

DISSENTING STATEMENT – THE HON GREG DONNELLY MLC

Does a child have a right to expect to be raised by a mother and a father? Should New South Wales law recognise such a right and facilitate, wherever possible, children being raised by a mother and a father?

It is my view that the answer to both these questions is yes. Moreover, I believe that the overwhelming view of the citizens of New South Wales to both these questions is also yes, notwithstanding the fact that for a range of reasons beyond their control, there are children in this state who do not have the opportunity to grow up with a mother and a father.

New South Wales has had responsible government since 1856 - over 150 years. Over that period, governments of all persuasions have acknowledged and supported the general proposition that a child's best interest is served when that child is raised by a mother and a father. This has been seen, correctly in my view, as a valid principle that has guided our collective decision-making with respect to protecting the wellbeing of children. The principle is underpinned by that profoundly human bond that exists between a child and a mother and a father. A bond that is intrinsically known and understood by all cultures, down the ages for as long as anybody can remember.

This report is significant because it seeks to turn on its head, this conventional wisdom that has guided lawmakers in this state for generations with respect to legislating for the welfare and best interests of children. The recommendations in this report if implemented, would deny some children the right to be raised by a mother and a father. For a government to propose such legislation would, in my view, be unconscionable. To be sure, it would amount to a statement by the government that for a child both "mothering" and "fathering" are not important.

Adoption is a definitive legal process which permanently transfers all the legal rights and responsibilities of being a parent from a child's birth parent(s) to the adoptive parents(s). Adoption laws in this state have always operated to serve the best interests of children, not adults. This "paramountcy principle" remains at the heart of adoption legislation and practice in New South Wales today.

Current legislation restricts adoption by couples to heterosexual couples. Underpinning this is the widely held community view that it is in the best interests of a child to be raised by a mother and a father. The arguments made in favour of the heterosexual parenting model were presented in detail by a number of participants to the inquiry both through submissions and oral evidence. I find the arguments and the evidence supporting the heterosexual parenting model of a man and a woman in a permanent, preferably married relationship persuasive and worthy of ongoing legislative support.

Decisions of adults do often impact on children. For example, there are children in New South Wales living with two adults of the same-sex, one of whom is biologically connected to the child. Indeed there may be instances of children living with two adults of the same-sex, where neither of the adults is biologically connected to the child. Furthermore, there may also be cases where a child is living with more than two adults.

If there are genuine questions of uncertainty with respect to rights and responsibilities between same-sex couples and children who are living with them, then there is an argument that these matters should be looked at and clarified. However, I do not believe that the appropriate way to proceed is to amend the *Adoption Act 2000*. That Act, as it was designed to do, covers the field with respect to adoption in this state. If there are certain specific issues that need to be addressed involving same-sex couples and

children living with them, let the specific issues be considered and dealt with on their merits. Amending the *Adoption Act 2000* is not the only way to deal with such issues. Other legislative or regulatory mechanisms could be developed to address them.

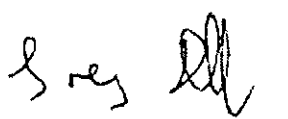
Other issues in the report deserving comment include:

- adoption by same-sex couples is not permitted in the majority of countries around the world; and
- laws permitting adoption by same-sex couples in Australia are the exception, not the rule.

Faith-based adoption agencies have a long history of providing adoption services in this state. An exemption provision in the *Anti-Discrimination Act 1977* enables such agencies to, according to their religious tenets, only offer adoption services to heterosexual couples. This arrangement has operated without difficulty or problems for a number of years. It is therefore extraordinary that one of the recommendations of this report would seek to qualify and compromise the exemption entitlement currently utilised by these agencies. The proposed requirement of faith-based agencies to refer same-sex couples who seek their services to another accredited adoption agency that will assist them totally compromises the position they relied upon under the exemption in the first place. Forcing a faith-based agency to act in a way that did not accord with the tenets of their beliefs would undermine the exercise of legitimate religious freedom.

On the issue of the exemption provision, one final point should be made. Subject to the Appeal Panel's decision in the Wesley Mission case referred to in chapter 6 of the report, the New South Wales Government should obtain legal advice to establish what actions should be taken to provide certainty with respect to exemption provision protection for faith-based adoption agencies, as originally intended by the Parliament.

I conclude by noting that it was only with the exercise of the casting vote by the Committee Chair that the proposed recommendations were endorsed. Throughout this report, reference to "the majority of the Committee" means three Committee members out of six with the casting vote of the Chair required to carry the day. This inquiry report does not provide a mandate for change of adoption laws. What it does do is highlight the need for further study, debate and reflection on this most important area of social policy.



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Government Whip