

Submission to the Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-General Law Reform) Bill 2008

AUSTRALIAN
FEDERATION OF AIDS
ORGANISATIONS INC.
ABN 91 708 310 631

PO Box 51
Newtown NSW
2042 AUSTRALIA

Ph +61 2 9557-9399
Fax +61 2 9557-9867

Email afao@afao.org.au

Internet <http://www.afao.org.au>

The Australian Federation of AIDS Organisations (AFAO) is the peak body for Australia's community sector response to the HIV/AIDS epidemic. AFAO is charged with representing the views of our members: the AIDS Councils in each state and territory, the National Association of People Living with HIV/AIDS, the Australian Illicit and Injecting Drug Users League, and Scarlet Alliance, the national organisation representing sex workers. AFAO provides HIV policy advice to the Commonwealth Government, advocates for our member organisations, develops and formulates policy on HIV/AIDS issues, and promotes medical and social research into HIV/AIDS and its effects.

People with HIV/AIDS are significantly affected by discrimination against same-sex couples. Men with a history of homosexual contact continue to make up the majority (approximately 85%) of those diagnosed with HIV infection in Australia.¹ Many of these live in couple relationships, and sometimes they are also parents. Of the 982 HIV positive Australians who completed the *HIV Futures 5* survey, 82% identified as gay or bisexual men. Almost half of those people reported currently being in a relationship, and named their partner as their primary source of social support². Notably, when asked to rank the most important issue relating to relationship rights, the 1313 respondents to the Gay and Lesbian Rights Lobby's 2007 survey ranked 'legal rights' as most important.³

In 2006-07, there were 27 000 same-sex couples living in Australia⁴, and 58 federal laws that actively discriminated against them in relation to financial and work-related entitlements⁵. Not only do those laws breach numerous international instruments to which Australia has voluntarily agreed to comply⁶, they significantly impact the lives of tens of thousands of Australians: adults and children. Sometimes an individual bears the brunt of one of those laws, creating an impact that is specific and severe. Otherwise, the combined effect of those 58 discriminatory laws exacerbates the homophobia and social

¹ National Centre in HIV Epidemiology and Clinical Research, *HIV/AIDS, viral hepatitis and sexually transmissible infections in Australia Annual Surveillance Report 2007*, National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales; Australian Institute of Health and Welfare Sydney, 2007.

² J Grierson, R Thorpe and M Pitts, *HIV Futures 5: Life as we know it*, monograph series number 60, The Australian Research Centre in Sex, Health and Society, Latrobe University, Melbourne, 2006.

³ Ben Bavinton, Laurie Berg, Vicki Harding and David Scamell, *All love is equal: Isn't it – the recognition of same sex relationships under federal law*, Gay and Lesbian Rights Lobby, Sydney, 2007, p.5.

⁴ Australian Bureau of Statistics, "4442.0 - Family Characteristics and Transitions, Australia, 2006-07" at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4442.0>

⁵ Human Rights and Equal Opportunities Commission, *National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*, HREOC, Sydney, 2007.

⁶ Including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and International Labour Organisation Discrimination (Employment and Occupation) Convention 1958 (ILO 111).

exclusion experienced by many, which in turn negatively impacts the health and wellbeing of individuals and the communities in which they live. Numerous reports have revealed poor health indicators resulting from the social exclusion of same-sex attracted people, for example, markedly higher levels of depression⁷, and drug and alcohol abuse⁸.

AFAO applauds the intention of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws— General Law Reform) Bill 2008*. It is vital that the Bill's benefits are passed on to those directly affected as soon as possible.

- **Concerns about negative implications of the bill**

Whilst in support of the bill, AFAO has several concerns regarding the equitable and sensitive implementation of this Bill; particularly around Centrelink reporting obligations and the management of implications for individuals whose financial circumstances may negatively be impacted by this Bill.

For some people living in same sex relationships the recognition of their relationship may carry negative consequences – this is particularly true for people living with HIV who rely on the Disability Support Pension or other government benefits (such as the Health Care Card).

AFAO would like the Senate Committee to consider that the negative consequences of this Bill will not be uniformly shared by those who will attain equality. AFAO notes that for the most part, it is the disadvantaged – those on Centrelink Benefits such as the Disability Support Pension, low income earners and those who rely on the Health Care Card, who are going to bear a significant cost in the transition to equality. In passing these reforms, AFAO hopes that the disadvantages which some same-sex couples will face will be addressed.

These disadvantages exist as a consequence of the transition from a period of lesser or reduced human rights. For some same sex couples, this transition will involve a reduction in welfare entitlements and/or concessional benefits. AFAO firmly argues that consideration of these consequences lay in the principles of social justice. For people living on low incomes, any change to financial circumstances can have considerable ramifications. These effects can extend into all aspects of life. Reduced household budgets (as a result of reduced welfare payments or an increase in the cost of pharmaceuticals due to the loss of a health care card or pension card) may for some people necessitate relocation.

⁷ M.Pitts, A.Smith, A.Mitchell, S.Patel, *Private Lives: A Report on the Health and Wellbeing of GLBTI Australians*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, 2006. p.31.

⁸ Attorney General's Department of NSW, *You Shouldn't Have to Hide to Be Safe: A Report on Homophobic Hostilities and Violence Against Gay Men and Lesbians in NSW*, NSW Government, Sydney, 2003, p.43.

With these points in mind, AFAO would like to recommend that the Senate Inquiry consider directing Government Departments responsible for the implementation of this Bill (and the resultant policy implications) to:

- Delay the policy implementation of the “negative” consequences of the Bill to better allow people to prepare for their personal situation.
- Fund appropriate education and support campaigns and services to help people negatively affected by the Bill.
- Provide an amnesty period of two years to allow people some discretion in which to report on their own situation and act in better faith with Government departments (such as Centrelink) without fear or risk of punitive actions and/or debt accrual.

•Allegations that this is the Government’s attempt to sneak in ‘gay marriage’ and other associated controversial practices

Much to the frustration of many same-sex attracted people and their advocate organisations, this allegation seems extremely unlikely given the Government’s tightly held and frequently repeated policy position against gay marriage. Instead, the structure proposed by the bill would appear to allow equitable treatment to same-sex couples, while keeping marriage as an elite union of heterosexual couples.

•Comments relating to children

AFAO applauds the bill’s inclusion of children of same-sex relationships. As HREOC argued:

same-sex families do exist. And the Inquiry does not accept that one set of parents should have to struggle harder than another set of parents to protect the best interests of their child, purely on the basis of their sexuality. Laws that perpetuate such inequalities are unjust and should be changed. They are also contrary to international human rights law.⁹

⁹ Human Rights and Equal Opportunities Commission, *National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*, HREOC, Sydney, 2007, Chapter 5 at http://www.hreoc.gov.au/human_rights/samesex/report/Ch_5.html