



*Human Rights and Equal
Opportunity Commission*
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Same-Sex: Same Entitlements

**National Inquiry into Discrimination
against People in Same-Sex Relationships:
Financial and Work-Related Entitlements and Benefits**





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**National Inquiry into Discrimination against People in Same-Sex
Relationships: Financial and Work-Related Entitlements and Benefits**

May 2007



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All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...

Article 26, International Covenant on Civil and Political Rights

**Human Rights and
Equal Opportunity Commission**



The Hon Philip Ruddock MP
Attorney-General
Parliament House
Canberra ACT 2600

May 2007

Dear Attorney,

We are pleased to present *Same-Sex: Same Entitlements*, the Human Rights and Equal Opportunity Commission's report of the National Inquiry into Discrimination Against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits.

The report is furnished to you in accordance with the Commission's functions contained in sections 11(1)(e), 11(1)(g), 11(1)(j), 11(1)(k), 31(a), 31(c), 31(e) and 31(f) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). As such, it is subject to the tabling requirements in section 46 of that Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John von Doussa'.

The Hon John von Doussa QC
President

A handwritten signature in black ink, appearing to read 'Graeme Innes'.

Graeme Innes AM
Human Rights Commissioner

Human Rights and Equal Opportunity Commission

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Executive Summary

At least 20 000 couples in Australia experience systematic discrimination on a daily basis.

Same-sex couples and families are denied basic financial and work-related entitlements which opposite-sex couples and their families take for granted.

Same-sex couples are not guaranteed the right to take carer's leave to look after a sick partner.

Same-sex couples have to spend more money on medical expenses than opposite-sex couples to enjoy the Medicare and PBS Safety Nets.

Same-sex couples are denied a wide range of tax concessions available to opposite-sex couples.

The same-sex partner of a federal government employee is denied access to certain superannuation and workers' compensation death benefits available to an opposite-sex partner.

The same-sex partner of a defence force veteran is denied a range of pensions and concessions available to an opposite-sex partner.

Older same-sex couples will generally pay more than opposite-sex couples when entering aged care facilities.

This is just a small sample of the discrimination caused by the many federal financial and work-related laws which exclude same-sex couples and their children.

It is not just Australia's same-sex couples who suffer discrimination; it is their children too. Approximately 20% of lesbian couples and 5% of gay couples in Australia are raising children. The financial disadvantages imposed on same-sex parents will inevitably have an impact on their children.

This discrimination breaches human rights. And it can be stopped. All it takes is a few changes to the definitions in some federal laws.

Same-sex families; second-class citizens

The *Same-Sex: Same Entitlements* Inquiry spent more than three months travelling around Australia holding public hearings and community forums to hear, first hand, about the impact of discriminatory laws on gay and lesbian couples. Those public consultations, and some of the 680 written submissions received by the Inquiry, clearly

describe the financial and emotional strain placed on gay and lesbian couples who are trying to enjoy their lives like everybody else in the community.

A same-sex couple from Adelaide said the following:

We are an average suburban family. We are working hard and contributing to our community. We don't want special treatment – just what others can expect from their legal and social community. Our rights are denied simply because of who we love. We just want equality.

A lesbian parent in Sydney made a similar plea:

I am not a second class citizen and resent my family and I being treated as such. All I ask is to be treated equally, no more and no less than any other Australian. Just equal.

A gay doctor put it like this:

I am a first-class taxpayer but a second-class citizen.

Federal laws breach human rights

The *Same-Sex: Same Entitlements* Inquiry conducted an audit of federal laws relating to financial and work-related entitlements in order to identify those which discriminate against same-sex couples and their children.

The Inquiry has identified 58 federal laws (listed in Appendix 1) which breach the rights of same-sex couples and in some cases the rights of their children.

The *Same-Sex: Same Entitlements* Inquiry finds that:

1. *The 58 federal laws in Appendix 1 discriminate against same-sex couples in the area of financial and work-related entitlements. Those laws breach the International Covenant on Civil and Political Rights.*
2. *Many of the federal laws in Appendix 1 discriminate against the children of same-sex couples and fail to protect the best interests of the child in the area of financial and work-related entitlements. Those laws breach the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.*

Simple amendments will remove discrimination

It is simple to remove discrimination against same-sex couples in federal financial and work-related entitlements: change the definitions in the 58 laws listed in Appendix 1 to this report.

There is no need to rewrite federal tax legislation, superannuation legislation, workers' compensation legislation, employment legislation, veterans' entitlements legislation or any other major area of federal financial entitlements. There just needs to be some changes to a few definitions at the front of each relevant piece of legislation.

The *Same-Sex: Same Entitlements* Inquiry recommends that:

1. *The federal government should amend the discriminatory laws identified by this Inquiry to ensure that same-sex and opposite-sex couples enjoy the same financial and work-related entitlements.*
2. *The federal government should amend the discriminatory laws identified by this Inquiry to ensure that the best interests of children in same-sex and opposite-sex families are equally protected in the area of financial and work-related entitlements.*

***Same-Sex: Same Entitlements* report overview**

The *Same-Sex: Same Entitlements* report covers the following issues:

- A short background to the Inquiry (Chapter 1).
- The strategies used by the Inquiry to gather information (Chapter 2).
- Human rights protections for same-sex couples and their children (Chapter 3).
- How federal law currently defines a couple; what states and territories have done to remove discrimination; how formal relationship recognition schemes may impact on access to financial entitlements; and a new definition of 'de facto relationship' for all federal laws, which would remove ongoing discrimination against same-sex couples (Chapter 4).
- How family law defines a parent-child relationship when a child is born to a same-sex couple; how family law impacts on access to financial and work-related entitlements; and what should change to remove ongoing discrimination against children in same-sex families (Chapter 5).
- The impact of discrimination against same-sex couples and their children in federal financial and work-related entitlements. The table of contents in each topic-specific chapter includes a summary of the entitlements which are, or are not, available to same-sex couples and families. The chapters describe how the relevant legislation applies to same-sex couples and families. Each chapter concludes with a list of legislation setting out what definitions need to change to remove discrimination in the following areas:
 - Employment (Chapter 6)
 - Workers' Compensation (Chapter 7)
 - Tax (Chapter 8)
 - Social Security (Chapter 9)
 - Veterans' Entitlements (Chapter 10)
 - Health Care Costs (Chapter 11)
 - Family Law (Chapter 12)
 - Superannuation (Chapter 13)
 - Aged Care (Chapter 14)
 - Migration (Chapter 15)

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- A miscellaneous list of additional legislation which may discriminate against same-sex couples and families in the area of financial and work-related entitlements (Chapter 16).
- A brief discussion of homophobia in the community and discrimination on the grounds of gender identity (Chapter 17).
- A summary of the Inquiry's findings and recommendations (Chapter 18).
- A list of 58 federal laws which discriminate against same-sex couples and their children, including guidance on how to amend the laws (Appendix 1).
- Selected stories about the impact of discrimination on same-sex couples and families (Appendix 2).
- A list of written submissions (Appendix 3), witnesses at public hearings (Appendix 4) and community forums (Appendix 5).



Glossary of Terms

TERM	EXPLANATION
adoptive parent	A person who has legally adopted a child.
ART	assisted reproductive technology
ART child	A child conceived through ART.
assisted reproductive technology	Conception other than through intercourse, including in-vitro fertilisation, clinically-assisted donor insemination and self-insemination.
birth father	A father listed on a child's birth certificate.
birth mother	A woman who gives birth to a child.
CRC	<i>Convention on the Rights of the Child</i>
de facto couple	Two people in a de facto relationship.
de facto relationship	A relationship between two people living together as a couple on a genuine domestic basis, irrespective of gender.
gay co-father	A person in a gay couple intending to raise a child from birth, who is not a birth father.
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
ILO 111	International Labour Organisation, <i>Discrimination (Employment and Occupation) Convention 1958</i>
Inquiry	HREOC's National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits
legal parent	A person noted as a parent on a child's birth certificate or an adoptive parent.
lesbian co-mother	The female partner of the birth mother at the time a child is conceived and born.
opposite-sex couple	A de facto couple where one member is the opposite sex to the other.

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TERM	EXPLANATION
opposite-sex family	An opposite-sex couple with one or more children.
opposite-sex partner	One member of an opposite-sex couple.
parenting order	A parenting order issued by the Family Court of Australia under the <i>Family Law Act 1975</i> (Cth).
same-sex couple	A de facto couple where one member is the same sex as the other.
same-sex family	A same-sex couple with one or more children.
same-sex partner	One member of a same-sex couple.
social parent	Any person (often a subsequent partner) significant to the care and welfare of a child who is not a birth mother, birth father, lesbian co-mother or gay co-father.