

# **THE LAW AND PRACTICE RELATING TO THE ADOPTION OF CHILDREN IN NSW**

A SECOND SUBMISSION PREPARED FOR  
THE NSW LAW REFORM COMMISSION ENQUIRY  
BASED ON THEIR WHITE PAPER

Prepared by the Gay and Lesbian Rights Lobby and the Lesbian and  
Gay Legal Rights Service

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## Introduction

In September, 1993, The Gay and Lesbian Rights Lobby and the Lesbian and Gay Legal Rights Service made a submission to the NSW Law Reform Commission review into the practice of adoption of children in NSW.

Subsequent to this, a further discussion paper has been produced, incorporating many of the ideas suggested in the original submission. The original submission was supported by a verbal presentation by one of our members.

All the points made in the original submission still stand and in the ensuing nine months, evidence as to the suitability of lesbians and gay men as potential adoptive parents has increased. The landmark case in Britain, where a lesbian couple were given permission to adopt a child has only reinforced our argument. Britain, unlike Australia, is not generally recognised for its tolerance, especially toward lesbians and gay men. The changes in world opinion as regards lesbians and gay men highlighted in our original submission are also reinforced by this case.

The Gay and Lesbian Rights Lobby was established in 1988 as a non- Government funded community organisation. The Lobby promotes and protects the rights of lesbians and gay men in NSW. Most recently, the Lobby was the lead organisation in the work to have anti-homosexual vilification included in the provisions of the NSW Anti-Discrimination Act. As you will be aware, this campaign was successful and resulted in the law being amended in March this year.

This second submission has been prepared by the Adoption and Fostering sub-committee which is composed of people from a diverse range of backgrounds including social work and law. In this further submission, the Lesbian and Gay Rights Lobby:

- Identifies some of the changes in society which have a direct bearing on attitudes towards lesbians and gay men and as a result, the perceived 'normalcy' of these people and their suitability to make application for adoption;
- Advocates that the intent of the Anti-Discrimination Act 1977 should be a guiding principle, whether or not the provisions of this Act can legally be applied to the issue of adoption;
- Discusses whether being raised in a lesbian or gay household adds a level of 'difference' for the child and offers some research findings which disprove this fallacy;
- Reiterates points made in the original submission regarding the paramount issue being the welfare of the child and the 'right' to adopt being a dangerous premise;
- Highlights the need to build active support through strong community structures and looks at the 'communities of care' concept raised by the International Year of the Family committee; and
- Dispels the myths and fallacies in relation to parenting by lesbians and gay men and questions the assumptions about the stability of marriage.

## **The Gay and Lesbian Rights Lobby recommends:**

- Changes to the Adoption of Children Act should seek to bring the Act in line with changes in society including recognition of lesbians and gay men as full members of society and the accordance of equal rights in this regard.
- The spirit of anti-discrimination legislation which seeks to extend the same rights to all people regardless of race, sex, class, age, religion, disability or sexual orientation should be incorporated in the Adoption of Children Act. These provisions would recognise the rights of single people and of lesbians and gay men to be considered as suitable adoptive parents.
- That the assessment of lesbians and gay men as potential adoptive parents not be based on unproven and unsubstantiated allegations about why adoptive children might feel disadvantaged.
- The welfare and interests of the child concerned should be the paramount consideration in all adoption proceedings.
- The emphasis on marital status should be removed from the legislation.
- Single people should be given equal consideration as couples in the selection process.
- All children adopted by "strangers" should be treated equally. It is irrelevant whether the child has special needs when an approach which is non-discriminatory, neutral and in the best interest of the child is used.
- Lesbian and gay men should be regarded as forming stable, mature relationships, just as heterosexual couples are thought to do. The legally recognised status of any relationships should not be a factor in determining the suitability of applicants for adoption.
- Lesbian and gay male couples should be able to adopt a child jointly.

## **The Lobby reiterates its previous recommendations:**

- Repeal section 17. Enact a provision which applies to the entire Act stating that the "welfare and interest of the child concerned shall be regarded as the paramount consideration". This principle should not need to be repeated in particular provisions.
- There should be a general reluctance to make an adoption order where the child, regardless of age, refuses her or his consent. In such cases, other arrangements such as fostering, custody or guardianship would be preferable.
- A separate legal representative should be appointed to represent the child's wishes.
- A broad non-discriminatory approach to the selection of adopters should be used. Within this, consideration of the sexuality of potential adopters should be regarded as irrelevant.
- Advantages currently available to relatives, step-parents and foster parents should be extended to co-parents and persons who have a significant relationship with the child whether it be a personal or professional relationship.
- Any exemptions under section 54 of the Anti Discrimination Act 1977 should be removed.
- An adoption certificate system should be implemented.
- Educational programs should be run for social workers, adoption agencies and courts to dispel myths about lesbian and gay male parenting.

## **1. CHANGING ATTITUDES TOWARDS LESBIANS AND GAY MEN**

Some of the most dramatic changes in the attitudes of society in the last 30 years have been attitudes toward lesbians and gay men. Increasingly, with the law reflecting changes in society, it becomes more difficult to substantiate discrimination against a whole section of society by excluding them from certain legal advantages or procedures, such as adoption. The Adoption of Children Act 1965 should recognise these changing attitudes and be consistent with the Anti-Discrimination Act 1977.

Even in the last year, there have been dramatic changes in the recognition of the inherent civil rights of lesbian and gay men and that the struggle for those rights is part of the wider social struggle for an equitable society. In the last few years, the International Lesbian and Gay Association was accorded recognised consultative status with the United Nations' Economic and Social Committee (EcoSoc); Britain reduced its age of consent for gay men from 21 to 18; the European Community passed a resolution supporting the rights of lesbians and gay men; NSW passed the anti-homosexual vilification amendments to the Anti-Discrimination Act and the United Nations Human Rights Committee found Australia in breach of its international obligations in regard to discriminatory laws affecting gay men in Tasmania.

Even in the last month, there have been continued moves to accord lesbians and gay men full and equal recognition as members of society. 'Marriage Guidance NSW, has changed its name to 'Relationships Australia (NSW)' in a bid to better reflect society and to recognise the increasing numbers of open lesbian and gay couples using their services. The Australian Tax Office has recognised the partners of their lesbian and gay male employees as being entitled to the same provisions of paid carer leave as their heterosexual counterparts. This change has employed the term 'family' in its broadest sense - that of a relationship based on mutual care, respect and emotional support - regardless of the gender of the partners.

Early in July, a British court ruled that a lesbian couple were the joint parents of a child born to one of them. The Court gave the partner of the birth mother equal status as a parent in a land-mark case which is set to become an international precedent. This ruling has direct relevance to any consideration of lesbians and gay men as fit and suitable foster and adoptive parents of children.

The Adoption of Children Act 1965 no longer reflects the true interests of either society or of the adoptive child. The pool of potential adopters should reflect the true balance and nature of the world in which we live if the child is to be integrated easily without additional suffering. Placing children in supposed 'ideal' families must not be based on false or limited assumptions which do not recognise the deeper changes that our community is going through.

The sexuality of the potential adopters is irrelevant - a fact which is increasingly being recognised throughout our society. A review of the Adoption of Children Act must recognise that changes to reflect the increased diversity of our society are required.

Recommendation: Changes to the Adoption of Children Act should seek to bring the Act in line with changes in society including the recognition of lesbians and gay men as full members of society and the accordance of equal rights in this regard.
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## 2. THE LETTER OR THE SPIRIT OF THE LAW?

In the chapter on 'Eligibility to Adopt', the Commission's 'provisional proposals for reform' suggest:

"the assessment of applicants should be conducted in a way that is consistent with the Anti-Discrimination Act 1977 and with similar Commonwealth laws and international agreements to which Australia is a party."

The Anti-Discrimination Act (ADA) covers discrimination resulting from race, sex, marital status, physical impairment or homosexuality. However, Section 54 of this Act also provides for specific exceptions and exclusions from the Act.

As the chapter indicates, the ADA only applies to specific areas such as education, employment and the provision of goods and services. It then goes on to question how adoption relates to "provision of services" as defined in the anti-discrimination legislation.

It then becomes an issue for the Commission to decide whether it should follow the letter or the spirit of the law. It would be more within the scope of a review of the ADA to discuss in detail the relationship between this Act and the Adoption of Children Act. However, in responding to the discussion paper, the Lobby would argue that the broadest scope of the Anti-Discrimination Act should be considered in determining the suitability of applicants for adoption.

As the Lobby has previously pointed out, lesbians and gay men cannot make formal legal commitments to their relationships. As a result, we are automatically excluded from the privileges associated with this. There is no logical justification for regarding a factor, such as a formal, public commitment, as a determinant of suitability for adoptive parents but this is the impact of the current legislation.

Whilst the Anti-Discrimination Act prohibits discrimination on the basis of marital status, legal precedents have shown that this section does not apply to lesbians and gay men. Clearly this is anomalous. If the Commission decides to apply the letter rather than the intent of the law in its review of the Adoption of Children Act it will merely be perpetuating this injustice.

Similarly, a single person is equally capable of providing responsible and effective parenting to a child and we reiterate the point that the threat of the adopters relationship breaking down is removed if it is a single person who adopts the child<sup>1</sup>.

Recommendation: The spirit of anti-discrimination legislation which seeks to extend the same rights to all people regardless of race, sex, class, age, religion, disability or sexual orientation should be incorporated in the Adoption of Children Act. These provisions would recognise the rights of single people and of lesbian and gay male couples to be considered as suitable adoptive parents.
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<sup>1</sup> The divorce rate which peaked at 60% in the early 1980's appears to be on the rise again – *Sydney Morning Herald*, 30 August 1993, at page 6

### 3. ADDED DIFFERENCE?

The 'provisional proposals for reform' state that:

"The assessment should ensure that unfair or unjustified assumptions are not made about the relevance of applicants' sexual orientation ...The assessment should focus on the ability of the applicant(s) to meet the parenting needs of the particular child."

Later on, however, the provisions continue:

"Normality. Adoptive placements ... should ... recognise that adopted children might be harmed or distressed if, in addition to dealing with their adoptive status, they have to deal with other important and visible difference between their family and the families of their peers. It is proper in making adoption placements to seek to reduce such additional reasons why adopted children might feel disadvantaged by being seen as different from their peers."

The Lobby is aware that some groups will feel that to place an adopted child with a lesbian or gay couple would be to create a 'visible difference between their family and the families of their peers.' Yet it would be difficult to place a child in any family which did not include some form of visible difference between the child and their peers. Should we, for instance, exclude potential adopters because the father has only one arm, or the mother is particularly short, or because they are the only family of a particular race in that area?

As the Lobby will expand upon in the chapter on the stability of marriage, there are increasing variations in the type of families common today. The image of the nuclear family as promoted on commemorative 50 cent pieces by the International Year of the Family: wife, husband, 1.5 children and pet is increasingly at odds with the true multi-cultural and diverse society we live in.

Responsible parenting involves loving and caring for children and teaching them appropriate social values. Social values which condone and promote violence, abuse, racism, discrimination and assault should be seen as anathema to the proper, caring development of a child.

In many ways, the 'difference' that being lesbian or gay can make can be advantageous to the development of a child. As people who have suffered discrimination, lesbians and gay men are often more tolerant of diversity and difference. As people who have often been rejected by our families, we are aware of how important a loving accepting family group can be. As people who have actively chosen our lifestyle, we have built our own communities of care which can give an adopted child a broader range of contact and learning than traditional nuclear families.

As to whether the children of lesbian and gay male couples actually suffer more at school than the children of other parents, there has been some research on this subject.

Whilst it is a popular misconception that children are always cruel to each other, or are likely to 'pick' on each other for perceived or actual differences (such as the sexuality of their parents), research does not bear this out. In actuality, some research indicates that children raised in lesbian households are advantaged by their different family experience<sup>2</sup>.

When children are victimised it occurs for a variety of factors including race, sex, disability, size, religious and cultural differences. It would be counter-productive and contrary to the anti-vilification legislation to argue that people should change or hide the way they are to avoid bullying or harassment. It is the prejudice leading to harassment which should be tackled. All prospective adopters should be able to recognize the signs of harassment and deal with it when it arises.

Studies conducted in both the UK and the USA show that children of lesbians and gay men make successful friendships within their peer group and form stable relationships with others in similar socio-economic groups. On the whole, they suffer as much and as little discrimination based on the sexuality of their parents as their peers in other 'perceived different' groups do from the model of their parents' car; body image; facial characteristics or other irrelevant differences.

Recommendation: That the assessment of lesbians and gay men as potential adoptive parents not be based on unproven and unsubstantiated allegations about why adoptive children might feel disadvantaged.
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<sup>2</sup> Articles referred to in Tasker and Golombok (above at Page 184): Knight "Female Homosexuality and the custody of children" (1983) 12 New Zealand Journal of Psychology 23 - 27; Kilpatrick "Clinical Implications of lesbian mother studies" (1987) 14 Journal of Homosexuality 201 - 211; Gibbs "Psychosocial development of children raised by lesbian mothers: a review of research" 1989 (8) Women and Therapy 65-75; Falk "Lesbian Mothers" (1989) 44 American Psychologist 941 - 947; see also Green "Sexual Identity of 37 Children raised by homosexual or transsexual parents" (1978) 135(6) American Journal of Psychiatry 692-7; see also articles referred to in Helen Cosis Brown's article "Competent child-focused practice: working with lesbian and gay carers" (1991) 15(2) Adoption and Fostering 15

#### 4. THE WELFARE OF THE CHILD IS PARAMOUNT

As we stated in our original submission, the Gay and Lesbian Rights Lobby supports the basic principle of the legislation that the child's welfare and interests are paramount. This approach is consistent with the United Nations Convention of the Rights Of the Child which states that:

"State parties shall respect and ensure the rights set forth in the present Convention in respect of each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's/legal guardian's race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status."

In addition, the European Charter of the Rights of the Child states:

"No child may be the subject in the territory of the community of any discrimination on the basis of his or her parent's nationality, family background, sexual orientation, race, color, sex, language, social origin, religion, belief, state of health or their circumstance."<sup>3</sup>

We believe that these resolutions recognize both the rights of young people who may identify as lesbians or gay men and the legitimacy of lesbian and gay male parents. They suggest a broad non-discriminatory approach to the welfare principle.

This paramountcy principle, embodied in section 17 of The Adoption of Children Act 1965 ("the Act") applies only to Part 4 of the Act. We submit that this principle should apply to all sections of the Act as a child's welfare and interests should be the only relevant concerns in the adoption process.

As stated in the discussion paper in the 'Introduction' to the Eligibility to Adopt chapter:

"It does not follow from the concept of the child's welfare as paramount that the law should be unfair or discriminatory in the selection of adoptive parents. Indeed, unfairness or discriminatory approaches... would be inconsistent with treating the child's welfare as paramount."

The Lobby notes the comments from the Women's Action Alliance (WAA) suggesting that adoption application only be granted to infertile married couples on the grounds that it is "only just". The Lobby fundamentally opposes this view as decidedly unjust and discriminatory. Lesbians and gay men have been referred to as engaging in 'chosen infertility', with the ensuing argument that if you choose infertility you should be denied access to adoption services. We object to this as it denies that lesbians and gay men can and do become biological parents and because it is irrelevant to any discussion of adoption.

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<sup>3</sup> Emphasis added

The idea that any section of society is 'entitled' to adopt on the basis of two pre-existing conditions:

- their status as married (with no guarantees of the stability of that relationship, its relevance to this issue or any other perceived moral advantages which might be implied); and
- based on their infertility (What tests are employed? How long must they have proven this infertility? Must they undergo invitro fertilisation (IVF) trials before being considered as adoptive parents?) is totally at odds with the precept, that the interests and welfare of the child are paramount.

Recommendation: The welfare and interest of the child concerned should be the paramount consideration in all adoption proceedings.

## 5. THE STABILITY OF MARRIAGE

The current structure of the legislation is based on a hierarchy of preferred marital status and an exception-based approach. The emphasis on marital status should be removed from the legislation. It assumes that people who have made a public commitment by way of marriage and who have legal responsibility to each other are more likely to provide a child with stability and security. This assumption is problematic for a number of reasons:

- Married couples may end their relationships. When the relationship breaks down, arrangements for the child depend largely on individual circumstances for each parent. These may not be in the best interests of the child.
- A single person is equally capable of providing responsible and effective parenting to a child and we reiterate the point that the threat of the adopters relationship breaking down is removed if a single person adopts the child.

Current estimates indicate that while the divorce rate appears to be on the rise, the marriage rate has not risen significantly. Additionally, the number of married couples choosing to remain childless has increased in the last decade.<sup>4</sup> If one takes these factors into account whilst noting that the birthrate in Australia has remained at the same level of increase over the same period, it would indicate that more and more children are being born to family groupings outside the perceived norm of the nuclear family.

The Commission notes this in the section on 'Marital status and family structure' in the Eligibility to Adopt chapter where it states:

"The question appears to be to what extent, if at all, marital status is a useful indicator of an individual's or couple's suitability to adopt."

The report goes on to comment

"Some submissions suggested, for example, that a stable heterosexual relationship, whether married or not, should be preferable to other types of applicants, such as single applicants or homosexual partners. No doubt some of those who prefer adopters to be married treated marriage as an indication that the family would have certain characteristics, such as commitment to a long-term relationship and to providing a warm secure and stimulating environment for children."

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<sup>4</sup> Bureau of Statistics as reported on Radio National, June, 1994.

We have already attempted to point out the flaws in this argument. The fact that single people would chose to adopt a child indicate, if found suitable, that they have a happy and healthy environment in which to bring up a child. That they are willing to do so without the foundation of a relationship should mitigate in their favour against a couple who apply but who obviously cannot guarantee the security or longevity of their relationship. Additionally, it is not legally possible for lesbians and gay men to enter into legal commitment ceremonies which might mitigate in our favour. The denial of legal recognition in one forum thus flows on to be an additional discrimination in another. However, those who do not find lesbians and gay men suitable couples would be unlikely to support the recognition of lesbian and gay relationships. Whilst lesbian and gay relationships do suffer similar problems and breakdowns as heterosexual relationships, research seems to indicate that gay men enjoy longer couple based relationships than either lesbians or heterosexual couples.

The sanctity of marriage is no guarantee of a good safe home. The majority of child sexual abuse occurs within families and from family members. The main perpetrators of child abuse; emotion, physical or sexual; are heterosexual men. To consider lesbians and gay relationships of less value than their heterosexual counterparts assumes a hierarchy of emotional stability which is unwarranted and which has been discredited by research.

<p>Recommendation: The emphasis on marital status should be removed from the legislation.</p> <p>Single people should be given equal consideration as couples in the selection process.</p> <p>All children adopted by "strangers" should be treated equally. It is irrelevant whether the child is has special needs when an approach which is non-discriminatory, neutral and in the best interest of the child is used.</p> <p>Lesbians and gay men should be regarded as forming stable, mature relationships, just as heterosexual couples are thought to do. The legally recognised status of any relationships should not be a factor in determining the suitability of applicants for adoption.</p>
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## 6. BUILDING FAMILIES, BUILDING COMMUNITIES OF CARE

Currently, when a "single person" applies to adopt a child, if the person is in a relationship, their partner is generally assessed by social workers as to her or his parenting abilities. The child will only be placed if both people would provide an environment from which the child would benefit. There can therefore be no reason not to make an adoption order in favor of a lesbians or gay male couple jointly. Concerns about the relationship ending are no more applicable to lesbian and gay male relationships than they are to heterosexual relationships.

By denying lesbian and gay male couples the opportunity to adopt a child, the law effectively denies one partner any parental responsibility. The same situation is experienced by lesbians and gay men who co-parent their partner's biological child. The co-parent cannot establish a legal relationship with the child other than by a private appointment as guardian or possibly by way of application for custody in the Family Court. This situation is not in the child's best interests as it denies the reality that the child does have two parents. It also precludes the child from benefiting from the co-parents estate should she or he die intestate.

Excluding lesbians and gay men could mean ruling out the potential adopter with the best home to offer. Further, lesbians and gay men cannot be viewed as an homogenous group carrying identical values, capacities and skills. Although there may be some shared views or characteristics, lesbians and gay men should all be treated and respected as individuals.

Jerry J Bigner, Ph.d. and R Brooke Jacobsen, Ph.d. are both professors in the Department of Human Development and Family Studies at Colorado State University. In their study of gay and heterosexual fathers they state:

"Our findings in this study support that of others who report finding almost no differences when homosexual parents are compared with heterosexual parents with regard to degree of intimacy with children, problem solving, provision of recreation for children, encouragement of their autonomy and the manner in which problems of child rearing are handled."<sup>5</sup>

The significant differences which are evident after reading several studies<sup>6</sup> is the substantially higher rate of child-centred problem-solving exhibited by lesbian mothers as opposed to heterosexual married mothers and the higher rate of participation of lesbian mothers' partners in child care and household duties.

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<sup>5</sup> Bigner, JJ and Jacobsen, R B "Adult responses to child behavior and attitudes towards fathering: Gay and non-gay fathers" (1992) 23 (3) Journal Of Homosexuality 99 at page 109

<sup>6</sup> Judith Ann Miller, R Brooke Jacobsen and Jerry J Bigner "The child's home environment-lesbian vs heterosexual mothers: a neglected area of research" (1981) 7 (1) Journal of Homosexuality 49

Moreover, as Elena Marie DiLapi MSW, of the University of Pennsylvania notes:

"The Bell-Wienberg study, Homosexuality's (1978) found that homosexual men and women are more apt to have more close friends than their heterosexual counterparts. Thus one might conclude that lesbians having strong stable support networks and relationships helps to provide consistency for children growing up"<sup>7</sup>

Therefore, the only noticeable differences for children growing up in a lesbian or gay male household rather than a heterosexual household are advantageous rather than detrimental. There are cases under the Family Law Act 1975 (Cwth) which clearly indicate that there are no presumptions that certain qualities or characteristics disqualify a person from gaining custody for guardianship of a child. For example, Hannon J in the Family Court in Doyle and Doyle (1992) FLC 92-286, where custody of nine year old boy was granted to his father who was living in a permanent homosexual relationship, commented that a parent's lifestyle is of no relevance without a consideration of its consequences on the child's well-being. Hannon J further stated that homosexuality is relevant only if it affects parenting ability or the welfare of the child.

Recommendation: Lesbian and gay male couples should be able to adopt a child jointly.
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<sup>7</sup> Elena Marie DiLapi "Lesbian Mothers and the Motherhood Hierarchy". Paper originally presented at the 1986 "Challenge of Parenting in the 1980s, the Second Annual Parenting Symposium" at page 16

## 7. (STILL) DEBUNKING MYTHS ABOUT LESBIANS AND GAY MEN

There are a number of fallacies which underlie the resistance to lesbian and gay male parenting and adoption:

MYTH: The child will grow up to be a lesbian or a gay man

The Gay and Lesbian Rights Lobby rejects the prejudice implicit in this objection that if a child grows up to be a lesbian or a gay male that is a misfortune. If adoptive agencies and judicial sentiments about suitability of adoptive parents rest on this objection they offend the basic tenets of NSW anti-discrimination law which makes illegal discrimination, either direct or indirect, on the basis of homosexuality.

FACT: This objection is unfounded. There is no evidence to show that children growing up in lesbian or gay male homes are confused about their sexual identity or that their psychological development is inhibited.<sup>8</sup> Research has confirmed that lesbian and gay male parents, because of experiences of compulsory coercive heterosexuality are less likely to seek to impose their way of life on the adopted child. A number of studies have found that children of lesbian and gay men are no more likely to grow up gay than anyone else.<sup>9</sup> Their parents do not indoctrinate them. For example, Golombok et al<sup>10</sup> compared 27 children from lesbian households with 38 children from single heterosexual households. The study examined the children's' emotional development, peer group relationship and psycho sexual development including sex role behavior and direction of sexual interest. No significant difference was found between the two groups. Although most heterosexual partners bring up their children to be heterosexual, there is no evidence that lesbians and gay male parents bring up their children to be lesbian or gay male. Indeed, as Green, Mandel, Hotvedt, Gray and Smith have commented "It may appear facile, but nevertheless is accurate, to state that nearly all homosexuals had heterosexual parents."<sup>11</sup>

MYTH: The child may be abused

FACT: There is no empirical evidence that children cared for by lesbians or gay men are particularly vulnerable to sexual abuse. In contrast, research shows that 95% of child sexual abuse is perpetrated by heterosexual men, usually living in the same household as the child whom they have abused.<sup>12</sup>

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<sup>8</sup> Green, Mandel, Hotvedt, Gray and Smith "Lesbian and Heterosexual Mothers and their Children" (1986) 15(2) Archives of Sexual Behavior 167 at page 179

<sup>9</sup> See Bozett "Children of Gay Fathers" in Bozett (ed) Gay and Lesbian Parents New York; Tasker, F L and Golombok, S "Children Raised by Lesbian Mothers: The Empirical Evidence" (1991 ) Family Law 187; Cramer, D "Gay Parents and Their Children: A Review of Research and Practical Implications" (1986) 64 Journal of Counselling and Development 504-507; Green, Mandel, Hotvedt, Gray and Smith "Lesbian and Heterosexual Mothers and their Children" (1986) 15(2) Archives of Sexual Behavior 167

<sup>10</sup> Golombok, Spencer and Rutter "Children in Lesbian and Single-parent Households: Psychosexual and Psychiatric Appraisal" (1983) 24 (4) Journal of Child Psychiatry 551- 572

<sup>11</sup> Green, Mandel, Hotvedt, Gray and Smith "Lesbian and Heterosexual Mothers and their Children" (1986) 15(2) Archives of Sexual Behavior 167 at page 181

<sup>12</sup> Official statistics from the London Metropolitan Police indicate that the figure is 96%: Jane Skeates and Dorian Jabri Fostering and Adoption by Lesbians and Gays 1988, London Strategic Policy Unit at page 23

MYTH: A lesbian or gay male parent will reject a child of the opposite sex

FACT: There is no evidence that a lesbian or gay male parent will reject a child of the opposite sex. Such an assumption is based on the fallacy that lesbianism or homosexuality is a form of rejection of heterosexuality rather than a separate but equally viable form of sexual expression. There is no evidence that lesbian or gay male parent is any more likely to reject a child of the opposite sex than is a non-lesbian or non-gay male parent likely to reject a same-sex child.<sup>13</sup> In addition to this, it is simply illogical to suggest that a lesbian or gay man would go through the lengthy process to adopt a child and then reject her or him because of their sex.

MYTH: A Lesbian or gay male home is not "normal"

FACT: Most Australian families do not conform to the nuclear family of mum, dad and children. Only 25% of Australian families reflect this 'traditional family' model. This objection rests on the false assumption that children growing up in lesbian or gay male home may be more likely to experience emotional and behavioral problems. The assumption that influences directly related to parents' homosexuality lead to increased risk of psychiatric disorder is contrary to research in this area. References to disruption and discord within the family do not relate in any way to parents' homosexuality.<sup>14</sup> There is no evidence that children who grow up in 'traditional families' are any better adjusted than other children.

The Law Reform Commission's Issues Paper on the Review of the Adoption of Children Act 1965 (NSW) acknowledges "community attitudes and laws have changed in relation to unmarried parenthood, the roles of men and women, ex-nuptial birth, de facto relationships and many other features of family and community life."<sup>15</sup> Adoption laws must keep pace with these changing attitudes, including changes to the concept of the 'family'. Lesbians and gay men also form families which provide the care, security and emotional support presumed to exist in the traditional heterosexual family.

In 1989, a Washington state court gave a woman the right to adopt her partner's child making them both the child's legal parents. The lawyer for the family, University of Puget Sound Law Professor Raven Lidman said about the decision: "It's an example of the court looking at function over form, of recognizing families as they exist now".<sup>16</sup>

MYTH: Public prejudice against lesbianism and homosexuality will mean that the child is stigmatized by society

FACT: There is no evidence that children brought up by lesbians or gay men are subject to harassment any more than other children. Research actually indicated that children raised in lesbian households are not disadvantaged by this experience.<sup>17</sup>

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<sup>13</sup> Cramer, David "Gay Parents and Their Children" (1986) 64 Journal of Counselling and Development 504 -509 at page 505

<sup>14</sup> Tasker and Golombok, above, at page 184

<sup>15</sup> Issue Paper 9, paragraph 1.4

<sup>16</sup> Katie Monagle Ms October 1989 18(4) at page 69

<sup>17</sup> See references to Tasker and Golombok; Knight; Kilpatrick; Gibbs; Falk. Also Green and Helen Cosis Brown

As mentioned previously, children are victimized for a variety of factors including race, sex, disability, size, religious and cultural differences. Rather than trying to hide the problem and thereby inadvertently condoning discrimination and harassment, it is the harassment itself which should be tackled and the prejudice which lies behind it.

As we have stated previously, attitudes to gay men and lesbians throughout the world are changing and as we become more accepted, having a gay or lesbian parent will cease to be seen as a reason for teasing or harassing a child.

In the absence of research which conclusively proves that lesbians and gay men are bad parents, there can be no reason for discriminating against lesbians and gay men who wish to adopt children. Law reform should be based on the best evidence. In the absence of any evidence, homophobic fears that parenting by lesbians and gay men threatens society's views of 'the family' should not be placed above the interest and welfare of the child. What is being assessed in the adoption process is the potential adopter's capacity to meet the needs of particular children, not whether the potential adopters fit a particular ideological notion of the family.<sup>18</sup>

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<sup>18</sup> Helen Cosis Brown "Competent child-focused practise: working with lesbian and gay carers" (1991) 15(2) Adoption and Fostering 11- 17 at page 13

## 8. CONCLUSIONS

In this submission the Gay and Lesbian Rights Lobby has attempted to demonstrate that regulations against lesbians and gay men adopting children are based on myths, fallacies and erroneous. preconceptions rather than on logical and rational arguments.

Much of the empirical information on lesbian and gay male parenting that is available is the result of research done in the United States and Britain but there is no reason to believe that the parenting abilities of Australian lesbians and gay men would differ greatly from our American and British counterparts. The research cited throughout this submission has been conducted by academics in leading universities and the results published in such journals as *American Journal of Orthopsychiatry*, *The Journal of the National Association of Social Workers*, *Psychology Today*, *Social Work and the Journal of Child Psychology*. The results of the research suggest that lesbian and gay male parents are little different from heterosexual parents, and that their children are similar to other children.

There can be no justification for the continued discrimination against lesbians and gay men who wish to parent children. Homophobic attitudes should not prevent children from being placed in the most suitable homes. The State does children a disservice by continuing to allow uninformed decisions to be made. The major consideration in adoption legislation and procedures should be the welfare of the child.

We ask that the Law Reform Commission not be seduced by the emotional pleas which they will no doubt receive from those claiming to have the moral high ground and instead that you continue to base your recommendations on the available evidence and on a logical analysis of the facts. If this is the case, you cannot but conclude that lesbians and gay men should be allowed equal access to adoption services both in the interests of the children awaiting adoption and in the interests of justice.