

Chapter 8: Human Rights

8.1 STATEMENT FROM THE COMMISSIONER

The 2006–07 year has been largely dedicated to identifying and eliminating the discrimination faced by people in same-sex relationships in accessing basic financial and work-related entitlements.

The *Same-Sex: Same Entitlements* Inquiry put federal laws under the human rights microscope. It found that 58 laws discriminate against more than 20 000 Australian same-sex couples – simply because of who they love. Those laws deal with fundamental areas of family life such as employment, taxation, and health care subsidies.



Mr Graeme Innes, AM
Human Rights Commissioner

The *Same-Sex: Same Entitlements* report documents which benefits and entitlements are denied to same-sex couples and their children. It also describes the emotional and financial impact of that discrimination. I was truly moved by the desire for equality – nothing more, just equality – which was so passionately expressed by many of the more than 1 000 people who spoke or wrote to us.

The *Same-Sex: Same Entitlements* report also highlights how easily discrimination against same-sex couples can be removed. The discrimination is directly attributable to the way federal laws define who qualifies as a person's 'partner', 'spouse', 'de facto spouse' and so on. The solution is to amend those definitions so that a same-sex partner is included in the same way as an opposite-sex de facto. Once that occurs, most of the problems just fall away. One of the challenges for the upcoming year is to encourage the government to implement the recommendations in the *Same-Sex: Same Entitlements* report.

Also in 2006–07, we conducted inspections of Australia's mainland immigration detention facilities. We were greatly encouraged by the cooperative attitude of detention staff and the clear efforts to improve the conditions inside immigration detention centres. However, I stand by HREOC's enduring call for the amendment of Australia's immigration detention laws. Mandatory, unreviewable, indefinite detention breaches Australia's human rights obligations and inevitably has a negative impact on the mental health and wellbeing of those people subjected to it.

In 2007–08 we will be further diversifying our human rights portfolio. We will develop and extend the material on our website, and we will look to our stakeholders to identify the emerging human rights issues facing Australia. I, and my team, look forward to the challenges this will bring.

8.2 RESEARCH AND POLICY

8.2.1 'Same-Sex: Same Entitlements' – the National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits

The *Same-Sex: Same Entitlements* Inquiry was launched on 6 April 2006. The purpose of the Inquiry was to:

- identify the federal laws which discriminate against same-sex couples and their children in the context of financial and work-related benefits and entitlements;
- describe the impact of those discriminatory laws on same-sex couples and their children; and
- make recommendations as to how to remove that discrimination.



Attendees at the report launch.

The final report of the Inquiry was tabled in federal Parliament on 21 June 2007. The final report reflects all three of these goals.

The report and community guide was officially launched in Sydney on 22 June 2007.

Findings and Recommendations

The *Same-Sex: Same Entitlements* report identifies 58 federal laws which deny same-sex couples and their children the basic financial and work-related entitlements which are available to opposite-sex couples and their children.

The 58 discriminatory laws identified by the Inquiry cover the following areas:

- employment;
- workers' compensation;
- tax;
- social security;
- veterans' entitlements;
- health care subsidies;
- family law;
- superannuation;
- aged care; and
- migration.



Media personality Peter Fitzsimons launching the 'Same-Sex: Same Entitlements' report in Sydney.

The report recommends amendment to the definitions of a de facto relationship in each of these 58 laws. The report also recommends changes to federal, state and territory laws to recognise the relationship between a child and both parents in a same-sex couple. Together, these changes would ensure that same-sex couples and their children would be treated in the same way as opposite-sex couples and their children.

The final report can be found at: www.humanrights.gov.au/human_rights/samesex/report/

As at 30 June 2007, the federal government had indicated that it was considering the recommendations of the final report.

Methodology

The *Same-Sex: Same Entitlements* report reflects the information, stories and opinions expressed in the 680 written submissions collected by the Inquiry. Those submissions came from the following individuals and groups:

- employment bodies
- gay, lesbian, bisexual, transgender and intersex individuals and couples
- human rights, advocacy and legal bodies
- members of the public
- non-government organisations
- organisations representing gay, lesbian, bisexual, transgender and/or intersex people
- parents, friends or family members of same-sex couples
- peak bodies
- religious organisations
- state and territory government agencies
- state equal opportunity commissions
- unions
- universities and academics.

For a full list of those who made submissions and copies of certain submissions see: www.humanrights.gov.au/samesex/inquiry/submissions.html

The *Same-Sex: Same Entitlements* report also reflects the evidence collected in the seven public hearings and 18 community forums held around Australia. Those public consultations clearly revealed the financial and emotional strain placed on gay and lesbian couples who are trying to live their lives like everybody else in the community. For a list and summary of the hearings and community forums see: www.humanrights.gov.au/samesex/inquiry/hearings.html

The Inquiry also received information from 15 federal government agencies.

The Inquiry released two discussion papers and a research paper as a way to encourage community responses and elicit further information from experts in the field. The final report incorporates the information in the discussion and research papers. Copies of those papers can be found at: www.humanrights.gov.au/samesex/inquiry/papers.html

8.3 MONITORING AND ADHERING TO HUMAN RIGHTS

8.3.1 Immigration detention, asylum-seekers and refugees

The President, Human Rights Commissioner and Human Rights Unit staff conducted inspections of all mainland immigration detention facilities during October and November 2006. In January 2007 an inspection report was published on the HREOC website at: www.humanrights.gov.au/human_rights/asylum_seekers/inspection_of_mainland_idf.html

The inspection report notes that substantial efforts have been made by the Department of Immigration and Citizenship (DIAC) to improve the physical environment, reduce the tension levels, enhance the programs and activities available to detainees, and improve mental health services inside immigration detention centres.

The inspection report also notes that, despite these improvements, the fundamental problem with immigration detention has not changed – the length of detention and the uncertainty about how much longer that detention will last.

The report makes 41 recommendations for improvements to the law, administration and conditions inside detention centres. There has been constructive interaction between HREOC and DIAC regarding those recommendations.

Commissioner Innes continues to engage with DIAC on a variety of immigration issues.

8.4 EDUCATION AND PROMOTION OF HUMAN RIGHTS

8.4.1 Community Guide for *Same-Sex: Same Entitlements* Inquiry



The *Same-Sex: Same Entitlements* Inquiry produced a community guide to describe discrimination against same-sex couples in a short and simple format. The guide is available at no cost. It is an educational tool for community groups and general members of the public.

8.4.2 Art and Essay Competitions for Young People

In 2006 HREOC partnered with the Australian Red Cross to run the *Human Writes* Essay Competition and *Rights in Perspective* Art Competition.

Children and young people aged between 11 and 18 years-old were encouraged to express their views and thoughts about human rights in either a written or visual arts form.



The *Rights in Perspective* Art Competition received 326 entries and the *Human Writes* Essay Competition received 208 entries.

The entries were judged by panels of experts including the Human Rights Commissioner, journalists, educators, artists, curators and senior representatives from the Australian Red Cross. Prizes were awarded for the best works in junior and senior categories at both a state and national level.



The winning artworks and essays can be found at: www.humanrights.gov.au/about/competitions/index.html

8.5 LEGISLATIVE DEVELOPMENT

In addition to the legislative changes recommended in the final report of the *Same-Sex: Same Entitlements* Inquiry, the Human Rights Unit contributes to legislative development by making written and oral submission to Parliamentary and other Inquiries. A list of these submissions can be found in Chapter 3 of this report, *Monitoring Human Rights*.

8.6 SPEECHES AND CONSULTATIONS

The Commissioner and staff conduct meetings, consultations and media interviews on an ongoing basis.

In the 2006–07 financial year the majority of those consultations occurred in the context of the *Same-Sex: Same Entitlements* Inquiry and the immigration detention centre visits (see above).

In addition, the Commissioner gave some separate addresses during 2006–07. Some of those speeches can be accessed on HREOC's website at: www.humanrights.gov.au/about/media/speeches/human_rights/

'*Canberra Launch of Same-Sex: Same Entitlements Report*, ' Human Rights Community Forum, Canberra, 29 June, 2007.

'*National Launch of Same-Sex: Same Entitlements Report*, ' Sydney, 22 June, 2007.

'Same-Sex: Same Entitlements Inquiry,' Queensland Association for Healthy Communities Inc Health in Difference Conference, Brisbane, 15 June, 2007.

'Human Rights in Australia' – Keynote address, NSW Professional Teacher's Council Annual President's Dinner, Sydney, 12 June, 2007.

'Human rights – who is my neighbour?' Keynote address, Mount St Benedict College, Pennant Hills, 23 May, 2007.

'Using the Law to Make a Difference,' Sir Ninian Stephens Lecture, University Of Newcastle, 8 May, 2007.

'What are Human Rights?' Keynote address, Service Learning Conference, Gala Dinner on Human Rights, Sydney, 18 April, 2007.

'What are Human Rights?' Liberal Speakers Group Meeting, Sydney, 6 March, 2007.

'Human Rights for Same Sex Couples,' Keynote address, Victorian Equal Opportunity Commission Human Rights Conference, Melbourne, 27 February, 2007.

'Seminar on the Health of Refugee Children,' Sydney Children's Hospital, Sydney, 20 September, 2006.

'Young people and human rights,' Youth for Human Rights Forum, Sydney, 11 December, 2006.

'White Ribbon Campaign Launch,' Sydney, 24 November, 2006.

'Challenging Discrimination against same sex couples at work,' Keynote address, 2nd Diversity Council of Australia Conference, Sydney, 26 October, 2006.