

Inner City Legal Centre – Submission to the Standing Committee on Family and Human Services Inquiry into Overseas Adoption

Inner City Legal Centre (ICLC) is a community legal centre that provides a range of general legal advice and advocacy services to the local community, while also offering a specialised legal service to the gay, lesbian and transgender communities in New South Wales.

Overarching Concerns

ICLC wishes to draw the Standing Committee's attention to the inconsistencies that exist between state and territory adoption legislation regarding adoption by same-sex couples. While ICLC acknowledges that these concerns are perhaps of a broader scope than the inquiry's narrow terms of reference, we submit that such concerns are nonetheless relevant. ICLC believes that any inquiry into adoption is best served by gaining a thorough overview of the issues and by the consideration of diverse perspectives.

ICLC is concerned that most state and territory adoption legislation operates to allow overseas and domestic adoption by heterosexual couples to the exclusion of same sex couples. Of particular concern are those jurisdictions that expressly legislate to exclude the possibility of adoption of an unknown or unrelated child to same-sex couple applicants, by defining 'couple' to mean 'a man and a woman'.¹ It is our view that such legislation is clearly discriminatory and is therefore in

¹ See ss26, 28 *Adoption Act 2000* (NSW), s13 *Adoption of Children Act 1994* (NT), s12 *Adoption of Children Act 1964* (Qld), s12 *Adoption Act 1988* (SA), s20 *Adoption Act 1988* (Tas), s11 *Adoption Act 1984* (Vic)

breach of Australia's obligations under Articles 23(2)² and 26³ of the *International Covenant on Civil and Political Rights*.⁴

ICLC notes with approval that all Australian state and territory adoption legislation, as well as the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*⁵, is directed by the paramount principle of the best interests of the child.⁶ ICLC submits that there is no evidence to support arguments that parenting by same-sex parents is not in the best interests of the child. In her article 'Family Relationships of Lesbians and Gay Men'⁷, Charlotte Paterson undertook a thorough review of research on lesbian and gay couples with children and concluded that there is

...no evidence that psychological adjustment among lesbians, gay men, their children, or other family members is impaired in any significant way. Indeed, the evidence suggests that relationships of lesbian and gay couples are just as supportive and that home environments provided by lesbian and gay parents are just as likely as those provided by

² Art. 23(2) states, "The right of men and women of marriageable age to marry and to found a family shall be recognized."

³ Art.26 states, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

⁴ The *International Covenant on Civil and Political Rights* entered into force generally for Australia on the 13 November 1980

⁵ This international instrument came into force in Australia in December 1998

⁶ See s6 *Adoption Act 1993* (ACT), ss7, 8 *Adoption Act 2000* (NSW), s8 *Adoption of Children Act 1994* (NT), ss5A, 10 *Adoption of Children Act 1964* (Qld), s7 *Adoption Act 1988* (SA), s8 *Adoption Act 1988* (Tas), s9 *Adoption Act 1984* (Vic), s3 *Adoption Act 1994* (WA), Article 1 *Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*

⁷ Charlotte Patterson, "Family Relationships of Lesbians and Gay Men" (2000) 62 *Journal of Marriage and the Family* 1052 at 1064 quoted in Jenni Millbank (2002) *Meet the Parents: A Review of the Research on Lesbian and Gay Families* (GLRL (NSW) Inc., Sydney) p. 37-38

heterosexual parents to enable psychological growth among family members.

As there is no evidence that parenting by same-sex couples is not in the best interests of the child, ICLC submits that the discriminatory eligibility adoption criteria currently in place in most of Australia's jurisdictions is without justification.

Recommendations

ICLC recommends that the Standing Committee address the above noted discriminatory inconsistencies between state and territory adoption legislation by the following:

- 1. Amendment of gender-specific legislation** – State and territory adoption legislation that restrict joint or couple adoption to a man and woman only⁸ should be amended to include the possibility of adoption of a child unknown or unrelated by same-sex couple applicants. This can be achieved with the use of inclusive gender-neutral language, such as that used in the adoption legislation of the ACT and WA.⁹ This would then allow for a case-by-case assessment of the applicants' capacity to provide the prospective adoptive child with an environment and upbringing that is in the particular child's best interests. In this way same-sex couples will no longer be excluded from adopting simply because they are the same sex, rather, only if they fail to meet the requirements placed on all adoptive parents on a more general level.
- 2. Implementation of the Swedish model** – In 2003 the Swedish government legislated to reflect the reality of modern family structures by

⁸ As per note 1

⁹ See ss18, 19 *Adoption Act* 1993 (ACT), ss38, 39, 40 *Adoption Act* 1994 (WA)

introducing the *Partnership and Adoption Act*¹⁰. This new law provides same-sex couples with the same chance as married couples to become adoptive parents of both local and overseas children. An essential requirement of this new law is that the same-sex relationship be a stable and committed one. Further, the two applicants must be registered partners and they must not conceal their relationship but live openly as a couple. Finally, the prospective adoptive child must have access to “a good, long-term male and female role model in his or her surroundings.”¹¹

ICLC recommends that progressive and inclusive legislation similar to Sweden’s *Partnership and Adoption Act* be passed in Australia in order to reflect and acknowledge our own diversity of family types.

Thankyou for the opportunity to contribute to this inquiry. ICLC would be pleased to contribute further as more detailed procedures and policies around overseas adoption are being developed.

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¹⁰ See Fact Sheet (March 2003), “Homosexual partnership and adoption,” Ministry of Justice, Sweden, available at www.regeringen.se/. Last visited 14/04/2005

¹¹ Ingmarie Froman, “Two Parents of the Same Sex,” available at www.sweden.se/templates/cs/Article_5334.aspx. Last visited 13/04/2005