



By email to "sarc@parliament.vic.gov.au" <sarc@parliament.vic.gov.au>
Attention Nathan Bunt
Executive Officer, Scrutiny of Acts and Regulations Committee

Parliament House, Spring Street
EAST MELBOURNE VIC 3002

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

October 19th 2015

Dear Ms Blandthorn,

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

We write to make a submission to the Committee on the Adoption Amendment (Adoption by Same Sex Couples) Bill 2015 (Vic).

Freedom 4 Faith (F4F) is a legal think tank that exists to see religious freedom protected and promoted in Australia. F4F's leadership team includes senior Christian leaders from the Anglican, Baptist, Presbyterian, Seventh-day Adventist and Australian Christian Church traditions.

Currently only a couple who are a man and a woman can adopt a child under the Act, The general purpose of the Bill is to permit 2 people of the same sex to adopt children – this covers both adoption of a child who is related to one of the persons and adoption of a child who is related to neither of the persons.

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.

Clause 17 is unnecessary for the Bill to achieve its main goal.

Adoption in Victoria is provided through the Department of Human Services and Anglicare and Catholic Care. We 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.

Because of clause 17, 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.

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 the 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 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 also 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 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.¹

The Government has failed to recognise that there are multiple human rights at stake in this change which can be accommodated. The Premier has spoken recently of the great value of diversity in our multi-faith and multi-cultural society; but clause 17 is designed to compel a single opinion and course of conduct in public life, not diversity.

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.

We would also be happy to meet with you or your representative should you wish any clarification of our position or if we could be of some other assistance. You can reach me directly on 0422 947 309.

Many thanks for your consideration of this important matter.

Yours sincerely,

Michael Kellahan
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¹ NSW Adoption Amendment (Same Sex Couples) Bill 2010, amending the Adoption Act 2000 as follows:

s. 45B (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 amending the Anti-Discrimination Act 1977 (NSW), s 59A as follows:

(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.