Howrah
775. Gill Taylor, Trevallyn
776. W Taylor, Norwood
777. Kristin Teare, Devon Hills
778. Paul Tehre, Devon Hills
779. Christopher Dean Tembt, Summerhill
780. Leon W Templar, Riverside
781. Maxine Templar, Riverside
782. Jenny Templeton, Scottsdale
783. K Thickey, Geeveston
784. Helena Thompson
785. G Thorne, Kings Meadows
786. Margaret Thorne, Kings Meadows
787. Maraget Thorp, Huonville
788. Jeff Thorpe, Kayena
789. Pamela Thorpe, Kayena
790. Caleb Tivendale, Mowbray
791. Raymond Tomlis, Longford
792. Allan Torrents, Riverside
793. Sharnee Torrents, Riverside
794. Jeff Towns, Bellerive
795. Lisa Towns, Riverside
796. Michael Towns, Trevallyn
797. Rod Towns, Riverside
798. Rosalee Towns, Bellerive
799. Barbara Townsend, Evandale
800. Doug and Glenda Townsend, Blackstone Heights
801. Miranda Tracey, Mornington
802. Victoria Tracey, Mornington
803. Keith Treasure, Launceston
804. Pearl Treasure, South Launceston
805. Dianne Turner, Norwood
806. Glenn Turner, Norwood
807. Marissa Tyler, Launceston
808. Lucy van der Metten, Riverside
809. Helen Van Der Vliet, Newnham
810. Noel Van Est, Pipers River
811. Adam van Sant, Kingston
812. D and J Van Veen, Legana
813. Mel Van Winden, West Launceston
814. A Van Zetten, Riverside
815. Peter Vandenberg, Legana
816. Kitty Vanderlin
817. R Vent Norwood
818. Amanda Verdouw, Blackmans Bay
819. Eric Verdouw, Kingston Beach
820. Adam Vogelpole, Hadspen
821. Annelise Vos, Riverside
822. Cathy Vos, Grindelwald
823. Danielle Vos, Riverside
824. Harry Vos, Launceston
825. Jarrod Vos, Riverside
826. Luke Vos, Riverside
827. Mariska Vos, Riverside
828. Wilma Vos, Riverside
829. Paul Waddington, Latrobe
830. Johannes and Janny Wagenaar, Riverside
831. Delys Wakeling, Trevallyn
832. Keverall Wakeling, Trevallyn
833. Alison Walker, Launceston
834. David Walker, West Launceston
835. Mervin and Dereen, Walker
836. Marcus Walten, Launceston
837. Graeme Walters, Blackwall
838. Heather Walters, Launceston
839. Helen Walters, Blackwall
840. JP Walters
841. Kevin Walters, Legana
842. Kris Walters, Mayfield
843. Lesley Walters, Mayfield
844. Oliver Walters, West Launceston
845. Uriel Walters, West Launceston
846. L Wan
847. Rose Watton, Kings Meadows
848. Ashley Webb, Kingston

849. D Webb, Legana
 850. Garry Webb, Legana
 851. S Webb, Railton
 852. Daniel Weeks, Geilston Bay
 853. Julie Weeks, Geilston Bay
 854. Jennifer Westland, Howrah
 855. Joanna White, Scottsdale
 856. Joanne White, West Launceston
 857. Patricia White, Warrane
 858. Shane White, West Launceston
 859. GE Whitely
 860. Tony Whitfield, Lindsfane
 861. Dean Wicks, Launceston
 862. Ross Wigg, Launceston
 863. Val Wigg, Newstead
 864. JA Willes, Rose Bay
 865. MA Willes, Rose Bay
 866. Angela Williams, Acton Park
 867. E Williams, Franklin
 868. Jo Williams, Franklin
 869. Joshua Williams, Acton Park
 870. N Williams, Franklin
 871. Rebekah Williams, Franklin
 872. Todd Williams
 873. Sarah Wills, Launceston
 874. Patricia Wilmont, Youngtown
 875. Ben Wilson, Launceston
 876. Lynette Wilson, Mowbray
 877. Paul Wilson, Launceston
 878. Camille Wimmer, West Launceston
 879. Claude Winwood, Norwood
 880. Sheila Winwood, Norwood
 881. Anita Wood, Legana
 882. Steve Wood, Burnie
 883. Kate Woodland, Sandhill
 884. Martin Woodward, Riverside
 885. Maureen Woodward, Riverside
 886. R Woolley, Legana
 887. W Woolley, Legana
 888. MJ Worthing, Hobart
 889. Beth Wright, Riverside
 890. Rosalind Wright, Southport
 891. Brian Yeoman, Newnham
 892. Cheryl Yeoman, Newnham
 893. BM Youd, Launceston
 894. Carolyn Youd, Launceston
 895. B Young, Trevallyn
 896. Basil Young, Launceston
 897. J Younger, Launceston
 and 60 others

Letter sent by 61 people:

1. Maria Bagin, Sorell
2. Ruth Bailey, Blackmans Bay
3. V Ball, Glenorchy
4. Jane Bowman, Sorell
5. F Brooks
6. P Calder, Lenah Valley
7. Jean Campbell
8. J & J Candelone
9. Annette Catlin
10. Chris Catlin
11. Brendan Cooper, Sorell
12. Kath Crawford, North Hobart
13. B Crossin
14. D Crossin
15. R Daniels
16. Stephen Dawson, Sorell
17. M Day
18. Genevieve Devlin, Mt. Stuart
19. Graeme Devlin, Mt. Stuart
20. Suzanne Devlin, Mt. Stuart
21. Maureen Doyle
22. Silia Fangeswisch, Sorell
23. Jim Garlick, North Hobart

24. Phil Graham
25. Catherine Habson, Sorell
26. Angela Have-Smith
27. J Heames, Bellerive
28. Nicole, Hoffmann
29. C Hurst, Lutana
30. Julian Knight, Blackmans Bay
31. Esa Kuronen, Legana
32. Karen Mahler, Sorell
33. Samuel Mahler, Sorell
34. Susanna McDonald, Kingston
35. Tim McDonald, Kingston
36. Mary Millington, West Hobart
37. Peter Mitchell
38. David Oematein, Chigwell
39. Hanna Oematein, Chigwell
40. Juliene Owens-Chilton, Kingston
41. Ruth Sallinen, Claremont
42. Vesa Sallinen, Claremont
43. Daniel Smith, Devonport
44. David Smith, Devonport
45. J Smith, Devonport
46. John Smith, Devonport
47. Graeme Stafford, Howrah
48. Adela Taylor, Howrah
49. B Towey, Midway Point
50. R Turvey
51. R Vantol, Kingston
52. S Williams, Lindsfane
 and 9 others

Letter sent by 37 people:

1. A Anderson, Prospect
2. Douglas Briton, Launceston
3. Brian Clarke, Howrah
4. Loys Clarke, Howrah
5. Liz Coveney, Legana
6. Henoh Ddezd, St Leonards
7. Lyndon Deans, Ulverstone
8. Elise Docezac, St Leonards
9. Alana Fazakerley, Invermay
10. Hazel Gough, Mowbray
11. Michael Gough, Mowbray
12. Elaine Grant, Newstead
13. Geoff Hill, Launceston
14. Mark Humber, Mowbray
15. Mark Hurst
16. Karen Jameson, Trevallyn
17. Elizabeth Jensen, Trevallyn
18. E Ling Norwood
19. Andrew Madden
20. Margaret McCormack, Rosevears
21. P McCormack, Rosevears
22. Ian and Faith Millen, George Town
23. Donald Murfet, Kings Meadows
24. Steve Pearce, St Leonards
25. Isobel Pinder, Kings Meadows
26. Nancy Plumb, Launceston
27. Darren and Lorrene Ross, West Launceston
28. Lisi Smedley, Kings Meadows
29. Caleb Smith, Launceston
30. Graeme and Marguerite Smith
31. Judy Smith, Launceston
32. E Sutherland, Kings Meadows
33. J Sutherland, Kings Meadows
 and 4 others

Letter sent by 36 people:

1. Elaine Anderson, Prospect
2. JK Atkinson, Prospect
3. Zelma Berne, Launceston
4. M Bilon, Launceston

5. Noelyn Bourke, Newstead
6. Douglas Britton, Launceston
7. John Cameron, Deloraine
8. Haosman Chi, Newnham
9. Kara Deans, Trevallyn
10. Dennis Digney, Ravenswood
11. Clive Dowling, St. Leonards
12. Karen Freese, Sandy Bay
13. John Greeney, Launceston
14. R and E Gregory, Launceston
15. Margaret Hanna, Launceston
16. Alison Hurst, Norwood
17. Mark Hurst
18. Son Jolly, Riverside
19. Monica Keating, Norwood
20. E Knowles
21. Louise Leslie, Mowbray Heights
22. J Nightingale, St. Leonards
23. Helen Perkins, Launceston
24. K Rosendale, Launceston
25. Keith Rosendale, Launceston
26. Margaret Sherry
27. Shane Smedley, Kings Meadows
28. Lisi Smedly, Kings Meadows
29. Lexie Synfield, Norwood
30. Vanessa Wyllie, Norwood
 and 6 others

Letter sent by 31 people:

1. Stefanie Anderson, Riverside
2. Douglas Briton, Launceston
3. L Bushly
4. M Button, Launceston
5. Sharon Cameron, Legana
6. Margaret Cashion, Launceston
7. Jennifer Dell, St Leonards
8. Michael Dell, St Leonards
9. N Digney, Ravenswood
10. Kevin Doherty, Launceston
11. Alison Doonan, Newstead
12. Joy Flower
13. David Freese, Sandy Bay
14. Margaret Greenly, Launceston
15. Albert Huring, Longford
16. Bev Hurley, St Leonards
17. Mark Hurst
18. David Jolly, Riverside
19. Monica Keating, Norwood
20. Lyndell Madden, Patersonia
21. J and I Oosterloo, Riverside
22. Miriam Pearce, St Leonards
23. Mavis Rehrmann, Prospect
24. Frank Rosol, Launceston
25. Warwick and Maxine Shipway, Ravenswood
26. Dulcie Slater, Launceston
27. David Smith, Launceston
28. Jaimee Smith, Launceston
29. Debbie Thomas, Newstead
30. G Tomkinson, Trevallyn
31. Ursula Vos, Launceston

Letter sent by 19 people:

1. L Adams, Launceston
2. Joyce Allen, Launceston
3. Freda Badcock, Launceston
4. L Boehm
5. R Boehm
6. Gwen Byard, Launceston
7. E Diprose, Launceston
8. Mary Drayton, Launceston
9. Joyce Freeman, Launceston
10. B Groves, Launceston

11. Lucy Gurr, Launceston
12. R Lawrence, Newstead
13. Betty Martins, Launceston
14. Lee McThail, Launceston
15. Greta Monaghan, Launceston
16. Daniela Radenti, Riverside
17. Bev Reid, Launceston
18. G Stewart, Newstead
19. Jean Tilley, Launceston

Letter sent by 3 people:

1. Cynthia Cleary, George Town
2. Lillian Kim, George Town
3. Lorna Parry, George Town

Letter sent by 2 people:

1. Barbara Baird, Norwood
2. P Howe

Petition signed by 45 people:

1. Eleen Aird, Devonport
2. M Avery, Forth
3. Helen Billows, Devonport
4. Jillian Chapell, Devonport
5. Roslyn Connolly
6. Dallas Cowan
7. Nancy Cowan, Devonport
8. Doreen Crispin, Devonport
9. Glenn Deans, Boat Harbour
10. Jill Di Pietro, Latrobe
11. Madeline Eden, Latrobe

12. Gwen Goold, Devonport
13. Helen Graham, Devonport
14. M Gran, Devonport
15. W Harris, Devonport
16. Anne Jewell, Devonport
17. Debra Kamphuis, Devonport
18. M Kingston, Devonport
19. Julie Kohler, Devonport
20. Shayn Lenon, Shearwater
21. Bill Major, Springton
22. Noreen Martins, Launceston
23. B Masters, Devonport
24. Edne Masters, Devonport
25. Phyllis McAvoy, Devonport
26. L Morse, Devonport
27. Corinne Nicol, Devonport
28. Frank Nicol, Devonport
29. Pam Pattison, Devonport
30. Kath Pearce, Devonport
31. Sue Pitchford, Devonport
32. Geoff Pobten, Devonport
33. Lorna Raadt, Devonport
34. Millicent Richards, Devonport
35. Chris Rossington, Devonport
36. Agnes Sinclair, Devonport
37. Barry Smedley
38. Ted Smith, Devonport
39. Clare Stephen, Devonport
40. Paul Stephenson, Latrobe
41. Ruth Taylor, Ulverstone
42. Raelene Webb, Devonport
43. Doris Williams, Devonport
44. Gwen Williams, Devonport
45. Anne Woodcock, Devonport