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Thank you for the opportunity to give evidence today in relation to the Commission's Inquiry into Discrimination against People in Same-Sex Relationships.

During the hearing you asked me to follow up three matters. These questions and my brief answers are set out below.

Does discrimination against a child's parents or guardian such as to adversely impact on the child constitute a direct breach of art 2(2) the *Convention on the Rights of the Child* (which requires the implementation of measures to protect children against all forms of discrimination on the basis of their parents' status), or does such discrimination only indirectly engage the *Convention* because it is less favourable treatment of the parent or guardian rather than the child him or herself?

In my view, discrimination against the same-sex parents or guardians of a child which has an adverse impact on the child (eg, parents unable to access a particular financial entitlement which would have been of benefit to the parents and, by extension, the child) directly engages and violates art 2(2) of the *CRC*.

Although, as far as I can ascertain, the Committee on the Rights of the Child, has not had occasion to directly consider this issue, it has made a number of statements which support my view.

First, the Committee has stated, on a number of occasions, that 'the human rights of children cannot be realized independently from the human rights of their parents, or in isolation from society at large': see, eg, *Concluding Observations on Uzbekistan*, CRC, CRC/C/111 (2001) 117 at para 558.

Second, the Committee has expressly stated that discrimination, 'both direct and indirect, against certain children and their parents or legal guardians' is contrary to art 2 of the *CRC*: see, eg, *Concluding Observations on Libyan Arab Jamahiriya*, CRC, CRC/C/132 (2003) 74 at para 368; *Concluding Observations on Morocco*, CRC, CRC/C/132 (2003) 100 at para 479.

Third, the Committee has consistently stated that States party should undertake all necessary proactive measures to 'combat societal discrimination', including particularly discrimination against children from 'non-traditional families', such as 'children from single-parent families and children born out of wedlock': see, eg, *Concluding Observations on Republic of Korea*, CRC, CRC/124 (2003) 24 at para 110; *Concluding Observations on Haiti*, CRC, CRC/124 (2003) 95 at paras 417 and 418

Fourth, the Committee has consistently stated that, in order to discharge their obligations under art 2, States parties should prohibit, protect against and address discrimination on all the grounds covered in art 2 and take strong proactive measures to ensure that children from vulnerable groups have equal access to education, health and other social services: see, eg, *Concluding Observations on The Netherlands*, CRC, CRC/C/118 (2002) 129 at paras 548 and 549; *Concluding Observations on Poland*, CRC, CRC/C/121 (2002) 120 at paras 520, 521, 537 and 538.

Finally, the Committee has stated that the principle of non-discrimination under the *CRC* engages much of the jurisprudence of the Human Rights Committee under art 2 of the *ICCPR* which has, in turn, expressly stated that discrimination against same-sex couples is prohibited: CRC, *General Comment No 5: General Measures of Implementation of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/5 (2003) at paras 5 and 12.

Has the ILO has considered the application of art 1(1) of the *Discrimination (Employment and Occupation) Convention* in the context of same-sex couples?

I have not been able to locate anything completely on point.

The citation for the recent UK case in which the requirement under the *UK Human Rights Act 1998* that all legislation be interpreted, so far as possible, consistently with human rights (including the right to non-discrimination) resulted in the House of Lords interpreting the term 'husband and wife' to include 'same-sex couple' in the context of a tenancy?

The case is *Ghaidan v Godin-Mendoza* [2004] UKHL 30 and is available in full at <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040621/gha-1.htm>. This case may be relevant in Victoria where, pursuant to s 32 of the Victorian *Charter of Human Rights and Responsibilities*, legislation must be interpreted and applied consistently with human rights, including the right to non-discrimination on the ground of sexual activity or orientation. Please note, however, that this provision of the Charter does not come into force until 1 January 2008.