



**Joint ARCQ / QuAC Submission**

**to HREOC Inquiry into Discrimination**

**against People in Same-Sex Relationships:**

**Financial and Work-Related Entitlements**

**and Benefits**

**Queensland**

**16 June 2006**

## Executive Summary

ARCQ and QuAC welcome the opportunity to provide input to the Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits. This Inquiry and its forthcoming recommendations present an opportunity for the Federal government to correct anomalies within Australian domestic law in light of principles of international human rights, comparability with state and territory law and the growing expectations of gay, lesbian, bisexual and transgender (GLBT) people.

ARCQ and QuAC have analyzed Queensland and Federal legislation which is contributing to the unequal treatment of and discrimination against GLBT members of the community. The identified legislation requires urgent reform.

We have identified limitations within the HREOC Inquiry's Terms of Reference, including the focus on financial issues alone and the focus on couples, and have made suggestions for an alternative approach.

We have outlined arguments for change based on the need for government to lead by example, the shift in public opinion regarding GLBT access to universal human rights and Australia's obligations to meet international agreements on human rights for all.

This submission details a number of case studies in Queensland which illustrate inequities endured by GLBT people before the law, including within Medicare, the taxation system, immigration policies, parenting, gender status and superannuation legislation. The case studies also reveal broader discrimination issues which require attention.

We offer an audit of some of the Queensland and Federal laws which need to be amended, and make recommendations for change to both State and Commonwealth legislation. Our recommendations include changes to the following Queensland legislation: *Status of Children Act 1978*, the *Anti-Discrimination Act 1991*, the *Adoption Act 1964* and the *Queensland Criminal Code*.

We have put forward a case for gay marriage/relationship registration/civil union, and argue that some form of relationship recognition is fundamental to GLBT rights in every aspect of legislation, including but not limited to those related to financial and work-related entitlements.

We appreciate the opportunity to participate in this Inquiry, and hope the Inquiry's recommendations to the Attorney-General and Government can lead to real improvements to the lives of GLBT people.

# Contents

Introduction

The Inquiry's Terms of Reference

Part One

The Arguments for Change

- 1.1 Government Leadership Role and Public Opinion
- 1.2 Australia's International Obligations

Part Two

Case Studies in Queensland

- 2.1 ADF
- 2.2 Medicare Safety Net
- 2.3 Taxation and Immigration
- 2.4 Immigration
- 2.5 Parenting
- 2.6 Gender Status
- 2.7 Superannuation

Part Three

Audit of Legislation in Need of Review and Recommendations

- 3.1 Queensland legislation
- 3.2 Federal legislation

Conclusions & Further Recommendations to the HREOC Inquiry

# **Joint ARCQ / QuAC Submission to HREOC Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits**

## **Introduction**

Action Reform Change Queensland (ARCQ) is a community-based organisation in Queensland which advocates for lesbian, gay, bisexual and transgender equality through campaigns for legal and social change and public education. ARCQ was formed in 2003 with participation from individuals and established community groups.<sup>1</sup>

The Queensland AIDS Council (QuAC) is a community-based organisation sponsored by Queensland Health responsible for providing education, advocacy and support for those living with or affected by HIV/AIDS in Queensland.

ARCQ and QuAC welcome the opportunity to provide input to the Inquiry. The Same-Sex: Same Entitlements Discussion Paper 2006 produced by the HREOC shows an understanding of how people in same-sex relationships are currently discriminated against under Australian law. This Inquiry and its forthcoming recommendations present an opportunity for the Federal government to correct anomalies within Australian domestic law in light of principles of international human rights, comparability with state and territory law and the growing expectations of gay, lesbian, bisexual and transgender (GLBT) people.

The following submission is structured into three parts: some arguments for legislative and other changes; a sample of Queensland case studies which identify some of the financial and human rights discrimination faced by gay, lesbian, bisexual and transgender GLBT people; and, an audit of Queensland and Federal laws which discriminate against GLBT people.

Firstly, however, ARCQ and QuAC have comments to make about the limitations inherent in the Inquiry's terms of reference.

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<sup>1</sup> For a list of community groups and individuals who work in association with ARCQ, see the ARCQ website: [www.arcq.com.au](http://www.arcq.com.au)

## **The Inquiry's Terms of Reference**

ARCQ and QuAC find the Terms of Reference of this Inquiry to be limited. Firstly, the Inquiry's focus on financial and work-related entitlements and benefits is exclusive of the broader context of GLBT people's lives. Human rights violations and discrimination take many forms, and financial concerns are just one aspect of these.

Secondly, the Inquiry does not seem willing to review the discriminatory provisions of the Marriage Act 1961, to consider the application of civil unions or other types of formal interdependency or same-sex relationship recognition. Formal recognition of our relationships is fundamental to our human rights (not to mention our financial rights) and to the questions posed by the Inquiry in relation to financial entitlements and work-related benefits. Its omission from this Inquiry is disappointing to many within our GLBT communities.

Thirdly, immigration issues have been placed outside of the scope of the terms of reference. ARCQ and QuAC suggest that this omission could have a substantial impact on our communities.

Fourthly, the use of the term "same-sex couple" is problematic. A person who is not in a relationship (i.e. is "single") but who identifies as gay or lesbian, or as bisexual or transgender, can be discriminated against in many ways, including within work-related entitlements and benefits. One's access to basic human rights should not be based on one's relationship status. The Inquiry needs to acknowledge the diversity of the gay, lesbian, bisexual and transgender communities, households and relationship choices, and not try to fit them conveniently into a mainstream "family" paradigm.

In response to these concerns, ARCQ and QuAC recommend that the Inquiry, and subsequently the Federal Government, investigate the benefits of an overarching legal framework to establish and protect GLBT human rights. This framework could be in the form of a discrimination based Act comparable to the Racial Discrimination Act, Sex Discrimination Act and Disability Discrimination Act and would be consistent with legal instruments in states and territories. Alternatively, a Bill of Rights could provide both a positive and comprehensive statement about the equality of GLBT people before the law.

## **PART ONE**

### **The Arguments for Change**

A range of legislation has to be changed to ensure that gays, lesbians, bisexuals and transgender people can have full participation in Australian society. We recognise that Government can take a leadership role in bringing about improvements in a range of areas affecting GLBT people and ensuring that equal rights are extended to every member of society. We believe that public opinion is changing and that members of the general public are becoming more tolerant of lifestyles different to their own. We also believe that Australia has a duty to meet its international obligations to protect GLBT and other minority group people. The following pages detail our arguments for change.

#### **1.1 Government Leadership Role and Public Opinion**

The role of the Federal government in helping to eliminate all kinds of discrimination against gay men, lesbians, bisexual and transgender (GLBT) people and guarantee their basic human rights is twofold. The Federal government can on the one hand lead by example: by taking a leadership role in developing laws and taking measures to ensure GLBT people are treated equally before the law. In this way the government can help guide public opinion and help Australia modernize into a tolerant society. For example, an interesting comparison has been made between the current gay marriage issue and the interracial marriage issue which took place in the USA over some 50 years.<sup>2</sup> While there were rapid changes in public opinion regarding interracial marriage over the polled years of 1948, 1967 and 1991 (90% opposed, 72% opposed and under 50% opposed respectively, representing a change averaging slightly less than 1% per year), it was not until as late as 1991 that public opinion favouring interracial marriages tipped over into a majority. The USA did not wait until the balance tipped before repealing interracial marriage laws in 1967. This is an example of how government can lead by example by striding ahead of public opinion.

The Federal government also needs to get in step with State and Territory laws which are in the main far less discriminatory than Federal laws regarding the rights of GLBT people. Added to this is an apparent shift in public opinion. Queensland has come a long way in the past 20 years, and although there has been little empirical research into this phenomenon, GLBT people are aware of a shift in attitudes. According to one Brisbane mother of a GLBT person:

I think people are more open to change these days – people of all ages. If you can talk to people they will come around. The more information there is, the less fear there is. I mean, men used to be afraid of women because we were supposed to be dangerous because we had small brains and when we were menstruating we were wild and unpredictable. It's all about education and normalisation...I find that most people assume that GLBT have the same financial and every other kind of right as anyone. They are genuinely shocked to find out that this isn't the case.

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<sup>2</sup> Mathabane, G. *Gays face same battle interracial couples fought*, USA Today, 2004–JAN -25. Referenced in [www.religioustolerance.org/hom\\_marp.htm](http://www.religioustolerance.org/hom_marp.htm) accessed 14 June 2006

The *Discrimination Amendment Act 2002* passed by the Queensland Legislative Assembly in November 2002 reformed approximately 70 pieces of legislation to formally recognise de facto relationships, including same sex relationships, and to provide parity with married couples. The parliamentary debate of the Bill illustrates the apparent shift in attitudes, sometimes from surprising sources, regarding the rights of GLBT people. Lawrence Springborg, leader of the opposition (National Party, Queensland) said in State Parliament in response to the introduction of this legislation:

[w]hen the Attorney-General quite rightly says that society has changed and that we have become tolerant, we in the opposition would support that. When he says that people are increasingly making the choice not to get formally married and more and more people are open about their sexual orientation, we would also agree that this is a statement of fact. When the Attorney-General goes on to say that we need to change legislation to reflect community attitudes and aspirations, we would also concur.<sup>3</sup>

Mrs Joan Sheldon, a Liberal Member, contributed the following during the Discrimination Law Amendment Bill's debate:

(...) I acknowledge that not everyone aspires to, or has the same set of values as I have and my family has. Society today has a knowledge of and support for diversity – of de facto couples, of same-sex couples and of homosexuality.<sup>4</sup>

Mr Vaughan Johnson, a National Member, offered the following during the same debate:

I have spoken to many people who are parents of young people and older people who live in same-sex relationships who are homosexuals and lesbians. I have to say that I do not condone this practice, but at the same time I am tolerant of it. I know that it exists and I know that it is happening in our society.<sup>5</sup>

Premier Peter Beattie provided a statement about his vision for a modern democratic state:

I do not want to see any Queenslanders marginalised. My government is a government for all Queenslanders. I want each and every one of us to enjoy the same rights and be treated equally before the law. The mark of a society is its acceptance and diversity. I am proud to live in a state where we welcome people of all races, beliefs and backgrounds... We want a positive society which is supportive, nurturing, encouraging, welcoming, inclusive and accepting. This produces positive children, positive people, positive opportunities and a positive community.<sup>6</sup>

There has been a shift in public opinion over time. As more and more GLBT people publicly disclose their sexuality, heterosexual members of the community are becoming more aware that they actually know or are related to someone who is same-sex attracted. These days siblings, parents, work colleagues and even fellow church goers find

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<sup>3</sup> Hansard, 28 Nov 2002, p. 5015

<sup>4</sup> Hansard, speech by Mrs J. Sheldon, Member for Caloundra, 28 Nov 2002

<sup>5</sup> Hansard, speech by Mr V. Johnson, Member for Gregory, 28 Nov 2002

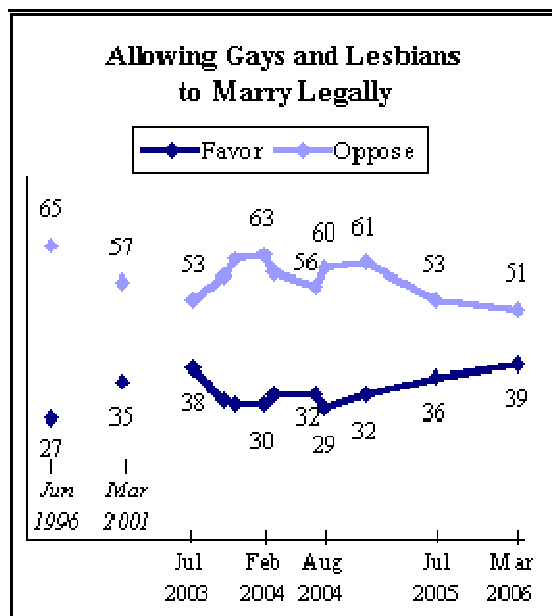
<sup>6</sup> Hansard, speech by Premier P. Beattie, Member for Brisbane Central, 28 Nov 2002

themselves socialising regularly with someone who is gay. Television is today also more willing to represent gay, lesbian or bisexual fictional characters (it is only a matter of time before transgender people start getting positive televisual representation). The Australian Research Centre in Sex, Health & Society found that young people were more likely to identify as same sex attracted in 2004 compared to 1998, which was possibly a reflection of the “social changes that have made this more acceptable.”<sup>7</sup>

A *Sydney Morning Herald* reader poll on 15/06/06 logged the following results on the topic ‘Gay civil unions, where do you stand?’ 72% of respondents can’t see a problem with gay civil unions, while 28% support Government’s action to overturn ACT gay civil union laws (total votes 5,696).

We would suggest also that there are generational and gender variations in attitudes towards same-sex relationships. In a recent Australian survey, when asked whether the law should recognise same sex relationships, the majority of the 34% who agreed with the proposition were women and young people.<sup>8</sup> Similarly, women and young people featured as those more likely to support gay marriage, in a *Newspoll* survey conducted in 2004.<sup>9</sup> This would indicate that over time, the support for recognition of same sex relationships will grow.

The following graph and table<sup>10</sup> indicate the trend over time in public opinion showing growing support for GLBT people in the United States. Australian State, Territory and Federal governments need to be aware of these trends in the opinions of the general public.



Shifting Views on Homosexual Policies		
<b>Allowing gay adoption</b>	<b>1999</b>	<b>2006</b>
	%	%
Favor	38	46
Oppose	57	48
Don't know	5	6
	100	100
<b>Gays serving openly in military</b>	<b>1994</b>	<b>2006</b>
	%	%
Favor	52	60
Oppose	45	32
Don't know	3	8
	100	100

<sup>7</sup> Hillier, L. et al, Writing Themselves In Again: 6 years on – The 2<sup>nd</sup> National Report on the Sexuality, Health & Well-being of Same Sex Attracted Young People in Australia, pp. 5-6

<sup>8</sup> Evans, A. & Gray, E., ‘What Makes an Australian Family?’ in Wilson, S. (ed), *Australian Social Attitudes: The First Report*, UNSW Press, Sydney, 2005, p. 20

<sup>9</sup> Ibid, p. 20

<sup>10</sup> Pew Research Center, Washington DC. <http://people-press.org/reports/> Accessed 13.6.06

## 1.2 Australia's International Obligations

The Human Rights and Equal Opportunity Commission is an important institution which can assist the government to meet its human rights commitments under international law. This is outlined in HREOC's Same-Sex: Same Entitlements discussion paper 2006. So here, ARCQ and QuAC would like to reiterate the GLBT community's stake in Australia complying with the International Covenant on Civil and Political Rights (ICCPR) by legislating against discrimination on the grounds of sexual preference. And here, too, as Article 26 states that: *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law*<sup>11</sup> we interpret said discrimination to include all forms of legislative discrimination, not simply types of legislative discrimination limited or pertaining to financial and work-related entitlements and benefits.

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<sup>11</sup> Article 26, ICCPR

## **PART TWO**

### **Case Studies in Queensland**

Here follows a sample of case studies from Queensland, many of which are restricted to financial matters, but some of which go beyond the financial realm to other areas of discrimination and violations of our human rights. In each case, the discrepancies between GLBT people's experiences and those of our heterosexual counterparts are apparent.

#### **2.1 AUSTRALIAN DEFENCE FORCE**

**Colin** worked in Townsville for the Australian Defence Force (ADF):

The big discrimination issue for GLBT people in the Armed Forces comes with transfers and what Family Services Support Units can and can't do. When someone gets a transfer which happens pretty often in the ADF, if you are heterosexual, then your partner and family relocation costs and also counselling and other support costs are covered by the Force. If you are in a same sex family then you get nothing towards relocating your partner and family. Transfers for GLBT people are costly and traumatic. (...)

Just say a soldier is injured on active service. Well, it is the ADF's Family Services Unit that does everything including notifying spouse and family members. They appoint a counsellor, look after the children, arrange special treats and take over paying the bills. GLBT spouse and families are not even notified when their nearest and dearest is injured or killed because the Army has no legal requirement to acknowledge any relationships but marriage to a person of the opposite sex. Even de facto heterosexual relationships are sometimes not equally acknowledged but GLBT? Nothing! There have been horrible cases when same sex partners haven't heard bad news and they have to rely on underground information. This is a terrible time not to be acknowledged!

ARCQ and QuAC acknowledge that a number of internal ADF policies were amended in 2005 (possibly since Colin's experiences) which now grant similar treatment of same-sex and heterosexual couples.

Another problem with the current policies is a definition used by the ADF requiring individuals to be in a close personal relationship, where there are both financial and domestic support commitments. This discriminates against same-sex couples who are forced to live apart due to separation by the ADF due to military relocation or service, institutionalisation, illness and frailty, etc. Queensland legislation also defines cohabitation as a compulsory requirement for recognition of de facto relationships.<sup>12</sup>

In the meantime, as the ADF can only change policies which it directly administers, legislative changes are required in order to eliminate inequities to same-sex couples who are current and former ADF personnel in regard to other benefits administered by the Federal government, including superannuation, retirement benefits, death benefits, rehabilitation and compensation schemes and housing loans.

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<sup>12</sup> Acts Interpretation Act 1954, s32DA, p. 40

We are acutely aware of the case of *Young v Australia*, UN Document CCPR/C/78/D/941/2000, where the United Nations Human Rights Committee found Australia to be in breach of article 26 of the Optional Protocol to the ICCPR. Young was denied both a pension and a bereavement payment as a same-sex partner to a veteran who died. These benefits should be available to same-sex couples as well as to their heterosexual counterparts.

## 2.2 MEDICARE SAFETY NET

**Jeff and Rod** have lived together in Brisbane for over sixteen years, since 1990. Because Jeff and Rod are a same-sex couple<sup>13</sup> they do not qualify for the Medicare Safety Net which protects heterosexual couples by covering “80% of your out-of-pocket costs.” As both Jeff and Rod work they would qualify for the \$716.10 threshold. This means that once you or your family reaches your threshold in a calendar year, the Medicare Safety Net will also cover 80% of all your out-of-pocket costs over and above the rebate, for the rest of that year. However this only works if you are a certain type of family.

Jeff has high cholesterol and a family history of heart conditions. In addition, Jeff has a thyroid and skin condition. These health issues require monitoring which he does with his GP and specialist treatment for his skin.

Rod was diagnosed with HIV in 1993. He had successfully been managing his health through diet and exercise. However in recent times his immune system has deteriorated requiring him to commence anti-retroviral treatment. HIV medical services are provided for free through a public health clinic and Rod makes a contribution of \$1,062 per annum to his medication expenses (the balance being met through the Pharmaceutical Benefits Scheme).

In addition to the above expenses, Rod is prone to minor health issues arising from a damaged immune system. These include skin rashes, fungal infections and colds. As the HIV clinic has a long waiting list for appointments (weeks in advance) Rod often uses his own GP for these issues.

Meanwhile, Rod’s brother, who has been in a relationship for the last 12 years, does not pay those types of extra health costs because he is in a heterosexual relationship. There is a glaring inequality between the brothers’ entitlements and it is easy to understand how resentments could develop.

We’re both family people. I have a brother. Jeff has six siblings and between us we have 14 nephews and nieces. Things are really good with our families now. We’ve been to every possible 21<sup>st</sup> birthday, engagement and wedding party. But it was pretty tense with our families in the early days. There was resentment and jealousy about our lifestyles. Jealousy on their part about our apparent freedoms beyond society’s conventions. And resentment on our part

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<sup>13</sup> Ironically, one of the only acknowledgements of the existence of same-sex partners enacted within Federal law, is within the Criminal Code Act 1995. This subsection of the Criminal Code – Associating with terrorist organisations – clarifies that the term “close family member” of a person includes ‘the person’s spouse, de facto spouse or same-sex partner’. It is interesting that some legislation can specifically refer to same-sex partner options, while other legislation completely disregards the possibility.

about the privileges that they enjoy just because they are straight. Part of this is explained by the way the laws work. It's a kind of relationship apartheid. I don't think the current laws are family friendly at all, I think they drive a wedge into families.

Jeff and Rod are accruing costs beyond the \$358.05 per partner per annum safety net. Heterosexual couples would attract a subsidy when they exceed this threshold but Jeff and Rod must keep paying until their individual costs exceed \$716.10.

Rod stated that he is grateful that he and Jeff are both employed, but many couples aren't. ARCQ and QuAC point out that a same-sex couple having to meet both the Medicare Safety Net and the Pharmaceutical Benefits Scheme Safety Net as two individuals rather than as a couple, experience an additional financial burden to those of their heterosexual counterparts.

**Xena and Marjorie** (not their real names) say this of the Medicare Safety Net:

There is a Federal Government policy that discriminates against me and my partner and that is the Medicare Safety Net. My partner and I are going through the IVF process and won't qualify as we are both women. We will have to look after all our own costs (the MSN is not means tested) whilst heterosexual couples are reimbursed after they spend \$1,000.

As the Medicare Safety Net recognises a 'spouse' as being a person legally married and not separated OR a man and a woman in a de facto relationship, a same-sex couple such as Xena and Marjorie are forced into financial burdens that a comparable heterosexual couple using the same IVF service would not experience.

## 2.3 TAXATION AND IMMIGRATION

The Medicare Levy Act 1986 provides:

that married couples and people entitled to certain rebates under the Income Tax Act can pay a reduced Medicare levy if their combined income is beneath the family income thresholds.<sup>14</sup> The relevant definitions of 'spouse' and 'dependent' exclude same-sex partners.<sup>15 16</sup>

**Penny and Natalie** (not their real names) live in an outer suburb of Brisbane and have been together for 8 years. Penny says:

Of course the Medicare Levy is not available to same sex couples, which is a significant financial disadvantage every year. Also you can't do a joint tax return, even though you have a joint mortgage, joint account and joint

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<sup>14</sup> Medicare Levy Act 1986, s8

<sup>15</sup> Income Tax Assessment Act 1936, ss6, 251R; Medicare Levy Act 1986, s3

<sup>16</sup> Same-Sex: Same Entitlements Discussion Paper 2006, p. 16

everything else. Heterosexual couples, married or de facto pay less tax than same sex couples.

My partner actually did our tax return one year on E TAX and it didn't have the tick box that you answer, asking you whether you do or don't have a partner of the opposite sex, just whether you have a partner. She ticked 'yes' and we paid over \$500 less tax that year. Being unsure of the legality of this my partner checked it out with a 'tax info person.' She was told that we should pay the higher amount i.e. for two single person's tax but we didn't opt to do that. I guess we would have been fined for being illegal if we'd been audited and that's ridiculous.

There are a number of tax concessions available to heterosexual couples which are not available to same-sex couples. As the Income Tax Act defines a "spouse" to be "another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person"<sup>17</sup> and since a same-sex partner is not understood to be a husband or wife, same-sex couples are excluded from the definition of 'spouse,' as well as from definitions of 'resident,' 'relative' and 'dependent'. As such, Penny and Natalie fall outside of various rebates available to their heterosexual taxpaying counterparts. For instance, if Natalie's mother moves in with them and becomes in need of care and has medical expenses she cannot cover, Penny will not be able to claim her as a dependent for tax purposes, even if Natalie is unemployed and Penny is footing all of the bills. This applies also to any rebates for superannuation paid by Penny into Natalie's superannuation fund.

Similarly, if Penny and Natalie have a child one day, only the biological mother will be able to claim the child-care rebate from her hard earned tax payments, according to the Family Assistance Act.<sup>18</sup> The taxation system is fraught with legislative anomalies that disadvantage same-sex couples, and in our opinion needs a complete overhaul.

Penny had these other comments to make for the Inquiry:

- Leave entitlements for bereavement for example; what a hideous time to be battling for normal rights!
- As a GLBT person you are constantly shopping around for the company that will recognise your relationship status for things like insurance and superannuation and health insurance.
- Australia must recognise GLBT persons fully, there is no choice. In Europe, law reform has been forced upon conservative governments to force change. It has to happen in Australia.
- Government policies must lead the way to social reform and equality for all. That's the point of them! The 'best brains' must be harnessed to create policies that protect marginalised groups.

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<sup>17</sup> Income Tax Assessment Act 1936, s6

<sup>18</sup> A New Tax System (Family Assistance) Act 1999, s42

## 2.4 IMMIGRATION

**Linda** (not her real name) has this to say about immigration:

There's this thing with getting your Visa when you immigrate to Australia: If you're in a same sex couple under the Partner Migration Program, you have to nominate that you are an "Interdependent" rather than married or de facto which heterosexual couples qualify for. This means that when you get your Visa you will have "Interdependent" or number 814, permanently on your Visa showing that you belong to a particular sub-class and in this case "same sex."

Now I am usually asked to show my Visa when I apply for jobs. How do I know that people aren't saying: "Oh, sub-class 814, that means she's gay! We don't want that kind working here!" I mean, what difference does it make to my professional qualifications what gender my partner is? That's a really bad kind of discrimination and it can have disastrous financial consequences.

Also there are other big immigration disadvantages to not being able to just get married. We had to register after 12 months of living together and that meant coming up with all this amazing documentation and proof like photos and bank statements and cards addressed to both of us and heaps of other stuff. Then you have to keep it up for two years and go through another whole proof exercise and then finally you get your Visa.

Heterosexual couples can marry after nine months and that's it!

## 2.5 PARENTING

**Sally and Anne** (not their real names) have two children, a boy of 8 and a girl of 6. Anne is the birth mother, and the couple used a known sperm donor. They own a house in West End, Brisbane, and the children go to school locally. Sally, as the non-biological mother, cannot under Queensland law legally adopt her own children. When the children first went to school, Sally had to bring a note from Anne confirming it was ok for her to pick the kids up from school. Likewise, when Sally wanted to take the younger child to meet her grandparents in England, she had to go through a mountain of bureaucracy to be able to take her daughter out of the country. Sally says:

It's crazy, Anne and I really wanted kids, and actually getting Anne pregnant turned out to be the easy bit! Since their births, I've really been educated in how discriminatory Queensland and Federal law still is. I mean, I'm their mother too! We both make them breakfast, we both kiss their hurts better, we both read them bedtime stories. But under the law I'm treated like less than an auntie. I would really like to be recognized as their other parent, on their birth certificates, everywhere. Anything less makes me feel like I'm a second class citizen.

At the Federal level, for the purposes of taxation, Medicare, Centrelink, ADF benefits and Family Law, the same-sex partner, Sally, is not recognized as a parent.

This has financial impacts on their household as well as placing emotional and social strains on them.

Sally and Anne are currently in England, where they are considering a civil union. What will their relationship status be when they return to Australia? And will Sally ever be able to adopt her own children in Queensland? ARCQ and QuAC urge the Federal and Queensland governments to reform the existing same-sex relationship and adoption laws, so that people like Sally and Anne can enjoy equal status with their heterosexual neighbours.

## 2.6 GENDER STATUS

**Jenny** is a post operative female and has been married to Lynne for 36 years. Jenny cannot get official recognition of her gender unless she divorces. She doesn't want to get a divorce and couldn't anyway as she is not recognised as being married any longer because as she is now female it is a same sex marriage. To show how complicated things are for her, Jenny says:

As I have a British Birth Certificate, to get a Gender Status Certificate I would have to travel to England to get a British gender expert to certify that I have a vagina. A British gender expert is the only one who can identify a vagina on an English person. What I need is for the State of Queensland to have the ability to issue me with a Gender Certificate. This is the only way I would be spared the cost of travelling to England to get one.

Jenny also made these comments for the Inquiry:

There is enormous financial discrimination against Lynne and me, but the emotional trauma of not being accepted anywhere robs you of any sense of achievement in your life.

The legal system is there to protect the weaker from the stronger, to make everyone equal and free. Of course everybody should be subject to the same laws and opportunities as everybody else. The law should allow you to do whatever you want as long as you don't hurt anybody else.

## 2.7 SUPERANNUATION

**Karen and Siobhan** (not their real names) have lived together for 8 years. As Karen works full-time, and Siobhan works on a casual, part-time basis, Karen would like to be able to make contributions into Siobhan's superannuation fund. As Karen says:

What are our rights? Superannuation is quite confusing but for same sex couples it is much worse. This is discriminatory. Super splitting is not an option for same sex couples. This is a good idea if one person in the couple is working more regularly than the other, but this option is not available in same sex couples.

It seems that the Government does have advertising campaigns when policies change. Recently they have changed super laws slightly affecting GLBT people but no ones knows about the changes. How well are these changes promoted? It's bad when socially active types at university don't know what the changes mean. How does the average person ever find out? If the Government did more work on information dissemination and education about policy changes, like circulating "facts sheets" it would be really helpful to GLBT people AND there would be a rise in community awareness of GLBT issues and presence. It's the invisibility that is bad.

Karen is referring to the Federal Government's *Tax Laws Amendment (Superannuation Contributions Splitting) Act 2005*, which offers tax rebates for a spouse making a superannuation contribution into a low-income or non-working partner's superannuation fund, but does not apply to same-sex couples, only to heterosexual couples.

## **PART THREE**

### **Audit of Issues in Need of Review and Recommendations**

The above case studies are just a sample of the types of discrimination GLBT people face every day of our lives. They clearly illustrate anomalies within the law, and present a strong case for the need for legislative and other changes within Australia. The following audits of Queensland and Federal legislation in need of review are by no means conclusive, and are meant as a guide only.

#### **3.1 Queensland Legislation**

At the Queensland State level, ARCQ and QuAC recommend the following:

- Adoption and parenting rights should be extended to same-sex couples, particularly in regard to the right of the non-biological mother to adopt her partner's (the birth mother's) child. - *Adoption Act 1964, Status of Children Act 1978*
- Changing the narrow definition of "parent" which denies schools and other authorities the legal basis to recognise the parent status of a lesbian mother who is not the birth mother of her child.
- The age of consent for sexual intercourse involving anal sex (currently 18) should be equalised to that involving vaginal sex (currently 16) - *Queensland Criminal Code, Section 208.*
- The reference in criminal records to people having been found guilty of crimes relating to homosexuality prior to its decriminalisation in Queensland should be removed.
- The "gay panic" or "homosexual advance defence" allowed in proceedings for assault including manslaughter be removed.
- Including same sex spousal entitlements in the *Aboriginal Land Act 1991.*
- Removing the exemption in the *Anti-Discrimination Act* relating to transgender people working with children.
- Removing exemptions to the *Anti-Discrimination Act 1991* which currently allow fertility clinics to deny access to same-sex couples.

Furthermore, some other positive changes we'd like to see for Queensland include: considering the creation of a relationships registration system, similar to that established in Tasmania; and establishing formal GLBT advisory structures for Government in all portfolios which affect our rights and interests.

#### **3.2 Federal Legislation**

ARCQ and QuAC have identified some of the areas covered by Federal legislation which discriminate against GLBT people and therefore require attention. The following is by no means an exhaustive list, but may serve as a guide to the Inquiry.

- Child Support
- Taxation

- Superannuation
- Defence Force and Veterans
- Family Law
- Human Rights and Equal Opportunity
- Aboriginal and Torres Strait Islander people
- Medicare and Health
- Migration
- Aged Care
- Crimes Act
- Marriage
- Workplace Relations
- Health Insurance and Life Insurance
- Privacy
- Sex Discrimination
- Social Security
- Disability

We also point out that same-sex marriage/civil union/relationship registration schemes need to be thoroughly considered. The current Marriage Act excludes people in same-sex relationships from the legal rights, benefits and entitlements which would otherwise flow from the institution of marriage or a civil union / relationship registration system. This exclusion necessarily has financial and human rights consequences for lesbians and gay men, and in some cases for bisexual and transgender people.

In keeping with a principle of full and equal engagement in Australian society, same sex partners should have access to marriage on the same basis as heterosexual partners.

Partners should have an option to have their partnerships and subsequent legal rights and responsibilities recognised in a way which removes ambiguity. This could be achieved through a registration scheme and would have benefits for both same sex and opposite sex partners. A certificate of partnership recognition would act as a source of evidence in formal legal proceedings and could be produced in other settings if required, for example, workplace, health care or finance settings.

A registration scheme offers advantages over a de facto relationship recognition model. Registration would be a formal process offering documentation for proof and providing certainty from the date of registration. A limitation of current models of de facto relationship recognition operating in states and territories is a time period qualification and, often, a co-habitation requirement.

Marriage does not require a time period qualification. Furthermore, many modern relationships, both same sex and opposite sex, involve emotional and financial interdependence without co-habitation. Time qualifications and co-habitation are not a requirement for marriage and should not necessarily be a determining requirement for other models of relationship recognition.

Same sex partners should have access to recognition as de facto partners in the same way as for opposite sex partners. As above, co-habitation should not be a critical element. However, where partners choose not to use a registration scheme should it be available, a time period qualification may be appropriate.

These three levels of partnership recognition (marriage, registration and de facto recognition) could co-exist in law. Accordingly, ARCQ advocates the adoption of these three models.

As well as the above, ARCQ and QuAC make the following recommendations to the Federal government to help improve the human rights of GLBT people: establishment of formal GLBT advisory structures for Government in all portfolios which affect GLBT rights and interests; family impact assessment for new legislation should consider the impact on gay and lesbian families; and, that changes to legislation affecting GLBT people be promoted to raise awareness of GLBT people and the broader population about rights and responsibilities.

## **Conclusions and Further Recommendations to the HREOC Inquiry**

The above pages identify some of the issues of discrimination faced today by GLBT people in Australia. Our arguments outlining the case for change within the jurisdiction of Queensland and Federal legislation and the need for Australia to comply with International commitments have provided evidence of the day to day inequities currently harboured within Australian legislation and which are tacitly perpetuated by government oversight or inaction.

While an inquiry into discrimination of GLBT people in the realms of financial and work-related entitlements and benefits has definite merit, we are mindful of the limitations to the Inquiry's Terms of Reference (outlined above) and have suggested inclusions and pointed out anomalies within the HREOC Inquiry's current format. In particular, the non-financial human rights issues in our view need to be addressed along with the financial.

We suggest that HREOC conduct an independent international literature review of GLBT issues, particularly research conducted in progressive countries such as The Netherlands, Denmark and Spain. This will inform many aspects of the Inquiry and contribute to the body of knowledge (and social capital) dealing with GLBT issues along with the current community consultation and proposed public forums.

We also urge the Inquiry to hold at least 2 consultative forums in Queensland, one in Brisbane and the other in Townsville, to garner further information from GLBT communities. We would also suggest that HREOC help to pay for travel and accommodation expenses to enable attendance of rural and regional representatives at these forums.

ARCQ and QuAC recommend that the Federal government take more of a leadership role in guiding public attitudes, by changing all laws which discriminate against GLBT people in any manner. On the flip side of this, we think the Federal government would do well to try to keep in step with State and Territory laws which for the most part are currently far ahead in addressing inequities between heterosexual and same-sex attracted Australia.

ARCQ and QuAC believe it is only a matter of time until Australian governments will take seriously their obligations within history. The Netherlands, Belgium, Canada, the UK, Denmark and Spain are amongst the countries which realise they need to eliminate discrimination from every sector of society. We have submitted this paper with the hope that Australia will move away from discriminatory laws and practices and will become a country that is respected and used as a model for human rights and equal opportunities throughout the world.

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