

Title: Speech in NSW Legislative Council on [Miscellaneous Acts Amendment \(Same Sex Relationships\) Bill 2008](#)
Author: Rev. Hon. Dr Gordon Moyes AC MLC
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Objectives:

This bill seeks to amend 57 Regulations, Acts and other instruments of New South Wales legislation. Firstly, it seeks to amend the Anti-Discrimination Act 1977 by adding ‘domestic status’ along with ‘marital status’, so that same sex de facto relationships are included. This will align it with the Property (Relationships) Act 1984, which includes same sex couples in the definition of de facto relationships.

Secondly, it seeks to amend the Status of Children Act 1996 to extend to the lesbian partners of birth mothers the same parenting presumptions in relation to children born as a result of a pregnancy achieved via a fertilization procedure (eg IVF).

In addition, it seeks to amend various other acts and instruments such as: the Births, Deaths and Marriages Registration Act 1995, and the Industrial Relations Act 1996.

I will now look at the implications and consequences for each of these Acts. The Bill seeks to extend to de facto relationships all provisions that apply to spouses, and seeks to clarify that when there are references to “a partner” in these Acts this term means “a partner of any gender”. A de facto relationship under the Property (Relationships) Act 1984 is currently defined as being between two adult persons who live together as a couple, and are not married to one another, nor related ‘by family’.

Comments:

The government seeks to amend these 57 Regulations, Acts and other instruments of New South Wales legislation in order to cease condoning what they describe as an established legal infrastructure that perpetuates social exclusion to any citizen based on their sexual partnership, and to treat children living in same-sex relationships as having the same rights and entitlements as children of traditional relationships. The government says it wants to ‘ensure that lesbian parents can take parental responsibility for the children of their partners’.

How will the Bill achieve this? Firstly, the government sees this Bill as solving a number of problems by placing both women’s names on the birth certificate of the child born to one of them by assisted reproductive technology (such as IVF), making them legal co-parents. This would allow the non-biologically related woman, who lives with the mother, to have her role as co-parent sanctioned. She would be able to show the certificate to the schools, hospitals, clinics, sports registration bodies, and other public institutions to prove her claim to that role – which would be much more practical and convenient for the family.

However, let us reflect for a moment. That same document will be the official birth certificate for the rest of that child’s life, and would be shown repeatedly throughout his or her life, for instance when applying for a passport and drivers licence. Would not the presence of two female names on the birth certificate potentially

serve to make the adult child vulnerable to deeply held prejudice, a prejudice that, even if outlawed, is unlikely to be completely eliminated?

And what if they are called on to visit or work in one of our more traditional neighbouring countries where practicing homosexuals are flogged or gaoled, wouldn't this birth certificate with two women's names on it call unwanted and even potentially dangerous attention to the holder? After all, Amnesty International reports that 7 countries in the world still have the death penalty for homosexuality.

Although Amnesty International recommends that 'governments everywhere take all necessary ... measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the administration of justice', this Bill would require the adult child to carry evidence of that parental same-sex identity throughout his or her life.

Australia cannot protect them from the beliefs and practices found in other parts of the world. Any official document that attests to one's parents being homosexual has the potential to alienate the child from full participation in society. For whose convenience is it then, to use the birth certificate this way, the child's or for the lesbian parents' during the child's fleeting years of dependency?

Currently, lesbian parents can obtain Parental Orders from the Family Court to provide this legal authority. Such orders can also preserve the guardianship status of the non-biological partner if the relationship breaks up or the biological mother dies. Therefore, it is clear that birth certificates do not need to be used in this way.

What else will the Bill set out to do? It will go into effect at once – and retroactively – for children already born to lesbian couples, and be removing the biological father's name, and all other identifying information, from the child's birth certificate, if he consents. In cases where he doesn't consent then the court can authorise it. This is because of the governmental policy that requires that a child have only two legal parents.

But is this the best way to go about it? Is erasing evidence of biological paternity the right thing to do? Modern scientific reproductive technology may allow us to forget there even was a man involved, but is it the right thing for society to do – morally, ethically, and psychologically? Does it not further blind us all to the fact of the biological basis of our existence? You can leave the father's name out, but there was a father: there is always a father involved in the birth of every human being. The man's gift of sperm, that makes possible new life, should not be treated as a meaningless commodity. Society needs, more than ever, to reaffirm the role of fathers, not slowly work towards an erasure of their existence so that they are not even mentioned.

There is a growing movement of adult children of sperm donors who are claiming that the ability to access the information surrounding their biological, genetic identity is a basic human right, and that no one has the right to deny that information, not even the government. It is a fundamental human yearning, this wanting to know who our forebears were. These adult children explain that to systematically deny them knowledge of their origins offends the dignity of their humanity, and that all children are entitled to the truth. And this heart-felt opinion is from children raised in a traditional male-female marriage. How much more troubling for children raised in a female only relationship, where erasure of male participation is complete?

Those children deserve much better from us. According to Trevor Jordan, Senior Lecturer in Queensland University of Technology, the more we learn about genetics the more we realise that for anyone to lack knowledge of their biological heritage is to be at a severe disadvantage.

According to David Blankenhorn, author of “Fatherless America”, artificial insemination by anonymous donors now accounts for 30,000 of the 4 million births each year in the United States. He argues that these births represent an extreme expression “of the idea that children do not need fathers”.

The bill would require the terms “mother and father” to be omitted from section 18 of the birth certificate regarding parentage details, and would be replaced by the term “both parents”. That way, the registration form could be used by people of unspecified gender. Isn’t this manipulation of the language something that George Orwell would have recognised? Let us not go the way he pointed to in his visionary novel 1984 when language was misused to achieve social outcomes. Babies are not conceived and born to couples of unspecified gender. They have a mother and a father; always.

Children have the intrinsic need to have and know their father as well as their mother. It is wrong to legitimise a means of producing children that intentionally denies the child a right to a father’s love, protection, guidance, and genetic identity.

Many studies worldwide have shown that children raised by same sex partners rate worse in classroom behaviour, school achievement, and positive social participation. Even the studies that are somewhat positive about children raised by same sex partners indicate the greater antisocial behaviour, anxiety, sadness, hostility, and defensiveness – especially among boys of lesbian mothers . Other findings show that boys and girls both need the presence of, and interaction with, fathers in each psycho-social developmental phase of their lives, in order to develop their personalities fully. Children need ‘role models’ to learn how to become men and women. They learn from watching the adults they grow up with, male and female adults, especially their parents.

Another change planned by this Bill would be to The Industrial Relations Act 1996, which would be amended to allow lesbian partners the same leave entitlements that are currently available to male employees in connection with the birth of their married or de facto partner’s children. To accommodate lesbians, the word “paternity” would be changed to “partner”, and “partner leave” would be the term used for everyone.

All of this focus on lesbian couples is interesting, and actually supported by statistics that reveal that over three-quarters of the same sex couples marrying in Massachusetts, USA - the first American state that made it legal, in 2004, – were indeed female couples.

But this is Australia. What are the populations of the lesbian and male homosexual communities here? The Sex in Australia survey carried out by La Trobe University in 2003 found that only 0.8% of the Australian population identified themselves as lesbian, and 1.6% as male homosexuals, which meant that over 97% of the population identified themselves as heterosexual.

[The 2001 Census](#) reported nearly 9000 same sex couples in New South Wales, and fewer than 900 lesbian households having children, however conceived.

Another American study, launched in 1986, the largest prospective longitudinal investigation of lesbian families in the United States, is The National Lesbian Family Study , based in San Francisco, where there was a “lesbian baby boom” in the 1980s. Since then the author has been able to track and study these families whose children were conceived by donor insemination.

This study notes that many of the participating women ‘ceased identifying as lesbian’ over the years and eventually married a man, and at least one chose to become male through gender reassignment. Others stayed together, or broke up and re-partnered with a new woman.

That raises another question, however. If a woman ceases to ‘identify as a lesbian’, which is apparently not uncommon according to the research, wouldn’t she regret that her child’s birth certificate has a woman’s name as legal co-parent?

Also, doesn’t such ‘ceasing to identify as lesbian’, tend to suggest that it has been a ‘lifestyle choice’ rather than an orientation that one was born with? I believe it would not be prudent to change legislation and our language to accommodate all lifestyle choices. We are talking about changes to the very structural foundations of our society, which many of us believe are sacred and worth defending.

A new pattern that the study also brings to light is that, in many cases, the women have alternated bearing children. So that means that the household has two women with their own children: not one woman who took on the traditional female role, while the other took on the traditional male role. In other words, society cannot simply project onto them the typical family structures and patterns found in the heterosexual community.

For Centrelink’s purposes this household would currently be defined, under the Social Security Act 1991, as two single mothers with children, and each mother could receive benefits. If this Bill passed they would be required to disclose their de facto status, and would lose one set of benefits.

As people of faith, we feel strongly that every child needs two parents, including a mother and a father. And that to purposely set about to deprive them of a father is unfair and could inflict profound psychological harm. We submit that ‘planned fatherlessness’ is not in the best interests of any child, nor of society.

However, so far we have only been discussing women, just lesbians, their lovers and children. Why is that so? There are also male couples who have children in the home, and there is nothing in this Bill’s provisions to address their situation. In fact, it does not even mention them. In fact, isn’t this Bill an example of discrimination on the basis of gender?

Most male couple’s families with children occur after divorce from the woman who gave birth to them, although there are privately arranged surrogacy arrangements, as well. If this legislation passed it would soon have to be amended to include male homosexual couples, as well, and there is little acceptance in the larger community for children to be raised by such couples.

An additional change that the Bill seeks to make is to amend all references to “marital status” to read “marital and domestic status”, which gives effect to the intent of the NSW Law Reform Commission’s review of the Anti-Discrimination Act 1977. This means that people in the community cannot be discriminated against for being part of a homosexual couple, whether in housing, insurance, registered clubs, the provision of goods and services, education, or work.

That also means that day care centres, schools, married student housing, aged care facilities, nursing homes and other such community services run by religious organisations who believe that homosexual relationships are wrong, would be forced to choose whether to close their doors, or violate their beliefs by providing their services to the couples whose behaviour they do not condone. Is that what we want to do in this society, where so many important and beneficial services to the larger community are run precisely by such traditional organisations?

Do we want to put all of these services and organisations out of business for the sake of a very small minority? Many people, whether of the Christian faith or of no faith at all, still believe that holy matrimony is a unique bond between one man and one woman, acknowledged and blessed by society, and which provides the bedrock and foundation of our social order. Agreeing with them, I think that parachurch organisations ought to be granted exemption from having to provide services to de facto heterosexual couples as well as homosexual couples, and be allowed to honor their beliefs in the services they choose to provide and to whom.

The Bill seeks to ensure that people living in same-sex, de facto relationships are treated equally, and share all rights and responsibilities of other citizens. And that sounds like social justice. But if this Bill goes into effect, many citizens who provide such services will have their freedom of religion, freedom of expression, and freedom to do business with whom they please violated, although they far outnumber people in homosexual relationships. Is that result really about social justice? This Bill sets one select and very small minority group's claims for social justice against the claims of the majority of the population.

Conclusion:

We see in the media many religious leaders agreeing that many forms of discrimination are wrong in modern, Western nations and they have been widely quoted as rejoicing in the recent ruling in California allowing equal marriage for same sex couples. Some of these leaders are from mainstream Protestant denominations, some are from Reform Judaism. However, the more conservative denominations of Christianity and Judaism do not perceive this as progress, and see it as a further erosion of our society's once sacred ideal of marriage, the home, motherhood, family. All those shared meanings are in the midst of being redefined.

This Same Sex Amendment Bill does not directly address the issues of homosexual marriage, or adoption by same-sex de facto couples, about which many people feel strongly on both sides, but the rationale behind it comes very close and invites that progression of logic. I think it is only a matter of time, and that the set of changes contained in this Bill brings the day closer that we will be debating both of those concepts in this Chamber. And when we do I will not be supporting either of those measures.

And I will not support this Bill because the protections it supposedly offers are already available to lesbian parents who can obtain parenting orders from the Family Court, and keep an up-to-date will, which any responsible parent should be doing.

Australia is a signatory to the UN Convention on the Rights of the Child, which states that the best interests of the child shall be a primary consideration (and that means by courts, legislators, and administrative authorities) in all actions concerning children, including ensuring their "right to know and be cared for by both parents". We believe this Bill is not in the best interests of children or of society as a whole. Children need both their mothers and their fathers in order to become well-developed people. And society needs fatherhood to be supported, respected and safeguarded from anyone who would undermine it.

As a former Father of the Year, I take very seriously the responsibility to oppose this Bill, and to ask all of you, as representatives of our society, to acknowledge, safeguard and honour fatherhood.

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