



BUILDING OUR COMMUNITY'S
HEALTH & WELLBEING

Submission to:

**Inquiry into the Same-Sex Relationships
(Equal Treatment in Commonwealth
Laws—General Law Reform) Bill 2008**

Senate Legal and Constitutional Affairs Committee

September 2008

1. ACON

ACON (formerly known as the AIDS Council of NSW) was formed in 1984 as part of the community response to the impact of the HIV/AIDS epidemic in Australia. Today ACON promotes the health of a diverse gay, lesbian, bisexual and transgender (GLBT) community, and is a leading agency in HIV/AIDS policy development and program delivery.

ACON is the leading organisation in NSW providing education, health promotion, care, support and advocacy for members of the GLBT community, including injecting drug users and Indigenous people, for sex workers, and for all people living with HIV/AIDS (PLWHA).

ACON is home to the Community Support Network (CSN), the Positive Living Centre (PLC), the Lesbian and Gay Anti-Violence Project (AVP) and the Sex Workers Outreach Project (SWOP). ACON has its head office in Sydney as well as branches in the Illawarra, Northern Rivers, the Hunter region and the Mid North Coast.

2. GENERAL COMMENT

ACON is pleased to make a submission to the inquiry into the *(Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008* (hereinafter referred to as the *General Law Reform Bill*).

As an organisation that works towards equality and social justice for GLBT people, ACON strongly supports the elimination of discrimination against same-sex couples and the children of same-sex relationships under Commonwealth law, and welcomes the introduction of the *General Law Reform Bill* by the Federal Government as an important step in achieving that outcome.

For a number of years, ACON has undertaken advocacy around the rights of same-sex couples and children of same-sex relationships based on our understanding of the impact that discrimination and social exclusion has on the health and wellbeing of those who are subject to such discrimination and exclusion.

As a social determinant of health, social exclusion impacts on the health and wellbeing of same-sex couples and children of same-sex relationships in two ways. First, same-sex couples and their families are not able to access the numerous financial benefits and entitlements that are made available to couples and families through both federal and state legislation. This places greater burden on same-sex couples and their families in meeting the costs of everyday living, including medical and associated expenses.

Second, the lack of legal recognition of same-sex couples and same-sex families sends a strong government-sanctioned message that these relationships and family structures are not valued, which further enforces the homophobia and heterosexism that pervades Australian society.

ACON offers its support for the *General Law Reform Bill*, and calls on the Senate Legal and Constitutional Affairs Committee to recommend that the Senate quickly move to pass the bill.

Recommendation 1

The *Equal Treatment in Commonwealth Laws—General Law Reform*) Bill 2008 should be passed by the Senate and incorporated in Commonwealth law.

Through this submission, ACON would like to raise three issues for the Senate's consideration:

- The recognition of interdependent relationships;
- The impact of social security reform on people with HIV and other members of the GLBT community;
- The need for education following the passage of these reforms;
- The need for federal legislation that prohibits discrimination on the basis of sexuality.

3. THE RECOGNITION OF INTERDEPENDENT RELATIONSHIPS

As ACON has previously stated in other inquiries, same-sex couples should be recognised as de facto couples under law, with equal access to the rights and responsibilities that opposite-sex de facto and married couples currently enjoy. Same-sex relationships are equal in every way to heterosexual relationships and so should be defined in the same manner.

Recommendation 2

Same-sex couples should be recognised as de facto couples under the law, and have access to the same legal rights and responsibilities as opposite sex couples.

Given that the intention of this bill is to eliminate discrimination against same-sex couples, it is pleasing that the bill, if passed, will amend the definition of a de facto relationship under Commonwealth law to include same-sex couples.

While acknowledging that it may be beneficial for interdependent or caring relationships to be recognised under Commonwealth law, ACON believes that any investigation of such law reform should occur as a process separate to the recognition of same-sex relationships as de facto relationships under federal law. We do so for three reasons.

Firstly, in the same way that a de facto relationship between two adults of the opposite sex is seen as different to a caring relationship between two persons, so too should a same-sex de facto relationship be seen as different. To equate a same-sex de facto relationship with a caring or interdependent relationship would serve to reinforce discrimination against people in same-sex relationships in the very legislation which is designed to eliminate it.

Secondly, there has been extensive public debate around the recognition of same-sex relationships under Commonwealth law over the last few years. However, discussion about interdependency has been framed primarily as a politically expedient means by which practical rights could be given to same-sex couples without really acknowledging their relationships at all. Little consideration has been given to caring or interdependent relationships (where two people would not be considered de factos but still share a close relationship). If recognition of these relationships were to be considered, a more substantive process of inquiry should occur, particularly given that legal recognition of interdependent or caring relationships may have both positive and negative consequences for people who are in such relationships.

Thirdly, the cost of including this group has the potential to be an inordinate and unwarranted drain on tax-payer funds if implemented in an ill-considered way. Many people may fall into this broad definition who shouldn't be there and don't want to be there. The cost then becomes prohibitive and is used as an excuse for excluding everyone even same-sex defactos. A better solution is to consider the two groups separately.

Recommendation 3

The recognition of interdependent and caring relationships under federal law should be considered through a process of inquiry separate to these reforms.

4. THE IMPACT OF SOCIAL SECURITY REFORM ON PEOPLE WITH HIV AND OTHER MEMBERS OF THE GLBT COMMUNITY

While the recognition of same-sex couples under federal law, through this bill and others introduced by the Federal Government, will have significant practical and symbolic benefit for the majority of Australians in same-sex relationships, not all will benefit from reform. People in couples who receive the Disability Support Pension, which includes people with HIV, other chronic illnesses, and other forms of disability, will face additional financial strain as a consequence of shifting from a 'single' to 'couple' rate. For some same-sex parents who are currently eligible for a sole parent pension, the recognition of their relationship will result in a loss of that benefit, which may have significant implications, particularly if they live in a low-income household. The change in law will also impact on the ability of some people to access health concession cards, which in

turn has implications in terms of eligibility for services provided by government and non-government agencies.

ACON believes that it is important for the government to recognise that through changes to social security law, many of the most financially disadvantaged and vulnerable members of the GLBT community will be subject to a loss of income, and that the government should act to minimise the financial hardship that will occur as a result of these reforms. A transitional period should be applied to any changes under social security law which will result in a loss of income, in order to allow people who will be disadvantaged to re-adjust their finances and make the necessary changes to their life, which may include changing accommodation.

If the reforms outlined under the *General Law Reform Bill* are due to take effect on 1 July 2009, then social security changes which will result in a loss of income should take effect twelve months later. Such a practice is not inconsistent with previous situations where significant changes to social security payments that impact on particular groups in society have been “phased in”. For example, the Wife Pension is gradually being phased out, and the shift in the qualifying age for women to receive the Aged Pension from 60 to 65 has been gradually phased in since 1995.

Recommendation 4

Amendments to social security laws which will result in a loss of income should take effect on 1 July 2010.

5. THE NEED FOR EDUCATION FOLLOWING THE PASSAGE OF THESE REFORMS

The recognition of same-sex couples and children of same-sex relationships under federal law will have a significant impact on the daily lives of thousands of Australians. Given the breadth of areas in which changes will occur, it also means that a sizeable proportion of the Commonwealth public sector will be affected. ACON believes that the passage of the government's proposed reforms must be accompanied by a range of government-funded educational campaigns aimed at the following audiences:

- The GLBT community – To advise them of the new rights *and* responsibilities that will be attributed to people in same-sex relationships, including those with children.
- Same-sex couples who are receiving social security and other government benefits – to provide them with all of the information necessary to understand the impact that reform is likely to have and make appropriate changes to their lives.
- Commonwealth public sector employees and others responsible for administering the reforms – to ensure that they are informed about the changes which relate to their work and have the necessary skills to administer such changes effectively and in a way that is culturally appropriate.

Recommendation 5

Following the passage of the reforms, a range of public education campaigns should be developed which target the GLBT community as a whole, same-sex couples who are receiving social security and other government benefits, and

Commonwealth public sector employees and others responsible for administering the reforms.

6. THE NEED FOR FEDERAL LEGISLATION THAT PROHIBITS
DISCRIMINATION ON THE BASIS OF SEXUALITY

Recognising same-sex couples and children of same-sex relationships under federal law is an important step in addressing the discrimination that same-sex attracted Australians face as a result of their sexuality. However, removing legal inequality is only part of the picture, as homophobia will continue to be a part of our society. To combat this social discrimination, anti-discrimination legislation on the basis of sexuality should be introduced by the Commonwealth Government. While comprehensive anti-discrimination legislation addressing sexism, racism and disability discrimination exists on both the Commonwealth and state/territory level, so far only the states and territories have attempted to prohibit discrimination on the basis of sexuality.

Recommendation 6

The Commonwealth Government should enact federal anti-discrimination legislation that prohibits discrimination on the basis of sexuality

For further information regarding this submission, please contact David Scamell, Manager of Policy, Planning and Research at [or 02 9206 2048.](tel:0292062048)