


Mr Robert Ferguson


4th October 2016

Research Director
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Members of the Health, Communities, Disability Services and Domestic and Family
Violence Prevention Committee,

Please accept my submission for consideration in review of the Adoption and Other
Legislation Amendment Bill 2016.

I applaud the government for reviewing the Adoption Act 2009, and note that in seven years societal values and beliefs have changed, mostly for the better. While legislation tends to follow such change, it can also drive change. It is therefore my hope that the Queensland Adoption Act will allow same sex attracted persons to be fairly assessed for adoption based on their ability to provide loving stable homes for children. Homes that I know can offer children an opportunity to realise their full potential, and contribute to a society that welcomes difference. It is also my hope that other same sex attracted men and women can experience the most wonderful and rewarding role that is parenting; there aren't words to describe how fulfilling it is.

This review is important to me as a gay man and foremost a father, as it is to many other same sex couples; the gay and lesbian community; gay and lesbian foster carers, or family carers; and those in second parent relationships who wish to become recognised families through adoption.

Same sex parenting is occurring regardless of the Adoption Act 2009, however this does not absolve the government's responsibility to act to protect all it's citizens and reduce the legislative discrimination against the gay, lesbian, bisexual, transgender, queer and intersex (GLBTQI) community. Discrimination that exists in light of research comparing lesbian and gay parents to heterosexual parents, and children of lesbian and gay parents to children of heterosexual parents. The research is quite clear: *Common stereotypes are not supported by the data, that is, beliefs that lesbian and gay adults are not fit parents likewise has no empirical foundation.*

When it comes to decisions about ‘the best interest of the child’, the power to make sound decisions and exercise wise judgements continues to lie in the uniquely human capacity to weigh and evaluate multiple sources of evidence, ever mindful of the historically, culturally and conceptually contextualised nature of knowledge in the family law system. There are many valuable academic papers available providing meta-analysis of the research, therefore I am sure you will appreciate it if I do not repeat the analysis here, or attempt to counter the beliefs of those who would have you believe children in gay and lesbian families are worse off, or that any deviation from a heterosexual existence or definition of family is flawed.

Instead, let me share my experience as man in a same sex relationship, and as a father. For the purpose of this submission I use the term ‘father’ to describe my relationship and my responsibilities to my daughter, not a genetic, biological, or legal definition. I also point out the diversity that exists within gay and lesbian families the GLBTQI community, in addition to heterosexual parent families. As a male same sex parenting couple we represent only 2-3 per cent of same sex parents with a resident child, while small in number the issues are significant.

Since I was a small child I wanted children of my own, I came from a large family (yes it was Catholic) and often had my younger sister on my hip, as many children in large families do. My early years taught me the value of a loving family that included children, however as I grew older, the unfortunate reality of a society less tolerant or accepting made my dreams of being a father less likely.

Unlike my brothers and sisters, Queensland’s legislation did not welcome me as a young man or any other members of the gay and lesbian community. It was not until the election of Labor's Wayne Goss in late 1989, and recommendations from the CJC, the law was changed in October 1990, and I was already in my late twenties. Legislation has never been good at stopping human nature, and prior to 1990 the legislation served to simply outlaw homosexual relationships.

Legislation did not prevent me, or the gay and lesbian community from having a same sex partner. Likewise, it is a social reality that gay and lesbian couples are having children and raising families. The heteronormative context, in which Queensland legislation and family law exist, does nothing but build mistrust within the GLBTQI community in the ability of the service system or its agencies to act fairly. Neither myself, nor the gay and lesbian community can afford to wait for legislation to accommodate our human needs for love and family. The legislation serves no logical purpose in excluding homosexuals, with the exception of causing psychological harm to the GLBTQI community and their families, which I believe is not the intent of this government.

My partner and I have been together for 24 years, we have supportive families, for which we are very grateful. Since our daughter was a few hours old we have been her sole carers, we have fed, bathed, nursed, soothed, nurtured, loved, been her teachers in everyday tasks, teaching her how to dress herself, how to walk, explained things, taken care of her when she was sick or hurt, been that someone she can count on, and as best as we could we laid the foundations for a child to grow and be the best person they can be. Our daughter is now 14

years old and is a beautiful young person, she has kindness, respect, generosity, empathy, humour, and intelligence, to name a few of her many endearing qualities.

We understand the importance of identity, and the decision to parent our daughter was made with her interests in mind. Our daughter has frequent contact with her mother and siblings as they are part of our family, as are her grandparents, aunts, uncles, and cousins.

Like many large loving families, having a child adopted out wasn't an option, our ability to love and care for each other, to keep family ties intact was a priority. When our daughter was born there wasn't a legislative system that could be relied upon to *impartially* make a decision in her best interests. If it were any other family member but a same sex family member the legislative options would have been different. We know that any decision at the time would be based on our sexual orientation and perceived inability, not our real capacity, to parent and ensure our daughter had everything she needed to reach her full potential. Which is ironic since my professional expertise is in parenting support, policy, knowledge and parenting skill development.

Without adoption rights there is always the possibility your child can be removed from your care, the child you have loved beyond definition; and not having any legal rights to prevent it; well that is the nightmare that does occasionally ravage our sleep. There were also many times I wish I could have said confidently to our daughter that she will never be apart from us, but only adoption could have made that possible. Adoption also affords our daughter legal status in relation to making decisions in our best interest, should we become unable to do so ourselves. Furthermore, adoption protects her legal claim on what should rightfully be hers if and when something happens to us, her parents.

In addition, we are concerned about the negative messages that an absence of recognition, such as adoption rights to same sex couples is sending to our daughter and all other children with same sex parents or the gay and lesbian community at large, about government and community values and beliefs. I believe most of society wants our children to grow up in a world accepting and valuing difference, and to develop the values of acceptance and tolerance. If this is to happen legislation has a role to play.

Not to mention the nonsensical nature of the legislation where same-sex couples are ineligible to adopt children, and yet throughout Australia, single persons are eligible to adopt children. This was demonstrated in the Victorian decision of *AB v Victorian Equal Opportunity and Human Rights Commission and Department of Human Services* (2010). In summary a same sex couple had been fostering an 11-year-old boy for some years. As the couple was ineligible to adopt the child as a couple, one of the couple applied to adopt him as a single person. The court found that, notwithstanding the couples 'ineligibility to adopt, an order could be made for one of the parties to adopt the child as an individual'.

Furthermore, the message that gay and lesbian people are lesser people and cannot be good parents is amplified by the disparate policy approaches of this government. Rightfully so, the government allows/promotes its most vulnerable children to be fostered in same sex families, however this same government does not see them fit to adopt. Here lays a subtle but harmful

message, '*second class care for second class citizens*', not one I believe to be true, but one that is implied by the government of our legislation. This anomaly must be corrected and value in these children and their gay and lesbian carers reinstated.

Our daughter is doing great, and is a young adult, therefore she will have her own choices to make, but legislation still has a role in legally defining us as a family and with that legal responsibilities. However the message and principle of support and recognition of equality will change many lives. As no country, it's States or Territories can prosper in a changing world when members of the society are not treated or acted upon fairly.

Legislation can either follow trends in societal change or drive the change that is required to protect the collective wellbeing of all its members, void of ignorance, racism, prejudice or discrimination. Changes to the adoption legislation will provide the Queensland Government a further opportunity to realise the end to discrimination against the gay and lesbian community. While providing opportunities for children to grow up in stable and secure environments, with parents who love them, encourage and support them to reach their full potential regardless of the gender or sexual orientation of their parents or of their children.

Queensland currently trails the Australian Capital Territory, Western Australia, Tasmania, New South Wales and Victoria, who have all changed their approach to allow same sex couples, individuals, and stepparents to have their suitability assessed as adoptive parents. We run the risk of being a state of bystanders on the issue of discrimination; there are people whose lives are absolutely ruined as a result of discrimination, and as we ponder change, there are children and young people navigating their journey of acceptance to the sexual orientation and gender identity they were born to.

I make this submission also for the future gay and lesbian generations, so they may experience the full richness of life, whether that be to parent or not, and for a generation who will experience legislation that protects and fully support their choices, without exemption based on sexual orientation. It will be a defining moment in history when we realise how similar we are as humans, when we are *all* treated equally.

To those who may oppose this Bill, I ask you to reflect on your privilege as heterosexuals and ask you use that privilege with kindness in your heart and acceptance of the beautiful and diverse world we were created into. Our difference, I believe, is a test of great character and offers us the opportunity to realise what it is to be human.

What if your most controversial act turned out to be the most traditional thing in the world?

Yours faithfully,

Robert Ferguson