

15 October 2015

*Ms Lizzie Blandthorn MP*  
*Chair*  
*Scrutiny of Acts and Regulations Committee,*

Dear Ms Blandthorn,

The *Adoption Amendment (Adoption by Same- Sex Couples) Bill 2015* (the Bill) explicitly removes any existing protection for faith based adoption agencies from the Equal Opportunity Act.

It is submitted that the Bill directly trespasses unduly upon rights and freedoms and should be reported as such to the Parliament pursuant to section 17 of the *Parliamentary Committees Act 2003*

The stated purposes of the Bill are:

- (a) to amend the **Adoption Act 1984** to enable the adoption of children by same-sex couples; and
- (b) to amend the **Equal Opportunity Act 2010** to remove the exception to the prohibition to discriminate in relation to religious bodies providing adoption services.

It is submitted that the removal of the exemption which appears in section 17 of the Bill breaches long standing religious freedoms.

For example, a Catholic adoption agency in Melbourne, CatholicCare, which has been in operation for 80 years, is at grave risk of being unable to comply with relinquishing parents requests for a mother and a father in accordance with the agency's religious views.

Proper allowance was made for religious freedom in NSW when same-sex adoption was passed in 2010 under the ALP Keneally Government.

Hon. Linda Burney (then NSW ALP Minister for Community Services) expressed her support for the exemption for faith-based organisations in NSW in regard to same-sex adoptions, stating that:

“I believe what is required in this debate is to find a balance between law and conscience and between equality and freedom... Does the exemption for faith-based organisations, as included in the proposed bill, result in the religious beliefs of faith-based adoption service providers prevailing over the rights and the ability of same-sex couples to adopt a child in New South Wales? The answer is no. Gay couples will have full and equal access to adoption through New South Wales Community Services and Barnardos. Examples in the United Kingdom show negative outcomes where faith-based organisations were not provided with an automatic exemption.”

In Victoria in 2015, in its submission to the Department of Premier and Cabinet in the “Review to permit adoption by same-sex couples under Victorian Law”, the Catholic Archdiocese of Melbourne expressed the following concerns:

“If same-sex adoption is introduced in Victoria, there is a risk that if CatholicCare declined to provide adoption services to persons on the grounds of their sexual orientation it would be found to have breached the Equal Opportunity Act 2010... In the absence of an appropriate amendment to the Equal Opportunity Act or the Adoption Act, it is possible that CatholicCare would be forced to cease providing adoption services as it could not do so without the risk of breaching the Equal Opportunity Act.”

How this was achieved in NSW- by amending 2 Acts.

NSW Adoption Amendment (Same Sex Couples) Bill 2010

Amending the **Adoption Act 2000**

45B Consideration of wishes of parents consenting to adoption

(1) A general consent of the parent of a child to the adoption of the child, as referred to in section 53, may express the wishes of the parent as to the preferred background, beliefs or domestic relationship of any prospective adoptive parents of the child.

(2) Nothing in the Anti-Discrimination Act 1977 prevents the Director-General or a principal officer of an adoption service provider from identifying (consistently with the best interests of the child) prospective adoptive parents who reflect those wishes in the adoption selection process under this Part.

And the **Anti-Discrimination Act 1977**

Insert after section 59: 59A Adoption services

(1) Nothing in Part 3A or 4C affects any policy or practice of a faith-based organisation concerning the provision of adoption services under the Adoption Act 2000 or anything done to give effect to any such policy or practice. Note. Section 8 (1) (a) of the Adoption Act 2000 requires decision makers to follow the principle that, in making a decision about the adoption of a child, the best interests of the child, both in childhood and in later life, must be the paramount consideration.

(2) Subsection (1) does not apply to discrimination against any child who is or may be adopted.

(3) In this section, faith-based organisation means an organisation that is established or controlled by a religious organisation and that is accredited under the Adoption Act 2000 to provide adoption services.

The *Adoption Amendment (Adoption by Same- Sex Couples) Bill 2015* did not provide the NSW type exemptions sought.

Instead the Bill explicitly removes any generally worded protection for faith based adoption agencies from the Equal Opportunity Act.

Adoption in Victoria is provided through the Department of Human Services and Anglicare as well as CatholicCare

A birth parent may request of a faith based agency, that their child be raised by say a catholic mother and father. However an agency acting on this request risks breaching the Equal Opportunity Act.

Same Sex couples have ample opportunities to adopt through the Department of Human Services and Anglicare.

It is relevant that same sex couples have substantial choice in relation to adoption agencies.

In these circumstances, clause 17 of the Bill trespasses unduly upon longstanding freedoms of religion for birth parents and faith based agencies who act on their requests.

I am available to give vive voce evidence in support of this submission at your early convenience.

Yours faithfully,



**Daniel Flynn**  
**Victorian Director**

[Note: WA also has a faith based adoption agency exemption]

This is from the 2010 NSW report.

[https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/c81be8593a9fec64ca2575ed000e043f/\\$FILE/ATTE041Z/Final%20Adoption%20report%20amended%20100301.pdf](https://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/c81be8593a9fec64ca2575ed000e043f/$FILE/ATTE041Z/Final%20Adoption%20report%20amended%20100301.pdf)

"As discussed in Chapter 2, there are three Australian jurisdictions that currently permit adoption by same-sex couples: the Australian Capital Territory, Western Australia and (to a more limited extent) Tasmania. **As far as the Committee is aware, only in Western Australia are faith-based adoption agencies effectively exempt from the application of antidiscrimination legislation.**

In relation to Western Australia, the Acts Amendment (Lesbian and Gay Law Reform) Act 2001 (WA) implemented a number of measures to equalise the status of gay and lesbian people including amending the Adoption Act 1994 (WA) to allow same-sex couples to adopt. Following debate on the Bill, changes were made to include a specific amendment to the definition of 'services' under Section 4 of the Equal Opportunity Act 1984. This amendment effectively excluded the Equal Opportunity Commission from reviewing any allegation of discrimination relating to the adoption of a child." Citation 481 (WAPD (Legislative Assembly), 2 August 2001, p 1983 and WAPD (Legislative Assembly), 11 December 2001, pp 6851-6852 ]

16 October 2015

Ms Lizzie Blandthorn MP  
Chair  
Scrutiny of Acts and Regulations Committee,

Dear Ms Blandthorn,

Further to my letter of 15 October, The *Adoption Amendment (Adoption by Same- Sex Couples) Bill 2015* (the Bill) (by removing any existing protection for faith based adoption agencies from the Equal Opportunity Act the Bill) discriminates against individuals who work in a religious body which is an adoption agency who may be opposed to same sex adoption (ssa) on religious or conscience grounds.

People who work in such agencies who have a religious or conscientious objection to ssa will suffer the discrimination in that their Charter rights to freedom of conscience, religion and belief will be infringed.

This impact on Section 14 of the Charter has not been addressed in the Statement of Compatibility and it should have been.

#### **14 Freedom of thought, conscience, religion and belief**

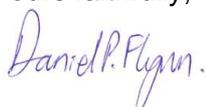
- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
  - (a) the freedom to have or to adopt a religion or belief of his or her choice; and
  - (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Archbishop Hart said on 6 October 2015, in relation to this issue:

“The Catholic position on marriage and family holds that the well-being of the community and children are best served when they experience the love of both a mother and father in a safe, secure and stable relationship”

As a matter of context, or weighing the competing rights, those who will benefit from the Bill will suffer no harm if the Equal Opportunity amendment is removed from the Bill because they will be able to access adoption from DHS and other agencies.

Yours faithfully,



**Daniel Flynn**  
Victorian Director