

**THE JOINT STANDING COMMITTEE ON COMMUNITY DEVELOPMENT MET
IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON TUESDAY
24 FEBRUARY 2004.**

SIGNIFICANT PERSONAL RELATIONSHIPS INQUIRY

Ms LISA HUTTON, DIRECTOR OF LEGISLATION POLICY REVIEW, DEPARTMENT OF JUSTICE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Thorp) - Thank you for your time today, Lisa. We have received the paper that you sent to us earlier, thank you very much, and perhaps you might like to address your comments to that document and leave the opportunity for questions at the end.

Ms HUTTON - Certainly. I am usually more coherent with a script so I might just walk you through it and perhaps if people would like to interpose their questions as they arise.

What I have attempted to do is just give a background to start off with about the policy basis on which we prepared the consequential amendments legislation that went with the Relationships Act. The act itself gave the first positive legal recognition for same-sex relationships in Tasmania. There were other pieces of legislation such as the Anti-Discrimination Act, which prohibited discrimination, but they didn't go that next step and affirmatively acknowledge the validity of those relationships. The accompanying legislation, the Relationships (Consequential Amendments) Act 2003, was based on the simple principle of antidiscrimination. It was to go through the acts of Parliament that already existed and amend those to extend the legal rights, entitlements and, in some cases, obligations of de facto couples to couples in same-sex relationships. Using that principle we literally did a mechanical search of all of the acts and looked for words like 'husband', 'wife', 'partner' and developed a very large list of things that we might have amended. We worked through each one and decided whether they were appropriate candidates for amendment. We ended up amending about 75 pieces of legislation, which was very frightening, and many of these had already been amended in 1999 when the De Facto Relationship Act was passed and it was really just updating that to add effectively same-sex couples.

There was a second and possibly even more important principle that underpinned what we were doing with consequential amendments and that related to the children of same-sex couples. Most of the things in most of the acts that were amended about the couples themselves but in a few quite important cases children were the focus of the provisions we were looking at and the principle there was that the children of same-sex couples were to enjoy the same legal status and the same protections as the children of male/females couples whether or not they were married. This package of amendments took effect from 1 January this year but, as you know, there were two clauses that were omitted from the consequential amendments bill on its way through the Legislative Council and were referred to this committee. The first one affected the Status of Children Act and the second the Adoption Act. Both of them are loosely about the same issue: they are about the parenting of a child born as a result of assisted reproductive

technology - which, if you don't mind, I will refer to as ART from now on - to a woman who is in a same-sex relationship.

Starting with the Status of Children Act, it is a slightly unusual act but it was originally designed to address what used to be called illegitimate children, children who were born to couples who weren't married or in some cases the father was not admitting responsibility or hadn't been put on the birth certificate and so on. The act originally was there to deem that in certain circumstances a man could be considered to be the legal father of a child. Examples are if he was living with the mother during her pregnancy or if he was married to the mother at the time but died before the child was actually born. So that covered off all that sort of thing originally. It has been amended since then in response to changes in technology. The whole of Part 3 was inserted in 1985 once ART became a technology that was available in Australia.

I guess people were having children through assisted reproductive technology and there was a question mark over who were the parents of these children, so Part 3 was put in there to try to clarify that. Prior to 1 January this year, the position in the Status of Children Act was that when the child was born to a married woman as a result of a fertilisation procedure, the woman who gave birth was deemed to be the child's legal mother and, provided the treatment itself had been carried out with the consent of the woman's husband, he was deemed to be the father. It defined 'fertilisation procedure' to be artificial insemination or invitro fertilisation. The other thing it did was, say, that the ovum donor or the sperm donor were not the legal parents of the child. So it just clarified who is what and how it should all run from there.

The change after 1 January is that where a child is born to a woman who is married or in a significant relationship with a man and has a child as a result of a fertilisation procedure, the woman who gives birth is deemed to be the child's mother. Provided, again, that the treatment is carried out with the consent of the woman's husband or male partner, he is deemed to be the father. The rules about what is a fertilisation procedure and what happens with donors and so on have not been changed. The thinking behind it is that there is a policy position that it is desirable to have children who are born as a result of these sorts of procedures to have two parents, the same as the majority of children do. We cannot achieve that in every respect but it is really to reflect the fact that a couple have made a choice to have a child; they are unable to have the child in the old-fashioned way, so they use ART. They have made that decision together, the conception has been successful, they have had the child and want to raise it together therefore the law says, 'You are now the child's mother and father'. There has never been any requirement that the husband or now the significant partner have made any physical contribution to the child's conception - he may not be able to, for example - but the law still says that that man is that child's father.

The law prior to 1 January this year did discriminate against children born to de facto couples as a result of ART. I am not sure whether that was a policy decision that at the time the legislation went through Parliament members decided that it was undesirable for de facto couples to be having children that way or whether there was an assumption at the time, and it may even have been the case, that only married couples were able to access fertility treatment - I am not sure. Certainly the position has changed, if that was the position then. There is no legal requirement in Tasmania, unlike some States, for a woman to be married or in a relationship with a man or any other prerequisite like that

before she can have a fertility treatment. In fact, it would probably be a contravention of the Anti-discrimination Act if we tried to impose a requirement like that. Members of the Council will perhaps remember the evidence that was given to them last year by the director of the local fertility clinic that they don't discriminate against potential customers or patients on that basis.

CHAIR - That's Dr Watkins?

Ms HUTTON - Yes, Bill Watkins. He gave evidence to that effect. The fact is that that sort of technology is available to women in all sorts of domestic circumstances in Tasmania. The amendments that went through last year, which took effect from 1 January, removed the anomaly in relation to the rights of a child born to heterosexual unmarried couples - to male-female unmarried couples - but they didn't protect the child of a mother in a same-sex relationship.

There was another proposal to change the Adoption Act, which has been referred to this committee. Section 29 of the Adoption Act is quite lengthy and technical but in very brief terms it sets out who must give their consent before a court can make an adoption order. As you would know, a court order is always required. It is not just a matter of filling in the form and saying, 'I would like to adopt a child'; the court has to have regard to all of the circumstances in the child's best interest. One of the prerequisites when doing that is making sure that the appropriate people have consented. The provision itself is drafted a bit differently from the status of children provision but similar effect. The husband or the man who is in a significant relationship with the mother at the time of the child's birth or conception is treated as the father and therefore has the right, if you like, to give consent. Sometimes that father can be identified in slightly circuitous ways. For example, if he has been the subject of a maintenance order from the Family Court or wherever he is deemed to be the father for consent purposes.

The proposed section - the provision that was omitted from the bill - applied the same reasoning to a mother's same-sex partner. If the partner took part in the decision to conceive a child through ART, she ought to be one of the parties to give consent if later on the child is made available for adoption. I should say here that we are only talking about very small numbers, probably quite small numbers of that type of conception, and then even smaller numbers of children who become available for adoption, but it is still an important principle.

Under the proposed provision, the same-sex partner would be a consenting party also if the child were conceived naturally, unless an identified man has been acknowledged as the father of the child; for example, his name is on the birth certificate. I think members of the council heard evidence from some couples who were in that situation where there was a father who wished to continue to take an active role in the upbringing of the child in whose conception he had played a part, and he might be on the birth certificate. In that case we took the policy decision that it was getting too difficult to have three potentially consenting parties and that it would be restricted to a maximum of two. As I have said, this is likely to cover quite a small number of cases. It has quite significant symbolic value, I think, and probably you have had this from some of the people who have made submissions to you. The principle we think is that if a child has been conceived or been raised in the course of a significant relationship involving two women

it is completely appropriate to recognise whatever contribution the non-birth mother has made by giving her a say in the child's future.

In conclusion, we know that many people in the community believe that the ideal family unit consists of a mother, a father and their child or children. However, it is just as clear that there are now, and there will continue to be, Tasmanian families consisting of a same-sex couple and their child or children. So if we take the view that the child's rights are to be paramount in all these arrangements, there can be no distinction between children on the basis of whether the woman who gives birth to them is married or is in a significant relationship with a man or a woman. The policy aim, from our point of view, is to ensure that wherever possible there are two adults who are legally obliged to provide for that child's needs as it grows up.

The Relationships Act and the Relationships (Consequential Amendments) Act are founded on antidiscrimination principles. The two clauses that weren't passed in the Relationships (Consequential Amendments) Act were aimed at removing discrimination, and in this case largely discrimination against children. With or without them a number of women in same-sex relationships will conceive using ART and an even smaller number may consent to the child being adopted. When I say 'we' I mean the Department of Justice. I am sure I speak for the Attorney, and the Government believes that these children deserve as much legal protection as any other child.

Mr WHITELEY - But there is a difference between what you are proposing now and what we were debating in Parliament only last year where, as I understand, in the Relationship Bill we were dealing with the issue of discrimination - as you have put it - in an existing situation, where children already existed. You were seeking, through your minister, the legislation to back up the ability of a same-sex partner to take on the legal rights of an adopted parent in an existing case. So you could, even though I voted against it, argue the discrimination angle on that basis. However, in this case, we are dealing with a hypothetical and we are dealing with a child who does not exist. You are seeking now to provide a provision for antidiscrimination in a very different setting. Discrimination only exists, as I understand it, where there is a situation already current. You are now seeking to remove discrimination as you call it in a situation that doesn't even exist.

Ms HUTTON - The law always has a prospective effect. Depending on how it's introduced the law affects things that are in existence; sometimes it affects things that happened in the past but it always has a prospective effect -

Mr WHITELEY - There's no doubt about that.

Ms HUTTON - so I don't think that is any different from any other law the Parliament might choose to pass. It would cover people who fit into a category now and people who would fit into that category in the future.

Mr WHITELEY - It would only be discriminatory if the situation was there and apparent. You talked about the old-fashioned way, I think they were your words -

Ms HUTTON - And others.

Mr WHITELEY - Yes, but you are the witness at the moment, and you also talked about situations where in the male's case, I think to quote you, there is 'no physical contribution'. Well, we could debate that for a few hours as to what a physical contribution may or may not mean.

Ms HUTTON - I guess I meant in the biological sense.

Mr WHITELEY - We could debate for a long time what a physical contribution would mean in the fertilisation process - we could sit here for three hours and do that.

CHAIR - I don't think I could!

Ms HUTTON - You would certainly be plumbing the depths of my knowledge.

Mr WHITELEY - What you are talking about as no physical contribution I found to be a very interesting comment and then you are talking about the old-fashioned way. Well, the old-fashioned way, as I understand it, to the majority of Tasmanians is that a fertilisation process does take both a male and a female. I understand what you are saying here, that there still will be the ART process, but discrimination only becomes an issue after this dramatic change to Tasmanian society where you are going to allow the presumption of parenting to a female partner in a same-sex relationship where in fact the equal contribution to the fertilisation process was by a male. I can't understand why it is an issue of discrimination. This is an issue of changing the goal posts. That is what this is about.

Mr STURGES - It's about defining the parent, though, isn't it?

Ms HUTTON - Yes, it's about ensuring that the child has two parents and they are the people who want to be the child's parents.

Mr WHITELEY - Yes, but they are trying to place a symbolic value on it - I think they were your words. The situation remains that to produce a child takes a male and a female. I understand that, I am not naive, but we have a situation where two people, two women, are choosing to go down this path. Why then is it an issue of discrimination? They are changing the goal posts.

Ms HUTTON - Because if a man and a woman choose to have an ART procedure and the man is unable to produce sperm he is not providing the sperm that leads to conception, so the principle is exactly the same.

Mr WHITELEY - That is right. We are not debating that; we are debating the same-sex issue at the moment. That is a completely different debate.

Ms HUTTON - But I think that is the issue.

Mr WHITELEY - No, I'm talking about same sex.

Mr STURGES - We are talking about defining the parent?

Ms HUTTON - We are talking about defining the parents. The conception, I suppose you can say, is given if the procedure is available to -

Mr STURGES - To just get this clear, I think this is about defining the legality of parenthood.

Mr WHITELEY - I took off my questions from your issue of discrimination, comparing it to what happened last year.

CHAIR - We are not here to debate; we are here to get evidence.

Mr WHITELEY - No, but I wanted to get a clarification of the discrimination issue. I don't believe the discrimination issue stands.

CHAIR - So you are asking whether or not our witness considers acts or conceptions that have not yet occurred can be described as antidiscriminatory, if I understand you correctly?

Mr WHITELEY - That's right.

Ms HUTTON - And my answer to that was -

Mr WHITELEY - Prospective.

Ms HUTTON - yes, I believe it can in the way that all other antidiscrimination legislation has a prospective application to anything that might happen in the future.

Mr WILKINSON - I was watching *60 Minutes* on Sunday and saw -

CHAIR - That's an admission.

Mr WILKINSON - I don't normally sit down and watch a lot of television but I did on Sunday. I noticed that there were a couple of people conceived this way and one especially felt she wished her parents hadn't done it. She felt empty, she felt she wanted to find out who her real parents were. What are your views in relation to those people who have a real hidden wish and an honest wish to find out who their actual parents are, because it does seem to leave, from the readings that I have done and also that show brought it to mind again, the fact that these people do really want to know what their origins are. People suffer because they don't know what their proper origins are. Is there going to be anything in this legislation at all so these people, if they want to find out who their real parents are - in other words, if they want to find out why they are like they are, why they are acting like they are - to enable that or, alternatively, are we going to leave that open?

Ms HUTTON - There is nothing, to my knowledge, proposed at present. I have to admit that this is not my area of expertise but I know in the area of adoptions, for example, there has been quite a shift in the law in recent years where it has been acknowledged that it is important for people to know who their biological parents are and that in certain circumstances they can get that information, provided both sides consent. As far as I am aware, that doesn't currently apply to sperm and ovum donors. I wouldn't be surprised if

it didn't at some time in the future but the argument would be the same whether the legal parents were two women or whether it was a woman and a man.

Mr WILKINSON - I agree with that but we are talking about the child's rights, we are talking about the welfare of the child. It seems to me that these children that are born this way want to find out what their beginnings were, who their parents were, why they were acting like they were. The only way that can be done is if there is some knowledge as to who the father was and who the mother was - who was the donor and who was the donee.

Ms HUTTON - That would depend on what sort of records were kept by the clinic and under what circumstances they can be made available.

Mr WILKINSON - To me, if we are looking at the child - and that seems to be the thrust of your evidence - that should be there because the child, from good experience, seems to want this and want it badly but it's not there.

Ms HUTTON - Some do, certainly.

Mr WILKINSON - The majority, it would seem.

CHAIR - That may be more directed towards the regulations surrounding record keeping et cetera in IVF clinics.

Ms HUTTON - And health privacy, which is another very large topic which I am not particularly expert in. I acknowledge that that is certainly the case with adoptions and with children who have been conceived through assisted reproductive techniques. In the area of adoption there has been quite a shift in the law and I think it is quite likely that it will happen with ART, but I think it hasn't happened yet.

CHAIR - Would you like to make a final summary comment about why you believe these sections should be included in the act?

Ms HUTTON - I guess all I could say is that they are consistent with the policy that informs the rest of this package of legislation that what we were trying to do is as far as possible put same-sex couples in the same position, if you like, at law as what used to be called de facto couples. Married couples will always have some differences from either of those categories simply because they are covered by Commonwealth law and there is nothing at a State level that can be done about that. I would submit that the principles that allow the other sexed significant partner of a woman in these circumstances would apply equally to her same-sex partner and, more importantly, to their child. These two cases, I guess, are in the minority in the sense of the types of amendments that were made in the consequential amendments bill because they're very much based on the child and not on the couple. If anything they are probably putting obligations on the non-birth mother; she would then become the child's mother for every purpose and have obligations to that child. I am not saying that she wouldn't feel those moral obligations anyway but they would be backed up by the law.

CHAIR - Thank you very much.

THE WITNESS WITHDREW.

RODNEY CROOME, TASMANIAN GAY AND LESBIAN RIGHTS GROUP WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Thorp) - Thank you very much for making yourself available to us today. You heard what we did with the previous witness, if you could possibly make a statement and leave questions to the end, or if you are comfortable with interjections.

Mr CROOME - I will make a brief statement, so it might be best to leave questions until the end.

CHAIR - Thank you.

Mr CROOME - Thanks for allowing an opportunity for me to talk today. Obviously, I am representing the Tasmanian Gay and Lesbian Rights Group which has been actively advocating on gay and lesbian human rights issues in Tasmania for many years now. We made a written submission to the committee of course and that submission deals with many different issues, everything from international conventions, through inconsistencies with other laws, to issues such as retrospectivity but today in my brief talk to you I wanted to touch on a very specific issue and that is the day-to-day effects of the current laws on the people who we are talking about, lesbian couples with children in Tasmania.

The basic issue of course that we are looking at and the basic issue that confronts us is that in Tasmania children have been, are being and continue to be born through fertility procedures to women in same-sex relationships. It is a fact and I am sure that many of us know women and children in that situation. The children concerned, in my experience at least, believe that they have two mums, that they are being raised by two mothers but of course the law at the moment says that they only have one legal parent. Obviously, we believe, according to our submission, that the law should be changed to give these children the added security of two legal parents rather than one.

The basic issue is ensuring that all Tasmanian children have the same legal protections and security regardless of the relationships of their parents. So like I said to start with, what I would like to talk about is what this means for children, the current legal situation and the reforms that we are looking at today.

Legal recognition of both parents, that is including the presumptive recognition of non-biological mothers through presumptive parenthood, ensures that both parents of the children that we are talking about can perform day-to-day parenting tasks that many of us would take for granted. They include, for instance, writing permission notes for school or collecting children from childcare without being questioned or taking children to the doctor, making decisions in emergency medical situations. If a child's legally recognised parent is out of the country for instance then the co-mother, who at the moment isn't legally recognised but under these proposals would be, would be able to make medical decisions for their child. Obviously, she would be the person in the best situation to do that and the law should recognise her right to do that for the sake of the child.

If we change the laws that we are debating today it would ensure that children would be eligible for financial benefits and protections if their non-biological parent dies. That would include superannuation benefits, it would include matters that flow from next of kin like wills, it would include issues like workers compensation. It would mean of course that if a child's biological parent died they wouldn't be left an orphan because they would still have another legal parent. It would also mean that if the biological parent died the child couldn't be taken away from the care of their co-mother or the company of the co-mother's children who, in many cases, certainly in my experience, the children we are talking about would regard as siblings. And, as we have already heard from Lisa, of course this issue involves not only rights for parents and children but also responsibilities for parents. If the relationships that we are talking about end between biological mother and co-mother then there would remain, once we had law of the obligation for that co-mother, then the legal parent, presumed parent, to pay maintenance which isn't the case at the moment.

Other benefits that would flow to the children if the reforms that we are talking about are law would of course include less stress on co-mothers. At the moment a non-biological mother who is caring for her partner's child, along with the partner, will naturally feel the stress of knowing that she is not considered a legal parent, and that stress inevitably means stress for the child as well. In our submission we also talk about studies from the United States which show that in situations where co-mothers are legally regarded as parents there is less conflict, particularly upon the breakdown of a relationship between the mothers about access, property division, maintenance and the issues I've just mentioned. We have to face facts that not all relationships last forever; some do break down. Where there is legal certainty about who the parents are there is less likely to be conflict and the children will benefit.

Less tangibly, and perhaps even more importantly, benefits which flow to children from presumptive parenthood in these situations include the important - I think Lisa referred to this - 'symbolic' advantages. As long as same-sex couples with children are treated differently under the law to opposite-sex couples or mixed-sex couples, that will continue to stigmatise those families and same-sex couples with children as less worthy, second rate and dysfunctional. And who bears the brunt of that stigma? The parents bear some of it but they are adults; they have grown up in a world that has been hostile to their sexuality and they can find ways to deal with it. The children are the ones who bear the brunt of that and they shouldn't have to. They should live in a society that sends out a clear message that they and their families are equal to other families, are as worthy as other families, are as important as other families and have the same legal rights and responsibilities.

To finish, I will make a reference to one of the points in our submission about Tasmania's laws before 1974, which of course didn't give any legal recognition to children who were born outside wedlock. What we call illegitimate children in Tasmania were disadvantaged legally because some sections of society didn't approve of their parents' relationship - they weren't married heterosexual couples. We are now talking about an identical situation where some children are disadvantaged because some adults don't like their parents' relationship. They don't think it is appropriate, moral, holy or whatever. Should we be disadvantaging those children simply because some people don't like lesbian relationships? I think not.

CHAIR - Am I right in summarising your statement by saying that you don't believe this is about morality? You don't believe this about the rights and wrongs of IVF, whether it should or should not be available to whomever, but simply about the situation that we currently have children in our community who don't enjoy the same protection under the law as do others?

Mr CROOME - Yes, exactly. I acknowledge the fact that there are some people in the community who have said they don't believe that single women or lesbians should have access to IVF. That has unfortunately been a debate which is confused with this one. As Lisa said, we know that in Tasmania there are children being born through fertility procedures. That includes IVF but isn't only IVF; it also includes anonymous sperm donation, both through fertility clinics and arranged privately. In my experience the majority of children we are talking about are actually born through those procedures, not necessarily through IVF. IVF is a long, difficult and costly procedure. If lesbian women want to raise children they usually do it through arranged private sperm donation with men who don't wish to put their names on the birth certificate.

But the point is, yes, that happens. We can have a debate about whether lesbians and single women should have access to IVF in Tasmania if we wish. I don't think we need to because the policy has worked fine up until now, the policy being that they do, but that is a separate debate. The fact is that they do have access and they are having those children and I have no doubt that in the future the number of children conceived through those procedures will stay the same as it is or maybe even increase. We have to be looking towards the needs of those children and not having some kind of irrelevant moral debate about whether lesbians should access those services or about whether lesbians should be raising those children because, like I said, the fact is that they are. Short of taking those children away from those couples, which no-one has seriously proposed as an option, what are we to do? Are we to turn a blind eye and say, 'We don't want to pay any attention to them'? Do you want to ignore them? Forget them? Or do we address their needs? We are talking about a small but significant number of Tasmanian children. We can't ignore them.

CHAIR - Thank you. Members, are there any questions?

Mr WHITELEY - Rodney, you talk about - on whatever page; the submission hasn't got page numbers -

Mr CROOME - Yes, sorry.

Mr WHITELEY - 'At the moment in Tasmania children born through fertilisation procedures to women in same-sex relationships' and you go on; you just talked about that. You are saying that in many cases it happens privately, but you did allude earlier in your submission to the fact that it does happen through clinics and so on. Can you clarify for the committee your understanding under law of the legal access to those clinics? Who can access clinics at the moment for ART and who can't, under the guidelines?

Mr CROOME - My understanding is that the policy is set by the clinics themselves and that if a woman goes to the service and says, 'I'd like to become a mother', then there is no discrimination on the basis of their marital status or, indeed, their sexual orientation.

Mr WHITELEY - So they will enable that process to be carried out solely on the basis of a female's wish to undertake it?

Mr CROOME - Yes, the process being access to sperm donation services. So men have donated sperm for the specific purpose of allowing women to conceive, but it is an anonymous service. That is the first step. If a woman fails to conceive through that process because of some condition related to medical infertility then she can access the IVF service, and again there is no discrimination. So far as I know, you don't go straight to IVF; you have to go through the other processes first. It is only if there is medical infertility, regardless of who you are, that they allow you to access the IVF service. That is my understanding.

In your case, being in the House of Assembly, you didn't have a briefing from Bill Watkins about exactly what the procedures are. I can only recommend that you have a chat with him.

Mr WHITELEY - I just wanted you to clarify from your perspective how you understood it. I just want to go back to a point - and maybe I am stuck on this. The laws that were passed through both Houses of Parliament last year were, in your words, 'time and time again, and I respect that, laws developed to remove the stigma and to give access to existing children, children who were already enjoying the spoils of this pleasant planet on which we live, and to give them security; the same issues that you have just discussed - the security of permissible notes and access to emergency treatment, all those sorts of things. That is history now; that has passed and that is okay but today we are talking about a whole different circumstance. We are not talking about developing new laws to remove 'stigma', in your words, of children who already exist. We are talking about now seeking to bring in new laws to cover-off single women, or women in same-sex relationships, who choose to bring those children into the world with a full understanding at the moment of current legal status. So you are asking this committee today to view favourably this potentially new legislation where you want Tasmanians, through their elected members, to legislate to endorse what I could very carefully - and I will, hopefully not offensively - endorse presumptive parentage for an unnatural fertilisation process? That is what you are asking us, as elected members on behalf of the Tasmanian people, to do?

Mr CROOME - There are several issues there. If I've got you correctly, I think your concern is that we are talking about creating new families rather than recognising existing ones. Is that what you're saying?

Mr WHITELEY - Yes, that is true, but what you are saying to me is that they are already exist - I am not naive enough to suggest they don't exist - but they exist on the basis, in your own words, of people accessing privately sometimes - I'm not sure where and who and how that all takes place; you might have to educate me at some point on how that all happens - but you're saying that they don't necessarily go through legitimate fertilisation clinics, that it happens privately. But they are choosing to bring children into the world in those circumstances; they are making choices in a current environment where this State at the moment does not give legal propriety to that.

Mr CROOME - As I said, there are several issues there. As I have said and as you have acknowledged, we are talking about children who already exist, families that already exist and families that will come into existence regardless of what the law says.

Mr WHITELEY - That's right.

Mr STURGES - I think the issue is equity that you're trying to get across, aren't you?

Mr CROOME - I will come to that in a second. I want to get down exactly what the concern is. Yes, my point has been that these women will have children, regardless of what the law says because they have already and they will continue to do so. Their desire to be mothers, to care for their children, is stronger than their sense that the law disadvantages them, as it has been for heterosexual de facto couples who have been through these procedures in the past but I will come to them in a second.

The fact is that it happens and it will continue to happen and we can't stop that. The only power that you have as a committee and as a parliament is to recognise the fact that it has happened and it will continue to happen.

Mr WHITELEY - There are a lot of things in society that happen that we don't have control over but it doesn't necessarily mean legislation follows it to embrace it.

Mr CROOME - It means that legislation follows it if the people involved are disadvantaged, particularly if there are children who are disadvantaged.

Mr WHITELEY - The children, in your words, would only be disadvantaged though after the woman chooses to work outside current legal practice.

Mr CROOME - I think there would be some grounds to what you are saying if it was the case that the current legal situation deterred lesbian women from having children, and we know that it doesn't. Are you suggesting that it should?

Mr WHITELEY - Maybe it should.

Mr STURGES - We're not inquiring into that.

Mr WHITELEY - No, we're not. I didn't raise that issue; Rodney raised it. But that brings it to a whole new debate. The issue is we have a situation where you are talking about removing these hurdles and discrimination when women are choosing to bring children into the world outside the boundaries that I believe, as an elected member, that the public feel are pushing those boundaries too far.

Mr CROOME - The same thing could have been said about heterosexual de facto couples prior to 1 January. Heterosexual de facto couples who went through artificial reproductive technology and had children as a result didn't have the advantage of presumptive parenthood. Those children's father, the partner of their biological mother, wasn't recognised as a father. Should we not have changed that because we felt that that was illegitimate or because those procedures were, to use your word, unnatural? You said that these procedures are an unnatural form of -

Mr WHITELEY - I said in inverted commas, that's right.

Mr CROOME - and for those heterosexuals couples the procedures were equally unnatural. Now you are saying that perhaps the law has a role in discouraging them. So should we not have changed that law because we felt that that was wrong for those couples to have children?

Mr WHITELEY - The community would assert very strongly that in us contemplating such legislation the preferred status, the preferred natural status of raising a child, would be, where the law embraces it and encourages it, to raise that child, where possible, with a mother and a father - a male and a female.

Mr CROOME - I think you would also find that the public would agree that in situations where that is not the case -

Mr WHITELEY - No, where women are choosing to make it not the case.

Mr CROOME - where that situation is not the case then the children involved should have maximum legal protection. Even those people who said, 'Yes, we agree that a mixed sex couple is the ideal' if people don't reach that ideal the children should not be disadvantaged. It is exactly the same as the situation with illegitimacy I mentioned before. In 1974, a majority of Tasmanians decided -

Mr WHITELEY - I understand that.

Mr CROOME - 'We might not think that it is right to have children outside wedlock but if it happens those children should not be disadvantaged'. That is the issue.

Mr BEST - I will just preface my comment that I think it is very subjective as to what comments committee members have in relation to the community and what feedback they get. I will just make that because you made your point so I am just making mine.

Mr WHITELEY - That's cool.

Mr BEST - The feedback that I get from the community is not necessarily that that is the case; people do accept that life has moved on. I actually have a morality issue that I wanted to raise and really I guess my question is related to the morality of the co-mother in relation to responsibility and obligations. Do you think in some ways there is a lack of clarity on the issue of the responsibility and obligations of the co-mother and that in some ways the need to address that is the case that is being presented? You mentioned a lot of the legal implications of workers compensation, superannuation, the case of someone passing over their financial status if they unfortunately depart. To me, whilst there are a lot of justice issues that have been raised, I am just thinking of the reverse case. What would be your thoughts in relation to this matter of responsibility and obligation of the co-mother? Do you think that in a case there isn't any other than the co-mother feeling they are obliged or that they might not be whereas in a heterosexual marriage it is fairly well defined, isn't it?

Mr CROOME - I think Lisa made the point that the majority of co-mothers that we are dealing with, non-biological mothers, would have a strong sense of moral obligation and

that is certainly my experience. They understand what their obligations are as parents and they discharge those, including on the breakdown of a relationship but there is no legal framework to back that up. So if you have people who don't want to fulfil those obligations, particularly in terms of paying maintenance or whatever, they aren't compelled to and who is disadvantaged there? Obviously, the other mother but in particular the child. Again, it comes back to the interests of the child. It is in the best interests of that child to have a legal framework established so that if either of her mothers split then the same obligations apply in terms of maintenance as they would if they were a heterosexual couple. So we are not talking about giving these parents rights but we are also talking about giving them responsibilities and it is all entirely about the interests of that child.

Mr BEST - Just to finish off on that, when we talk about the choice in some ways what we are actually doing though now is really clarifying the responsibilities that go with those choices so where the choice could have been in the past a whim in the sense of a couple getting together, same-sex parents getting together, in some ways there was an easier ability for the co-mother to walk out and not have any responsibility, so in making this choice now what you are saying to me is that with these laws there would have to be greater consideration in making that choice in relation to the responsibility to the child and to make sure that the child's needs are fulfilled and that the co-mother is committed.

Mr CROOME - Yes, indeed. Sometimes when people make the point that Mr Whiteley was making about lesbians choosing to have children they make that point with the suggestion that that choice is made frivolously.

Mr WHITELEY - No, I didn't suggest that.

Mr CROOME - I didn't say you did, but sometimes people do. They talk about designer babies and all this sort of stuff. It is much harder of course for gay and lesbian people to have children than it is for heterosexual people. Usually you find that when gay and lesbian people have children it is a very considered decision they have made and they understand fully the obligations they're getting into - sometimes more than some heterosexual people because of the obstacles they have to overcome. When we change the legal regime in Tasmania to ensure that there are equal legal obligations then that choice will be even more thoughtfully made because people will understand what grave obligations apply to them as parents. By this law reform we would be ensuring that if there is any frivolity involved in making these choices that will disappear.

Mr STURGES - I am going to make a statement and you can confirm or change it if you like because I think we have digressed quite significantly from the terms of reference of this inquiry. For my benefit and for the record, Rodney, I understand that the key issue - at the risk of being too simplistic because I have read your submission and it is very comprehensive - is about equity for all kids in Tasmania regardless of the relationship of the parents and thus bestowing, for want of a better word, legal obligations on the co-mother. So the issue is not necessarily about conception of the child, it is about providing a fair go for the child and giving legal recognition of the status of both the mother and the co-mother. Is that correct?

Mr CROOME - Yes, that's correct.

Mr STURGES - Thank you. Let's get back to the core of the inquiry, and I think that is what this is about.

Mr CROOME - To be even more specific it is about equity for children as well as parents. In the Legislative Council briefings on these issues several months ago the teenage children of lesbian couples spoke. They are children who are soon to make an important contribution to Tasmanian society, and some of them are already making their contribution as students through their schools. I think of one particular witness - a teenage student at a school in Hobart - who has been raised by two people who, all his life, he has regarded as his parents. He only has one legal parent and they are painfully aware of that all the time, about the legal and social implications of that. He, along with the other children we are talking about, should have exactly the same rights, responsibilities, obligations and opportunities as every other Tasmanian child.

CHAIR - What do you think was the impact of removing these particular sections from the legislation that we examined last year? What did it do to the overall legislation package?

Mr CROOME - In terms of the legislative package, it put a significant hole in it because it is inconsistent with the principles of the act, and inconsistent with amendments, for instance, to the Anti-discrimination Act, which say that there will be no discrimination on the grounds of relationship status. But the impact goes far beyond this actual legislation - the impact is on Tasmanian families because, as I said before, it is reinforcing that stigma that you, as legislators, should be attempting to remove.

CHAIR - So by removing those sections from the legislation last year, the impact was on Tasmanian children?

Mr CROOME - Yes. There was a lot of publicity around the legislative debate and around the removal of these sections. What the removal said was that lesbian couples raising children were not considered legitimate families. An issue which hasn't come up this morning and which I think needs to be raised is that the legislation does provide for a way round this of course because it provides for known-child adoption, which is a good thing. Therefore families in the situation we have been talking about, co-mothers, will be able to go through an adoption process to provide their children with two legal parents rather than one. I know couples contemplating that path. You may remember, at the beginning of the year when the registration scheme that was part of that legislation came into effect, there was a lesbian couple who registered and spoke to the media and talked about their plans to have children and to use those particular provisions.

But even that is not adequate. As we know, going through an adoption application process is time consuming; it can be expensive and difficult. It leaves a period in the child's life when they still have only one legal parent rather than two after their birth. It also reinforces the stigma I have been talking about because these parents have to go to a State agency and prove that they are good parents. They have to do that because they are lesbians, as opposed to heterosexual couples now under the presumptive parents provisions who are presumed to be good parents from the moment of signing the birth certificate because they are heterosexuals. That is a terrible slight against the parenting abilities of women who are bringing up young Tasmanians today.

CHAIR - Thank you. Do any members have any further questions? In that case, thank you very much for your time today and for your contribution.

Mr CROOME - Thank you very much.

THE WITNESS WITHDREW.