

18 October 2015

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

By email: [sarc@parliament.vic.gov.au](mailto:sarc@parliament.vic.gov.au)

Dear Ms Blandthorn,

**Adoption Amendment (Adoption by Same Sex Couples) Bill 2015 (Vic).**

I wish to make a submission to the Committee on the *Adoption Amendment (Adoption by Same Sex Couples) Bill 2015 (Vic)*.

The state purpose of the Bill is to amend the Adoption Act 1984 to enable the adoption of children by same-sex couples and to amend the Equal Opportunity Act 2010 to remove the exception to the prohibition to discriminate in relation to religious bodies providing adoption services.

While I am not supportive of the intended purposes of the Bill, my submission today focuses on the infringement on the freedom of religion.

**Clause 17 of the Bill**

Clause 17 of the Bill removes the existing exemption from the Equal Opportunity Act for religious organisations in relation to their provision of adoption services. That exemption currently allows religious organisations to refuse to arrange adoptions of children to same sex couples if that refusal conforms with the doctrines, beliefs or principles of the religion or is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.

Adoption in Victoria is provided through the Department of Human Services and Anglicare and Catholic Care. I understand that only Catholic Care will refuse to arrange adoption by same sex couples because of religious doctrines and beliefs of itself, its employees and, often, of a birth parent. (A birth parent may request a faith based adoption agency to have their child raised by a mother and father because of a religious or conscience-based belief that is in the best interests of the child).

If the main part of the Bill becomes law, same sex couples will be able to use the services of the Department of Human Services and Anglicare to adopt and no same sex couple will be denied the ability to adopt. Clause 17 of the Bill is unnecessary to achieve the provision of same sex adoption services in Victoria.

Clause 17 limits the freedom to demonstrate religion or belief in practice of adoption agencies, their employees and relinquishing parents who have a religious or conscience-based conviction that children should be raised by opposite sex couples.

This limitation is contrary to Charter s.14 (1)(b) and (2) and to the common law right to freedom of religion and conscience.

Section 14 of the Charter provides that

- (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.

If the Bill is allowed to pass unamended, a religious adoption agency which acts on its genuinely held religious belief or a birth parent's conviction by refusing to arrange adoptions by same sex couples will breach the Equal Opportunity Act. That consequence leaves:

- the religious body with the choice of breaking the law or closing its adoption service to all couples or abandoning its religious convictions.
- employees of adoption agencies with such religious convictions with a similar choice of acting against their deeply held religious or conscientious beliefs or quitting their jobs.
- relinquishing parents with no ability to have their religious or conscientious beliefs about the parenting of their child considered and implemented by an adoption agency.

This is particularly concerning as Catholic Care has already publicly expressed they would consider closing down their services altogether. This would mean less adoption agencies and less options for children. Catholic Care has been operating for decades in accordance with their religious beliefs.

In 2007 the UK Labour government adopted a similar law to the Bill without exceptions for religious adoption services and that forced the closure of all UK Catholic adoption agencies or their abandonment of their religious conviction: see: <http://www.telegraph.co.uk/news/religion/7952526/Last-Catholic-adoption-agency-faces-closure-after-Charity-Commission-ruling.html>

The only practical effect of clause 17 is to limit the rights of religious bodies, their employees and relinquishing parents to act in accordance with their religious beliefs that children should be raised by a couple who are a woman and man and who can provide male and female role models and model gender complementarity to the children. It is an unnecessary overreach by the government which breaches human rights.

### **Clause 17 is discriminatory contrary to s.8 of the Charter**

Clause 17 amounts to discrimination against people with such religious convictions. A general requirement which has the effect of disadvantaging people with an attribute protected under the Equal Opportunity Act (in this case a particular religious belief) and is not reasonable, amounts to indirect discrimination under s.9 of the Equal Opportunity Act and is contrary to s.8 of the Charter.

It is not reasonable or necessary to compel religious persons to comply with this law because there is a reasonable accommodation available which still achieves the result sought (s.9(3)(e)). That accommodation is to remove clause 17 and exempt religious persons and adoption agencies - same sex adoption will still be widely available through DHS and other adoption services.

In the Statement of Compatibility the Minister asserts that there is no less restrictive means available of removing discrimination against same sex couples (as required by section 7(2) of the Charter). But that is plainly wrong. The Bill will achieve its goal of enabling full access to same sex adoptions in practice without clause 17.

The NSW same sex adoption legislation achieves that goal of enabling same sex adoption while continuing to respect and accommodate genuine religious convictions to the contrary.

The government has failed to recognise that there are multiple human rights interests in this change which can be accommodated.

In a recent interview with 3AW on 9 October 2015 (in relation to protests over building a mosque) Premier Daniel Andrews told Neil Mitchell that "This is a secular country, we are a multi-faith, multicultural state. This diversity is our greatest asset." Further, he stated that "I will always speak out for that, I will always stand up for it."

Clause 17 reflects a totalitarian government policy which clearly and directly contradicts the Premier's own value placed on diversity in our multi-faith and multi-cultural society.

Victoria can follow the NSW model and remove clause 17 and accommodate both same sex adoption and religious convictions. But clause 17 unnecessarily tramples on the human rights of religious people and organisations without practically assisting the human rights of same sex couples.

I strongly urge you to review clause 17 of this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Derrick Toh', written in a cursive style.

Derrick Toh  
President of the Victorian Christian Legal Society