

# Human Rights and Equal Opportunity Commission

## ***Same-Sex: Same Entitlements***

*National Inquiry into Discrimination against  
People in Same-Sex Relationships: Financial  
and Work-Related Entitlements and Benefits*



## **Discussion Paper II**

# **Same-Sex Couples and their Children in Federal Law**

**September 2006**

## Discussion Paper II: Same-Sex Couples and their Children in Federal Law

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## 1 What is this discussion paper about?

This discussion paper briefly discusses federal laws which exclude same-sex couples from accessing financial and work-related entitlements.

The paper discusses the following areas of federal law:

- Employment (workplace laws, workers compensation, federal employees)
- Tax
- Social security
- Health (Medicare, Pharmaceutical Benefits Scheme)
- Family law (property division, parental status, child support)
- Retirement laws (superannuation, retirement savings, aged care)
- Discrimination law
- Migration
- Insurance
- Crimes
- Investment, conflict of interest and disclosure
- Aboriginal land and organisations
- Marriage

Appendix I to the paper is an alphabetical summary list of the federal legislation that would need to be amended to remove the discrimination identified throughout the paper.

This discussion paper is a summary of a larger research paper ('the main research paper'), which is published in full on the Inquiry website at: <http://www.humanrights.gov.au/samesex/index.html>.

The discussion paper is structured in a similar way to the main research paper so that readers can cross-reference with the main paper for more detailed discussion and analysis.

Neither this discussion paper, nor the main research paper, represent any final findings, conclusions or recommendations of the Inquiry.

## 2 Why are we publishing this research now?

The purpose of publishing this paper is to seek input from community groups, government and individuals about the issues covered in the main research paper and this summary.

One of the main goals of the *Same-Sex: Same Entitlements Inquiry* is to conduct a comprehensive audit of all federal laws which discriminate against

same-sex couples in accessing financial and work-related benefits and entitlements.

To assist in conducting this audit of federal laws, the Inquiry commissioned independent research. The result is the main research paper, called *Areas of Federal Law that Exclude Same-Sex Couples and their Children*.<sup>1</sup>

The Inquiry would now like to hear any comment about the research in this summary and the main paper.

Some questions are set out in the following section to assist those organisations, agencies and individuals who are interested in providing comments to the Inquiry.

### **3 How can you help the Inquiry?**

The Inquiry would like your comments about the content of this discussion paper and the main research paper.

In particular we are interested in your responses to any or all of the following questions. However, you should not feel limited by these questions; they are simply intended to guide you.

- (a) Can you identify any discriminatory federal legislation, regulation or policy that we have missed in our research?
- (b) Can you clarify how any of the discriminatory provisions described in this paper work in practice?
- (c) Do you have a personal experience which illustrates the impact of any of the laws described in this paper?
- (d) Do you have any comments about the suggested definition of 'de facto relationship' in federal law (discussed in section 6.2 of this discussion paper)?
- (e) Do you have any comments about the suggested options for recognising a 'child' in federal law (discussed in section 6.4 of this discussion paper)?
- (f) Do you have any recommendations about how to address the discrimination described in this paper?

The deadline for comments is **3 November 2006**.

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<sup>1</sup> The main research paper was completed for the Inquiry by Associate Professor Jenni Millbank.

## 4 What will the Inquiry do with your comments?

Any comments that you send to us will be considered as submissions to the Inquiry and may be published on the Inquiry website, unless you specify otherwise.

Your comments will assist the Inquiry team to write the final report and make final recommendations to government.

Remember, the deadline for submission is **3 November 2006!**

The Inquiry strongly encourages you to send your comments by email to [samesex@humanrights.gov.au](mailto:samesex@humanrights.gov.au).

However, you can also send comments in hard copy, floppy disk, audio tape, video tape, CD or DVD, to:

Same-Sex Inquiry  
Human Rights Unit  
Human Rights and Equal Opportunity Commission  
GPO Box 5218  
Sydney NSW 2001

If you have any questions, please email the Inquiry at [samesex@humanrights.gov.au](mailto:samesex@humanrights.gov.au). Or if you would like to speak to someone in person, please call (02) 9284 9600 or 1800 620 241 (TTY).

## 5 What are the Inquiry's next steps?

The Inquiry will complete its public consultation process on 16 November, with its final community forum in Katoomba, NSW. A schedule of the public hearings and community forums can be found at: <http://www.humanrights.gov.au/samesex/hearings.html>.

From November 2006 onwards, the Inquiry will start developing a final report and recommendations on the basis of the information gathered from:

- the written submissions
- the public consultation process
- this discussion paper
- the main research paper
- any other relevant information and research.

The Inquiry aims to send a final report to the federal Attorney-General in early 2007 so that it can be tabled in Federal Parliament by mid 2007.

## **6 What are the ‘problem definitions’ in federal laws?**

The primary source of discrimination against same-sex couples in federal law is the way in which terms such as ‘spouse’, ‘de facto’ and ‘child’ are defined in legislation.

### **6.1 ‘Spouse’ and ‘de facto’ in current federal law**

Virtually all federal legislation includes a heterosexual ‘de facto’ partner within the definition of ‘spouse’. The problem for same-sex couples arises because no federal legislation includes same-sex couples within the concept of a ‘de facto’ couple.

There are a number of different definitions of ‘de facto’ spouse in federal laws. Many laws specify that a de facto couple must include two members of the ‘opposite sex’. Other federal laws use the words ‘husband’, ‘wife’ or ‘spouse’ within the definition of de facto, and these terms mean that the couple must be heterosexual.

One way to remove discrimination in federal law would be to change the definitions used in that legislation so that they include, rather than exclude, same-sex couples. This type of reform has already occurred in all states and territories, other than South Australia.

Appendix II in the main research paper compares the various definitions used in various federal, state and territory legislation.

### **6.2 Options for defining ‘de facto’ in federal law**

Appendix II in the main research paper proposes one possible definition of ‘de facto relationship’ which could be used to remedy the discrimination caused by restrictive definitions of ‘spouse’ and ‘de facto’ in federal law.

The proposed definition is a simplified version of the definition used in the Australian Capital Territory and is consistent with many of the definitions used in the other states and territories. It focuses on the genuineness of the relationship rather than the sex of the partners.

The list of factors used to determine the genuineness of the relationship does not require that any one factor be present, and allows a decision-maker to consider any additional relevant factors.

***A new definition of 'de facto relationship'***

1. *'De facto relationship' means the relationship between 2 people living together as a couple on a genuine domestic basis.*
2. *In determining whether two people are in a de facto relationship, all the circumstances of the relationship must be taken into account, including any of the following:*
  - (a) *the length of their relationship*
  - (b) *how long and under what circumstances they have lived together*
  - (c) *whether there is a sexual relationship between them*
  - (d) *their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them*
  - (e) *the ownership, use and acquisition of their property, including any property that they own individually*
  - (f) *their degree of mutual commitment to a shared life*
  - (g) *whether they mutually care for and support children*
  - (h) *the performance of household duties*
  - (i) *the reputation, and public aspects, of the relationship between them*
3. *No one factor, or any combination of factors, under (2) is necessary to establish a de facto relationship.*
4. *A de facto relationship may be between a couple of the same sex or different sex.*

In addition to the factors (a)-(i) above, the following factor could be added to assist in proving a domestic relationship:<sup>2</sup>

- (j) *the existence of a statutory declaration signed by either or both of the couple stating that they are, or were, in a de facto relationship*

Alternatively, if the Tasmanian model for a registration system were introduced, a subsection 5. could be added to the definition of 'de facto' along the following lines:<sup>3</sup>

5. *If a relationship is registered under section [of the relevant Act], registration is proof of the relationship from that date.*

If this were to occur, subsection 3. should also include:

3. *... The fact that a relationship is not registered as provided for in (5) is not relevant to a determination under (2)*

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<sup>2</sup> This suggestion is drawn from the Superannuation Industry (Supervision) Regulations 1994 (Cth), r 1.04AAAA.

<sup>3</sup> This suggestion is drawn from the *Relationships Act 2003* (Tas) s 4(2).

### **6.3 'Child' in current federal law**

Around 20% of lesbians and up to 10% of gay men have children.

Where children were born into previous heterosexual relationships, it is clear who the child's parents are and their relationships are legally recognised.

However children are increasingly being born into same-sex families. When this occurs, federal law provides no recognition of the relationship between the child and the non-biological parent.

The definition of 'child' under federal law is varied and uncertain. So is any path to reform definitions to include same-sex families.

There are a number of reasons for the uncertainty around this area:

- most federal laws implicitly assume that a child is a biological child of its parents without any express provision or definition regarding the relationship between parent and child
- most federal laws do not define 'parent' or 'child'
- unlike most heterosexual families, in same-sex families there is always one parent who does not have a biological relationship with the child
- states and territories have primary responsibility for determining parental status. This raises difficult questions about the relationship between state and federal provisions in the context of recognising parent-child relationships in same-sex families in federal law.<sup>4</sup>

Where there are definitions of 'child' in federal laws, they generally relate only to conditions of eligibility for a benefit, such as a child's age, or whether they are financially dependent on the adult.

The aim of any reform would be to give the broadest and most accessible range of legal protections for children being raised in same-sex families, while still having certainty as to which relationships are covered in each statute.

### **6.4 Options for defining 'child' in federal law**

Appendix III in the main research paper suggests five options for defining 'child' within federal legislation. Appendix III also sets out the advantages and disadvantages of the various options, as well as giving examples of how the different options might work in practice.

The five different options are set out below.

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<sup>4</sup> See further section 11.2 of this Discussion Paper.

### **6.4.1 Option 1**

Create a new federal definition of 'child' that includes as a parent the consenting female partner of a woman who has a child born through assisted conception.

This could be done through inserting the definition separately into each Act, or through reference to a principal Act containing the new definition, for example the *Family Law Act 1975* (Cth) or the *Acts Interpretation Act 1901* (Cth).

### **6.4.2 Option 2**

Create a new federal definition of 'child' that reflects the state parenting presumptions for children born through assisted reproductive technology (ART).

This could be done through inserting the definition separately into each Act, or through reference to a principal Act containing the new definition, for example the *Family Law Act 1975* (Cth) or the *Acts Interpretation Act 1901* (Cth).

### **6.4.3 Option 3**

Insert into some or all federal Acts a 'functional family' definition of child. This could be done by utilising the broad purposive definition of child currently used in a small number of Acts. For example:

- (a) 'child includes a child living with a person as a member of their family' or
- (b) 'a child to whom the person acts in the place of a parent'.

### **6.4.4 Option 4**

Insert into all federal Acts a definition of child that includes a child 'for whom a person has sole or shared parental responsibility' as defined by the *Family Law Act 1975* (Cth).

### **6.4.5 Option 5**

Option 1 and 4 could be pursued in conjunction with each other.

## **7 What are the problems in employment laws?**

### **7.1 Workplace laws**

Minimum workplace entitlements for Australian employees include carers' leave, compassionate leave, parental leave and adoption leave.<sup>5</sup>

Carers' leave and compassionate leave are both available in relation to an employee's 'immediate family' or a 'member of their household'.

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<sup>5</sup> *Workplace Relations Act 1996* (Cth) as amended by the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) ss 244(b), 257, 263, 282, 298.

Since a same-sex partner is not considered 'immediate family', he or she is only entitled to carers' or compassionate leave if the couple are living together. Heterosexual couples are not restricted in this way.

Parental leave is only guaranteed to a male employee who is the spouse of a woman giving birth. Female partners of the birth mother are excluded.

Adoption leave is only available to an adoptive parent, and is not guaranteed to the non-adoptive parent in a same-sex couple. In most states same-sex couples are not permitted to jointly adopt children. Where one member of a couple adopted as an individual, their partner would not be eligible for adoption leave.

## **7.2 Employment by federal agencies**

The employment conditions of many federal employees are determined by collective or individual agreements rather than in legislation. However some federal employment conditions are provided for in legislation.

Benefits that *are* available to same-sex partners include:

- Same-sex partners have identical travel entitlements to those provided to the spouses of holders of public office and principal executive officers.<sup>6</sup>
- The Australian Defence Force recognises 'interdependent partners' as a category of recognised relationship in their instructions on pay and conditions. Benefits include on and off-base accommodation, relocation expenses and travel benefits, leave entitlements and education and training benefits.<sup>7</sup>
- The travel entitlements of judicial officer holders include the partner of the office holder.<sup>8</sup>
- A range of travel entitlements are provided to the spouse of a Member of Parliament. While a same-sex partner is not considered a spouse, many (but not all) travel entitlements are available to a 'designated person' or a Member's 'nominee'.<sup>9</sup>

Benefits that *are not* available to same-sex partners:

- A defence force member is eligible for a subsidised home loan if he or she purchases a house with a spouse.<sup>10</sup> This is not available to a same-sex couple who purchases a home as joint tenants.

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<sup>6</sup> *Remuneration Tribunal Act 1973* (Cth), Remuneration Tribunal Determination 2004/03 Official Travel by Office Holders.

<sup>7</sup> Defence Instructions (General) DI(G) PERS 53-1 of 1 December 2005 amended the Defence Instruction (General) Manual and the ADF Pay and Conditions Manual.

<sup>8</sup> *Remuneration Tribunal Determination 2004/03* Official Travel by Office Holders.

<sup>9</sup> *Determination 2005/09*.

<sup>10</sup> *Defence Force (Home Loans Assistance) Act 1990* (Cth).

- If a service member dies a loan is available to their surviving spouse.<sup>11</sup> A surviving same-sex partner is excluded from this benefit.
- An allowance payable to a former Governor-General passes to their spouse upon death.<sup>12</sup> This is not available to a same-sex partner.
- Former and sitting members of Parliament are eligible for a set number of free domestic trips per year for themselves and their spouses. The spouse benefit is not available to same-sex partners.<sup>13</sup>
- The cost of accommodation of a spouse is included in calculation of travel allowance paid to statutory office holders and judges of the High Court.<sup>14</sup> This is not available to same-sex partners.

### **7.3 Workers' compensation**

Same-sex partners are not considered spouses in federal workers' compensation legislation.

A member of a same-sex couple is not eligible for payment of compensation in the event of an injury resulting in the death or incapacity of his or her partner.<sup>15</sup>

However, where a same-sex partner provides care to an incapacitated employee who is a member of their household, compensation may be payable.

Same-sex partners are also excluded from compensation and benefits payable to 'dependants' of special categories of employee, including:

- veterans of the defence forces who have rendered 'operational service',<sup>16</sup>
- current and former members of the Defence Force who suffer a service injury, death or disease<sup>17</sup>
- seafarers in the event of their death.<sup>18</sup>

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<sup>11</sup> *Defence Force (Home Loans Assistance) Act 1990* (Cth) ss 26, 29.

<sup>12</sup> *Governor-General Act 1974* (Cth) ss 4, 4A and 4AA.

<sup>13</sup> *Members of Parliament (Life Gold Pass) Act 2002* (Cth) ss 10-12.

<sup>14</sup> *Judicial and Statutory Officers (Remuneration and Allowances) Act 1984* (Cth) ss 4, 6.

<sup>15</sup> *Safety, Rehabilitation and Compensation Act 1988* (Cth).

<sup>16</sup> *Veterans' Entitlements Act 1986* (Cth).

<sup>17</sup> *Military Rehabilitation and Compensation Act 2004* (Cth).

<sup>18</sup> *Seafarers Rehabilitation and Compensation Act 1992* (Cth).

## **7.4 Employment-related privileges and immunities**

Same-sex partners are not eligible for certain privileges and immunities granted to foreign nationals engaged in particular occupations in Australia.

Those privileges include the following:

- Diplomatic privileges are extended to the spouse of the head of a foreign state.<sup>19</sup>
- The privileges of a diplomatic agent are extended to the spouses of staff and representatives of international organisations.<sup>20</sup>
- Defence force members of another country travelling in the course of duty, the crew members of an aircraft or ship, and their spouse or child are exempt from paying departure tax.<sup>21</sup>

## **8 What are the problems in tax laws?**

### **8.1 Dependant rebates**

Same-sex couples cannot access a number of rebates that are paid for the dependants of an income earner, including:

- spouse rebate
- dependent child rebate
- child housekeeper rebate
- invalid relative rebate
- parental or spousal parent rebate.<sup>22</sup>

In addition, non-biological or non-adoptive parents do not qualify for the rebates that concern children.

### **8.2 Rebates that include a dependant spouse rate**

Same-sex couples are excluded from a number of rebates that are paid at a higher rate if the taxpayer has a dependant spouse.

Those rebates include:

- zone rebate for people living in rural and remote areas
- rebate for members of the defence force serving overseas
- rebate for civilians serving with a United Nations force.<sup>23</sup>

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<sup>19</sup> *Foreign States Immunities Act 1985* (Cth).

<sup>20</sup> *International Organisations (Privileges and Immunities) Act 1963* (Cth).

<sup>21</sup> *Passenger Movement Charge Collection Act 1978* (Cth).

<sup>22</sup> *Income Tax Assessment Act 1936* (Cth) s 159J.

<sup>23</sup> *Income Tax Assessment Act 1936* (Cth) ss 79A, 79B 23AB(7).

There is also a senior Australians tax offset (or low-income aged person's rebate) for a taxpayer with a spouse.<sup>24</sup> This is calculated on the effective combined income of the couple. Same-sex couples are excluded from the higher level of these rebates.

### **8.3 Superannuation contribution rebates and concessions**

A tax payer who contributes to a spouse's superannuation fund when the spouse earns less than a set amount is entitled to a rebate.<sup>25</sup> These payments are also exempt from superannuation contributions tax.<sup>26</sup>

Same-sex couples are excluded from these benefits.

### **8.4 Medical expenses rebate**

Once a person has paid over a set amount of out-of-pocket medical costs, they may claim a 20% rebate for medical expenses over that sum.<sup>27</sup> This includes medical costs paid on behalf of a 'dependant', including the spouse or child of the taxpayer.<sup>28</sup>

Same-sex couples must meet the spending threshold individually rather than collectively. In other words, same-sex couples have to spend more than a heterosexual couple to access the rebate.

### **8.5 Transfer of property following relationship breakdown**

The transfer of property to spouses or children following family breakdown attracts favourable tax treatment. This concession is not available to same-sex families.<sup>29</sup>

### **8.6 Baby bonus**

The first-child rebate, known as the 'baby bonus' was available for a child born or adopted in the years 2001-2004 as a non-income-tested rebate to eligible parents.<sup>30</sup> Non-biological same-sex parents may be excluded if there was another eligible parent or they had not obtained a parenting order.

The first-child rebate can be transferred to a spouse who does not have the primary entitlement. The ability to transfer the rebate is beneficial if one partner does not have a sufficient tax liability in the tax year to be able to claim the value of the rebate while the other partner does. Same-sex couples cannot transfer the rebate.

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<sup>24</sup> *Income Tax Assessment Act 1936* (Cth) s 160AAAA.

<sup>25</sup> *Income Tax Assessment Act 1936* (Cth) s159T.

<sup>26</sup> *Income Tax Assessment Act 1936* (Cth) s 274.

<sup>27</sup> *Income Tax Assessment Act 1936* (Cth) s 159P.

<sup>28</sup> *Income Tax Assessment Act 1936* (Cth) s 159.

<sup>29</sup> *Income Tax Assessment Act 1936* (Cth) ss 102AGA, 160ZZM, 160ZZMA.

<sup>30</sup> *Income Tax Assessment Act 1997* (Cth) sub-div 61-I s61.360.

### **8.7 Child-care tax rebate**

The child-care rebate covers 30% of out-of-pocket child-care expenses for approved child-care up to a maximum of \$4000 per year.<sup>31</sup>

The rebate applies to payments made by an individual or his or her 'partner', but excludes same-sex partners. Consequently, only child-care payments made by the biological or adoptive parent attract the rebate.

Further, unlike heterosexual de facto partners, same-sex partners cannot transfer any unused value of the offset to their partner in order to minimise tax in a specific tax year.

### **8.8 Capital gains tax**

Same-sex couples are excluded from a capital gains tax exemption for an inherited dwelling that was the main residence of the 'spouse' of the deceased.<sup>32</sup> Thus same-sex couples have a higher liability for capital gains tax on the death of a partner.

On the other hand, same-sex couples may have a tax advantage if they own and live in two separate properties. This is because capital gains tax is not payable on the capital gain of a dwelling that is the taxpayer's main residence.<sup>33</sup> If a person lives in a separate main dwelling from their spouse, they must either choose one of the residences or nominate both as their main residences. If both are nominated, the capital gains tax exemption is split. Same-sex couples are excluded from this provision and can therefore legitimately claim an exemption for each residence.

### **8.9 Fringe benefits tax**

Fringe benefits tax is assessed on the basis of benefits that are granted to a person, or in some cases, their associates (including their spouse, relatives, or children).

The Australian Tax Office has deemed same-sex partners to be associates thus exposing them to fringe benefits tax.<sup>34</sup>

However, same-sex partners and the non-adoptive or non-biological child of an employee are not covered by a range of fringe benefits tax exemptions available to heterosexual families, including:

- provision of accommodation, residential fuel, and meals to a residential employee during a period of accommodation<sup>35</sup>

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<sup>31</sup> *Income Tax Assessment Act 1997* (Cth) s 61.496.

<sup>32</sup> *Income Tax Assessment Act 1997* (Cth) s 118.205.

<sup>33</sup> *Income Tax Assessment Act 1997* (Cth) s 118.110(1).

<sup>34</sup> *Australian Tax Office Ruling ATO ID 2003/7*.

- benefits provided by a religious employer to an employee who is a religious practitioner, or to their spouse or child<sup>36</sup>
- provision of transport benefits if they are used to attend the funeral of a 'close relative' of the employee.<sup>37</sup>

## 9 What are the problems in social security laws?

Social security laws do not generally recognise same-sex couples as a genuine relationship.<sup>38</sup> This is because a same-sex partner does not fit the definition of a 'partner' or a 'member of a couple' in the legislation. Partner is a commonly used term in the legislation and is defined as meaning a 'member of a couple'.<sup>39</sup>

This means that the members of same-sex couples are denied certain benefits available to people in a recognised relationship. However, it also means that same-sex couples may be entitled to claim some benefits at the higher 'single' rate rather than the lower 'couple' rate.

### 9.1 Disadvantages for same-sex couples in social security

Members of a same-sex couple are not recognised as 'partners' for the six different types of benefits described below.

#### 9.1.1 Partner allowances

Various kinds of partner allowance may be paid in certain circumstances to heterosexual couples.<sup>40</sup> For example, if a person does not have recent workforce experience and their partner is on a disability pension, sickness allowance or Austudy they may be entitled to a partner allowance.<sup>41</sup>

#### 9.1.2 Bereavement allowance and bereavement payments

A bereavement allowance is payable to a person without dependant children for a set number of weeks immediately after the death of a 'partner'.<sup>42</sup> Other bereavement payments unavailable to same-sex partners include:

- payments to people in receipt of social security payments or Austudy<sup>43</sup>

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<sup>35</sup> *Fringe Benefits Tax Assessment Act 1986* (Cth) ss 58, 58U, 58T.

<sup>36</sup> *Fringe Benefits Tax Assessment Act 1986* (Cth) s 57.

<sup>37</sup> *Fringe Benefits Tax Assessment Act 1986* (Cth) s 58LA.

<sup>38</sup> *Social Security Act 1991* (Cth) s 4(2).

<sup>39</sup> *Social Security Act 1991* (Cth) s 4(1).

<sup>40</sup> *Social Security Act 1991* (Cth) ss 771-771NZAA.

<sup>41</sup> *Social Security Act 1991* (Cth) s 771HA.

<sup>42</sup> *Social Security Act 1991* (Cth) ss 315-359.

<sup>43</sup> *Social Security Act 1991* (Cth) ss 237-243, 592-592E.

- one-off payments to partners and those eligible for wives' and carers' pensions<sup>44</sup>
- payments to a carer of the person who dies, or to the carer or parent of a young child who dies.<sup>45</sup>

### **9.1.3 Widows' pensions and allowances**

Specific pensions are payable only to a divorced, separated or widowed woman in certain circumstances.<sup>46</sup> A woman whose partner has died can more easily qualify for the age pension than anyone else.<sup>47</sup>

Male partners in any relationship and female partners in same-sex relationships are not eligible for these payments.

### **9.1.4 Youth allowance**

Eligibility for youth allowance is determined by a parental income test unless the person is classified as 'independent' of their parents. And a person will be 'independent' if he or she is in a 'Youth Allowance Couple'.<sup>48</sup> A young same-sex couple cannot qualify as a 'Youth Allowance Couple' and will therefore be unable to establish their independence for the purpose of this allowance.<sup>49</sup>

Further, a person in a same-sex couple may be ineligible for the youth allowance if they have refused a job because of their partner's circumstances (for example medical condition, care responsibilities, pregnancy etc). This is because the legislation does not consider the circumstances of a same-sex partner in the same way it takes into account a heterosexual partner.<sup>50</sup>

### **9.1.5 Retirement allowance to farmers**

Retirement assistance for farmers exempts the value of farming interests transferred by (a) a qualifying farmer and (b) a current or former opposite-sex partner, for the purpose of determining eligibility for social security.<sup>51</sup> This benefit is not available to same-sex partners.

### **9.1.6 Social security recipient in gaol**

If a social security pension is not payable because the recipient is in gaol or psychiatric confinement on a criminal charge, the payment may be redirected

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<sup>44</sup> *Social Security Act 1991* (Cth) ss 512-514F.

<sup>45</sup> *Social Security Act 1991* (Cth) ss 235-236B.

<sup>46</sup> *Social Security Act 1991* (Cth) ss 362A-407, 408AA-408GI.

<sup>47</sup> *Social Security Act 1991* (Cth) s 43(1A).

<sup>48</sup> *Social Security Act 1991* (Cth) s 1067A(2).

<sup>49</sup> *Social Security Act 1991* (Cth) s 1067C.

<sup>50</sup> *Social Security Act 1991* (Cth) s 541D(1A).

<sup>51</sup> *Social Security Act 1991* (Cth) ss 1185A, 17A .

to a dependant child or partner of the person.<sup>52</sup> This benefit is not available to same-sex partners.

## **9.2 Advantages for same-sex couples in social security**

### **9.2.1 Individual income and assets tests**

The income or assets of a partner are taken into account in determining eligibility for social security.<sup>53</sup>

If a couple's combined assets or income exceed the threshold, a person may not get benefits that they would be eligible to receive as an individual. Alternately, they may receive a benefit at a lower rate when they are a member of a couple.

Since social security law does not recognise the existence of a same-sex couple, Centrelink will calculate assets and income on an individual basis rather than a combined basis. This means that each member of a same-sex couple will find it easier to qualify for certain assets and income tested benefits.

### **9.2.2 Benefits using income and assets tests**

The combined value of a partner's assets is generally relevant in assessing eligibility for benefits such as:

- Newstart allowance<sup>54</sup>
- parenting payment<sup>55</sup>
- sickness allowance<sup>56</sup>
- Health Care Concession Card.<sup>57</sup>

For some benefits, when one member of a couple is on social security or another form of income support, the asset tests for the second member of the couple only imputes 50% of the total value, rather than 100%. This may be beneficial or detrimental to a couple, depending on how their assets are divided. This type of calculation applies to benefits such as:

- Newstart allowance<sup>58</sup>
- sickness allowance<sup>59</sup>
- age pension<sup>60</sup>

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<sup>52</sup> *Social Security Act 1991* (Cth) s 1159.

<sup>53</sup> *Social Security Act 1991* (Cth) s 8(1B).

<sup>54</sup> *Social Security Act 1991* (Cth) s 612(1). This is not an exhaustive list.

<sup>55</sup> *Social Security Act 1991* (Cth) s 500Q.

<sup>56</sup> *Social Security Act 1991* (Cth) s 681(1).

<sup>57</sup> *Social Security Act 1991* (Cth) s 1071A.

<sup>58</sup> *Social Security Act 1991* (Cth) s 612(2). This is not an exhaustive list.

<sup>59</sup> *Social Security Act 1991* (Cth) s 681(2).

- parenting payment, bereavement allowance and Widow B pension<sup>61</sup>
- payments based on severe financial hardship.<sup>62</sup>

### **9.2.3 Benefits paid at a partnered rate**

Many social security benefits are paid at a 'partnered rate' to people who are members of a couple. This is less than the rate that would be paid an individual who is not a member of a couple.

The reduced payment is based on the assumption that a cohabiting couple pools expenses and lives more cheaply than two individuals.

Benefits that are paid at a partnered rate to members of a couple include:

- parenting payment<sup>63</sup>
- Austudy<sup>64</sup>
- youth allowance<sup>65</sup>
- age and disability support pensions<sup>66</sup>

## **9.3 Financial support for families**

### **9.3.1 Family tax benefit**

The family tax benefit (FTB) is not linked to the tax system, but is paid as a direct form of support to families with children, either as an annual or a fortnightly sum.

FTB Part A is a broadly based family-support payment available to both low-income and medium-income families.<sup>67</sup> FTB Part A is income-tested on the income of both 'members of a couple'.

The exclusion of same-sex couples from the definition of a couple creates a financial benefit for same-sex couples under FTB Part A. This is because a same-sex partner's income is not counted, so the couple is more likely to receive a higher benefit and less likely to reach upper income limit.

FTB Part B gives extra assistance to sole-parent families and families where one member of the couple is in paid employment while the other is primarily engaged in the care of children.<sup>68</sup>

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<sup>60</sup> *Social Security Act 1991* (Cth) ss 1064-A2, G3.

<sup>61</sup> *Social Security Act 1991* (Cth) ss 500Q, 1066-A2.

<sup>62</sup> *Social Security Act 1991* (Cth) s 19C.

<sup>63</sup> *Social Security Act 1991* (Cth) ss 1068, 503. This is not an exhaustive list.

<sup>64</sup> *Social Security Act 1991* (Cth) s 1067L.

<sup>65</sup> *Social Security Act 1991* (Cth) s 1067G.

<sup>66</sup> *Social Security Act 1991* (Cth) ss 1065-B1.

<sup>67</sup> See Family Assistance Office, 'Factsheet, Family Tax Benefit Part A' (1 July 2006).

<sup>68</sup> See Family Assistance Office, 'Factsheet, Family Tax Benefit Part B' (1 July 2006).

For sole parents there is no income test for this payment. For couples, the payment is income tested on the income of the individual earning the lesser income within the couple.

The exclusion of same-sex couples from the definition of a couple means that the biological or adoptive parent is treated as a sole parent and is entitled to the maximum FTB Part B benefit with no income test. This is only beneficial if the lower-earning member of the same-sex couple is earning over the lower income limit amount.

### **9.3.2 Child-care benefit**

Approved and registered child-care attracts a child-care benefit. This benefit may be paid directly to the child-care centre or reimbursed to the individual as a lump sum at the end of the year.

The benefit is paid on a per-child basis and is calculated on a sliding scale based on family income. Even high-income families are entitled to the minimum rate of the benefit as there is no income cut-off point.

The government subsidises the child-care fees paid by an individual or their 'partner'.<sup>69</sup> Child-care fees paid by the non-biological or non-adoptive parent in a same-sex family may not be eligible for the benefit as that person is excluded from the definition of 'partner' under the Act.

## **10 What are the problems in health laws?**

### **10.1 Medicare**

#### **10.1.1 Medicare levy and surcharge**

The Medicare levy is imposed upon personal incomes to fund the Medicare scheme.

The general Medicare *levy* is 1.5% of an individual's taxable income. However this rate is reduced for a member of a couple who is entitled to a rebate for a dependant or dependants.<sup>70</sup> As same-sex couples are excluded from the dependant rebates, they are also excluded from any reduction of the general Medicare levy.

The Medicare *surcharge* is an additional 1% charged on income above a specified amount if the individual does not have private health insurance for

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<sup>69</sup> *A New Tax System (Family Assistance) Act 1999* (Cth) ss 43-46.

<sup>70</sup> *Medicare Levy Act 1986* (Cth) s 8.

the tax year.<sup>71</sup> There is a family surcharge threshold, which is double that of the individual threshold.<sup>72</sup> This threshold is composed of family income which is defined as a person's taxable income, plus the taxable income of a spouse.<sup>73</sup> Same-sex couples are assessed under the individual rather than the family threshold. This is a disadvantage to a same-sex couple if one partner is over and one partner is under the individual threshold, but they would jointly be under the family threshold.

### **10.1.2 Medicare safety-nets**

Medicare sets schedule fees for different medical services, but doctors and hospitals are able to charge more than these fees. There are two 'gaps' in Medicare:

- (a) The gap between the schedule fee and the sometimes lower amount of the fee that Medicare refunds.

Medicare usually pays 100% of the schedule fee for GP services but only 85% of the schedule fee for other medical services. Once an individual or family spends over a certain amount on this gap, Medicare refunds the entire schedule fee. In 2006 the threshold for this safety-net was \$345.50.

- (b) The gap between the schedule fee and the higher actual out-of-pocket cost of the service.

Once an individual or family spend over a certain amount on this gap, Medicare refunds 80% of the difference between the actual cost of the medical service and the schedule fee. In 2006 the threshold for this safety-net was \$1000.<sup>74</sup>

Same-sex couples cannot pool expenses to reach the family threshold for the safety net or the extended safety-net.

## **10.2 Pharmaceutical Benefits Scheme**

Once an individual or a family spend more than a certain amount per year on certain prescription medicines, they are entitled to a PBS concession entitlement card.<sup>75</sup> Same-sex couples cannot pool expenses to reach the family threshold for the PBS safety-net.

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<sup>71</sup> *Medicare Levy Act 1986* (Cth) ss 8B-8D. See also *Income Tax Assessment Act 1997* (Cth) s 61.305.

<sup>72</sup> *Medicare Levy Act 1986* (Cth) s 3A.

<sup>73</sup> *Medicare Levy Act 1986* (Cth) s 8(5).

<sup>74</sup> For Commonwealth Concession card holders and families eligible for Family Tax Benefit A, the threshold in 2006 was \$500.

<sup>75</sup> *National Health Act 1953* (Cth) s 84C.

In 2006, the threshold amount for prescription expenses is \$960.10 after which the purchase of further prescription medicine is only \$4.70 per prescription.

For holders of Commonwealth concession cards the threshold amount for prescription expenses is \$253.80 after which the cost per prescription is zero.

## **11 What are the problems in family law?**

### **11.1 The Family Court**

Married couples can use the federal Family Court for both property and child-related matters when a relationship breaks down.<sup>76</sup> De facto and same-sex couples can use the Family Court for child related matters only.

Heterosexual de facto couples may soon be able to use the Family Court for property matters following an agreement by state and territory governments to refer these powers to the Commonwealth. However, the Commonwealth government has indicated that it will refuse to accept the referral of power regarding same sex couples.

Same-sex couples will be disadvantaged in a number of ways if they are excluded from the Family Court's property jurisdiction. This is because the federal property division regime:

- covers a larger pool of the couple's shared assets, including superannuation assets
- can divide such assets with a far greater degree of flexibility
- takes into account a wider range of factors and circumstances of the parties during and after the relationship in making any adjustments.

### **11.2 Parental status**

The parental status of children born through assisted reproductive technology (ART) is largely determined by state and territory law. However, parental status under state or territory law may not match parental status under federal law.

A male partner or husband of a woman who conceives through ART is a 'parent' for the purposes of the *Family Law Act 1975* (Cth) (FLA).<sup>77</sup> But a female partner does not qualify, even if she has been granted full parental rights under state or territory law.

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<sup>76</sup> *Family Law Act 1975* (Cth).

<sup>77</sup> *Family Law Act 1975* (Cth) s 60H(1).

Recognition as a 'parent' under the FLA provides additional legal rights to parents, including:

- shared and equal parenting responsibility is automatically granted to both parents, and is presumed to continue after separation.<sup>78</sup>
- if parental responsibility is shared, the Court must consider the child spending equal time or substantial and significant time with each parent.<sup>79</sup>

### **11.3 Child support**

Biological and adoptive parents can pursue child support from their partner after separation.<sup>80</sup> This is not always the case for same-sex couples, where one parent is non-biological or non-adoptive.

If a same-sex couple separates and the child remains living with the biological parent, that parent cannot pursue child support from the non-biological or the non-adoptive parent.

On the other hand, if the child of a same-sex couple remains in the care of the non-biological or non-adoptive parent, then that parent can pursue the legally recognised parent for support of the child if:

- the child was in their care with the consent of the legally recognised parent, or
- the carer had an order from the Family Court granting them sole or shared parental responsibility, or
- it was unreasonable in the view of the Registrar that the child be in the care of the legally recognised parent.

## **12 What are the problems in retirement?**

### **12.1 General superannuation issues**

#### **12.1.1 Death benefits**

In most superannuation funds a significant portion of a deceased member's entitlements either pass directly to a dependant or to the beneficiary of the deceased's estate.

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<sup>78</sup> See *Family Law Act 1975* (Cth) ss 61C, 61D, 61DA. If parental responsibility is shared then under 65DAA the Court must consider the child spending equal time or substantial and significant time with each parent.

<sup>79</sup> *Family Law Act 1975* (Cth) s 65DAA.

<sup>80</sup> *Child Support (Assessment) Act 1989* (Cth).

Death benefits paid directly to a dependant are exempt from income tax. In contrast, death benefits paid through an estate attract tax of 15% for the superannuation fund and 15% for the recipient (an overall rate of 30%).

A married or heterosexual de facto spouse is presumed to be a dependant while a same-sex partner is not. However, a same-sex partner may qualify as a dependant in private superannuation funds if:

- there is evidence of their regular and ongoing financial dependence on the deceased<sup>81</sup>
- they qualify as having an 'interdependency relationship'.<sup>82</sup>

The criteria for establishing an interdependency relationship largely mirror the criteria used to assess the existence of a de facto relationship now in place in most state and territory laws.<sup>83</sup>

However, it is important to note that while the category of 'interdependency relationship' *allows* a superannuation trustee to treat a same sex partner as a 'dependant', it *does not require* them to do so. Same-sex couples may therefore still be at a disadvantage. Further the 'interdependency' category does not apply to most Commonwealth government superannuation schemes.

### **12.1.2 Reversionary pensions**

Some superannuation funds provide for payment of a reversionary pension rather than a lump sum death benefit. The reversionary pension is generally a portion of the pension that would be paid, or was being paid to the deceased.

Most superannuation funds will only pay a reversionary pension to a married or heterosexual de facto spouse.<sup>84</sup>

### **12.1.3 Payments made on behalf of a spouse**

A person may split either their personal contributions or their employer's contributions with a spouse.<sup>85</sup>

This currently provides tax benefits as a couple may spread the value of their superannuation to take advantage of two Eligible Termination Payments and Reasonable Benefit Limits, which set a certain amount of taxation that may be taken before a higher rate of tax is payable on the benefit. This benefit is not available to same-sex partners.

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<sup>81</sup> See Miranda Stewart, 'Superannuation, Same-Sex Couples and Interdependency: Between Equality, Property and Family' (2006) 28 *Sydney Law Review* 437 at 446-451.

<sup>82</sup> *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Cth).

<sup>83</sup> Superannuation Industry (Supervision) Regulations 1994 (Cth), Regulation 1.04AAAA.

<sup>84</sup> Miranda Stewart, 'Superannuation, Same-Sex Couples and Interdependency: Between Equality, Property and Family' (2006) 28 *Sydney Law Review* 437 at 464.

<sup>85</sup> Superannuation Industry (Supervision) Act Regulations 1994 (Cth) as amended by the Superannuation Industry (Supervision) Amendment Regulations 2005 (No 8) (Cth).

From 1 July 2007 this provision will only benefit those who retire before the age of 60.

#### **12.1.4 Information about a spouse's fund**

Since 2002 the federal Family Court can split superannuation funds between separated married spouses in a property settlement.<sup>86</sup> This means that a spouse can apply directly to his or her partner's superannuation fund to discover the value of his or her superannuation assets.

This discovery is not available to separated same-sex partners, and may therefore create disadvantages in property settlement negotiations.

### **12.2 Federal statutory superannuation and pension schemes**

The superannuation schemes for federal government employees and statutory office holders are governed by a range of specific federal statutes, many with common benefits and definitions.

The general provisions on superannuation discussed above are applicable to federal statutory schemes. However, the changes to death benefits discussed in section 12.1.1, only cover private sector schemes and do not apply to most federal statutory schemes.

In each of the following federal superannuation schemes, a same-sex partner will *not* be eligible to receive direct death benefits.

- Commonwealth Superannuation Scheme (CSS)<sup>87</sup>
- Public Sector Superannuation Scheme (PSS)<sup>88</sup>
- Defence Force Retirement and Death Benefits Scheme<sup>89</sup>
- Military Superannuation and Benefits Scheme<sup>90</sup>
- Parliamentary Contributory Superannuation Scheme<sup>91</sup>
- Judges' Pension Scheme<sup>92</sup>

### **12.3 Retirement Savings Accounts**

A retirement savings account is a special account offered by banks, building societies, credit unions, life insurance companies and financial institutions. It is used for retirement savings and is similar to a superannuation fund.

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<sup>86</sup> *Family Law Act 1975* (Cth) s 90MC.

<sup>87</sup> *Superannuation Act 1976* (Cth).

<sup>88</sup> *Superannuation Act 1990* (Cth).

<sup>89</sup> *Defence Force Retirement and Death Benefits Act 1973* (Cth).

<sup>90</sup> *Military Superannuation and Benefits Act 1991* (Cth).

<sup>91</sup> *Parliamentary Contributory Superannuation Scheme Act 1948* (Cth).

<sup>92</sup> *Judges' Pension Act 1968* (Cth).

Retirement savings account benefits are payable to dependants or to the personal legal representative of the account holder. Same-sex partners are not an eligible dependant.

### **12.4 Aged Care**

There are a range of government subsidies to cover the cost of residential aged care.<sup>93</sup>

The income, assets and housing needs of a partner, close relative or dependent child may be relevant to the determination of an aged care residential subsidy and to the calculation of an accommodation bond.

An assets test applies, which can affect the amount of the accommodation bond and other charges for a person entering care. For a recognised couple, assets are valued at 50% of the couple's total asset pool. Currently, an accommodation bond charge applies if a person has assets that exceed \$31,500.

However, the value of a person's home is disregarded for the assets test if that home is occupied by the partner or dependent child of the person, or a close relative in certain circumstances. A carer is included in the exemption if they occupied the home for the past two years and were eligible to receive an income support payment.<sup>94</sup>

If a person in a heterosexual couple were to enter residential care and their partner remained in their home, the value of the home would be excluded from the assets test.

For a same-sex couple the full value of the home would be taken into account if the partner in care was the sole title-holder, or half the value would be taken into account if the partner in care held title as joint tenant with their partner. The only exception would be if a same-sex partner was held to be a carer, had lived with their partner in the home for the previous two years and was on a social security benefit.

## **13 What are the problems in discrimination laws?**

Federal law prohibits sexual harassment and discrimination against people on the ground of sex, marital status, pregnancy or potential pregnancy and family responsibility in certain areas. A same-sex couple arguably receives no protection under the grounds of marital status or family responsibility.<sup>95</sup>

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<sup>93</sup> *Aged Care Act 1997* (Cth).

<sup>94</sup> *Aged Care Act 1997* (Cth) s 44.10(2)(a) - (2)(c).

<sup>95</sup> *Sex Discrimination Act 1984* (Cth) s 6.

## 14 What are the problems in migration laws?

Relationship recognition is important in migration law because a relationship with an Australian resident or citizen, or with the primary holder of a visa, may entitle a person to a visa.<sup>96</sup>

Same-sex partners are recognised in limited circumstances through the category of 'interdependent relationship'.<sup>97</sup> This definition refers to a genuine relationship between two unrelated adults who live together. The parties must be at least 18 years of age and have lived together for 12 months before applying.

The interdependent relationship category operates in two areas of migration law only:

- Sponsored migration under the family scheme, which allows a Australian citizen or permanent resident to sponsor family members to migrate to Australia. These regulations allow for a temporary visa through a waiting period of approximately two years and then a permanent visa if the relationship is continuing.
- Sponsored migration under a temporary skilled migrant scheme, which permits the independent partner of a person as well as the dependent child of such partner to accompany the primary visa holder<sup>98</sup>. Interdependent relationships have been included in the temporary and not the permanent classes of skilled migrant visa. Unlike a heterosexual partner, a same-sex partner cannot join their partner's application for a permanent skilled migrant visa.

Same-sex couples are not recognised, except in these circumstances.

Further, interdependent partners are excluded from a wide range of visa categories which are otherwise available to spouses, including:

- all skilled migrant and business visa categories
- student visas
- humanitarian visas.

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<sup>96</sup> Eligibility to visit and migrate to Australia is governed by the *Migration Act 1958* (Cth) and Migration Regulations.

<sup>97</sup> Migration Regulations 1994 (Cth) reg 109A.

<sup>98</sup> Temporary Business (Long Stay) Visa (subclass 457).

## 15 What are the problems in other federal legislation?

### 15.1 Insurance

A court cannot order that a person's interest under his or her spouse's life insurance policy be used to discharge that person's debt.<sup>99</sup> Same-sex partners are not protected in this way.

Same-sex partners may also be excluded from enforcing liability for the death of a partner who dies as a passenger aircraft accident.<sup>100</sup>

### 15.2 Crimes

The *Criminal Code Act 1995* (Cth) is the only piece of federal legislation that explicitly recognises same-sex partners. They are included within the category of 'close family member' and are thereby protected from the strict liability offence of association with a terrorist.<sup>101</sup>

However same-sex partners cannot take advantage of two protections given to heterosexual partners in federal criminal law:

- a defendant's spouse, de facto spouse, parent or child is exempt from giving evidence if it is likely to cause them or their relationship harm<sup>102</sup>
- exceptions to the confiscation of the proceeds of federal crimes are provided to ensure that the needs of dependants are taken into account.<sup>103</sup>

### 15.3 Investment, conflict of interest and disclosure

A number of federal laws regulate investment and the ownership of shares in companies or certain kinds of financial entities. Many of these provisions set limits on ownership, or require disclosure of interests.

In order to prevent manipulation of such rules through sham transactions involving others closely connected to the person, many rules also cover the relatives and associates of the person. Same-sex couples are not subject to these rules.

These types of provisions are found in the following pieces of legislation:

- *Corporations Act 2001* (Cth)
- *Bankruptcy Act 1966* (Cth)
- *Foreign Acquisition and Takeovers Act 1975* (Cth)

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<sup>99</sup> *Life Insurance Act 1995* (Cth) s 204.

<sup>100</sup> *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ss 12(5), 35(5).

<sup>101</sup> *Criminal Code Act 1995* (Cth) s 102.8(4)(a).

<sup>102</sup> *Evidence Act 1995* (Cth) s 18(6). Note that s 19 excludes certain proceedings from this provision.

<sup>103</sup> *Proceeds of Crime Act 2002* (Cth) ss 24, 72.

- *Financial Sector (Shareholdings) Act 1998* (Cth)
- *Insurance Acquisitions and Takeovers Act 1991* (Cth)
- *Education Services for Overseas Students Act 2000* (Cth)
- *Broadcasting Services Act 1992* (Cth)
- *Pooled Development Funds Act 1992* (Cth)
- *Australian Meat and Live-Stock Industry Act 1997* (Cth)

### **15.4 Aboriginal land and organisations**

Land in the Jervis Bay Territory has been granted to the Wreck Bay Aboriginal Community. Where a registered member has the benefit of a lease of Aboriginal land for use for domestic purposes, that benefit can be transmitted to a 'relative' of the member.<sup>104</sup> This does not include same-sex partners.

Further, only a person who is Aboriginal or the spouse of an Aboriginal person is eligible to be a member of an Incorporated Aboriginal Association.<sup>105</sup> This does not include same-sex partners.

### **15.5 Marriage**

In 2004 the *Marriage Act 1961* (Cth) was amended to define marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'.<sup>106</sup> The amendments also prevent Australian courts from validating same-sex marriages contracted overseas.

## **16 Concluding remarks**

This Discussion Paper summarises the content of a larger research paper, which can be found at: <http://www.humanrights.gov.au/samesex/index.html>

The material in this paper does not represent any final conclusions or recommendations. Rather the paper is intended to elicit further comment from community organisations, individuals and government.

Comments should be provided to the Inquiry by **3 November 2006**.

See sections 3 and 4 of this Discussion Paper for guidelines on what to write and how to send a submission.

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<sup>104</sup> *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) s 37(1).

<sup>105</sup> *Aboriginal Councils and Associations Act 1976* (Cth) s 49.

<sup>106</sup> *Marriage Amendment Act 2004* (Cth) sch 1.

## **Appendix I: Preliminary list of legislation that may require amendment to include same-sex families in Commonwealth law**

### *Aboriginal Councils and Associations Act 1976 (Cth)*

Insert definition of child

s 3                                      replace definition of spouse

### *Aboriginal Land Grant (Jervis Bay Territory) Act 1986 (Cth)*

s 37(1)                                replace definition of relative, spouse, child

### *Age Discrimination Act 2004 (Cth)*

Insert definition of child

s 29(4)                                replace definition of near relative

### *Aged Care Act 1997 (Cth)*

s 44.11                                replace definition of close relation, member of a couple, partner, dependent child

### *Australian Citizenship Act 1948 (Cth)*

Insert definition of spouse or de facto spouse

### *Australian Meat and Live-Stock Industry Act 1997 (Cth)*

Insert definition of de facto spouse

### *Bankruptcy Act 1966 (Cth)*

s 5(1)                                replace definition of child, de facto spouse, close relative, relative

s 139K                                replace definition of dependant

### *Broadcasting Services Act 1992 (Cth)*

Insert definition of de facto spouse

s 5                                      replace definition of child

sch 5                                replace definition of child

### *Child Support (Assessment) Act 1989 (Cth)*

s 5                                      replace definition of parent, member of a couple

s 7B(1)                                define legal guardian

### *Civil Aviation (Carriers' Liability) Act 1959 (Cth)*

s 12(5), s 35(5)                    replace definition of members of the passenger's family, insert definition of child

*Commonwealth Electoral Act 1918 (Cth)*

s 4(1) replace definition of spouse, child

*Corporations Act 2001 (Cth)*

Insert definition of child

s 9 replace definition of de facto spouse

*Defence Act 1903 (Cth)*

Insert definition of spouse or de facto partner

*Defence Force Retirement and Death Benefits Act 1973 (Cth)*

s 6A replace definition of marital relationship, spouse

s 3 replace definition of child

*Defence Force (Home Loans Assistance) Act 1990 (Cth)*

s 3 replace definition of spouse, child

*Defence Housing Authority Act 1987 (Cth)*

s 12(1A) replace definition of spouse

*Disability Discrimination Act 1992 (Cth)*

Insert definition of spouse or de facto partner

s 4(1) replace definition of relative

*Education Services for Overseas Students Act 2000 (Cth)*

Insert definition of de facto spouse, child

*Evidence Act 1995 (Cth)*

sch 1 sec 3 pt 1 replace definition of de facto spouse

sch 1 pt 2 cl 10(1) replace definition of child

s 73(1)(b) replace 'a man and a woman' with 'a couple'

*Family Law Act 1975 (Cth)*

s 4 replace definition of child

s 90MD replace definition of spouse

s 60H(1) replace 'woman was married to a man'

s 60H(3) replace with provision clarifying that sperm or egg donor is not a parent under the FLA

s 60H(4) replace provision with new definition of de facto relationship

*Federal Magistrates Act 1999 (Cth)*

See Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006:

- pt 2 div 2 cl 9E      replace definition of eligible spouse, marital relationship
- pt 2 div 2 cl 9F      replace definition of eligible child

*Financial Sector (Shareholdings) Act 1998 (Cth)*

sch 1 s 2              replace definition of relative

*Financial Transactions Reports Act 1988 (Cth)*

Insert definition of spouse and de facto spouse

*Foreign Acquisition and Takeovers Act 1975 (Cth)*

Insert definition of spouse

*Foreign Acquisition and Takeovers Regulations 1989 (Cth)*

reg 2                  replace definition of spouse

*Foreign States Immunities Act 1985 (Cth)*

Insert definition of spouse

*Fringe Benefits Tax Assessment Act 1986 (Cth)*

s 136(1)              replace definition of spouse, child

*Governor-General Act 1974 (Cth)*

s 2B                    replace definition of marital relationship

*Health Insurance Act 1973 (Cth)*

s 10AA                replace definition of members of a person's family,  
dependent child

*Higher Education Funding Act 1988 (Cth)*

Insert definition of spouse

*Higher Education Support Act 2003 (Cth)*

Insert definition of spouse

*Income Tax Assessment Act 1936 (Cth)*

- s 6(1)                  replace definition of spouse, child, relative
- s 27A(1)              replace definition of dependant
- s 251R(3)            replace definition of dependant
- s 159J                 replace definition of dependant
- s 159TC              replace definition of spouse
- s 102AGA(2)(a)    replace definition of family breakdown
- s 102AGA             replace term natural parent

*Income Tax Assessment Act 1997 (Cth)*

s 995.1 definitions of spouse and child will be automatically changed by virtue of amendments to the *Income Tax Assessment Act 1936 (Cth)*

s 61.490 definition of partner will be automatically changed by virtue of amendments to *A New Tax System (Family Assistance) Act 1999 (Cth)*

- s 995.1 replace definition of relative
- s 126.5 replace 'de facto marriage' with 'de facto relationship'
- s 126.15 replace 'de facto marriage' with 'de facto relationship'
- s 52.105 delete gendered references

*Insurance Acquisitions and Takeovers Act 1991 (Cth)*

Insert definition of spouse

- s 4 replace definition of relative

*International Organisations (Privileges and Immunities) Act 1963 (Cth)*

Insert definition of spouse

*Judges' Pensions Act 1968 (Cth)*

- s 4AC replace definition of spouse
- s 4AB replace definition of marital relationship
- s 4 replace definition of child

*Judicial and Statutory Officers (Remuneration and Allowances) Act 1984 (Cth)*

Insert definition of spouse

*Life Insurance Act 1995 (Cth)*

Insert definition of child

- sch 1 s 8 replace definition of spouse

*Marriage Act 1961 (Cth)*

- s 5 replace definition of marriage
- s 46 replace 'man and a woman'
- s 88EA delete the provision

*Medicare Levy Act 1986 (Cth)*

Entitlements will be automatically changed by virtue of amendments to the *Income Tax Assessment Act 1936 (Cth)*.

- ss 8, 8B, 8C, 8D, 8G replace 'married person' with 'member of a couple'

*Members of Parliament (Life Gold Pass) Act 2002 (Cth)*

- s 4 replace definition of spouse
- s 4 replace 'widow' and 'widower'

*Migration Act 1958 (Cth)*

Insert definition of spouse, child, parent

s 238 delete definition of interdependency relationship

*Migration Regulations 1994*

reg 1.03 replace definition of dependent child

reg 1.15A replace definition of spouse

reg 1.09A delete definition of interdependent relationship

*Military Rehabilitation and Compensation Act 2004 (Cth)*

Insert definition of child

s 5 replace definition of partner, eligible young person

*Military Superannuation and Benefits Act 1991 (Cth)*

sch 1 r 7(4) replace definition of spouse

sch 1 pt 5 r 9(c) replace definition of spouse

sch 1 pt 5 r 12 delete this provision

sch 1 r 2 pt 1 replace definition of child

*National Health Act 1953 (Cth)*

Insert definition of child

s 4 replace definition of de facto spouse

s 84 replace definition of child

*A New Tax System (Family Assistance) Act 1999 (Cth)*

Insert definition of child

s 3 definition of member of a couple and partner should be automatically changed by virtue of amendments to the *Social Security Act 1991 (Cth)*.

*A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

Insert definition of spouse

*Parliamentary Contributory Superannuation Act 1948 (Cth)*

s 4B replace definition of marital relationship

s 19AA(5) replace definition of child

*Parliamentary Entitlements Act 1990 (Cth)*

s 3 replace definition of spouse, dependent child

*Passenger Movement Charge Collection Act 1978 (Cth)*

s 3 replace definition of spouse, child

*Petroleum Retail Marketing Franchise Act 1980 (Cth)*

Insert definition of spouse

s 3 replace definition of child

*Pooled Development Funds Act 1992 (Cth)*

Insert definition of child

s 4(1) replace definition of de facto spouse

*Privacy Act 1988 (Cth)*

Insert definition of child

Insert definition of de facto spouse

*Proceeds of Crime Act 2002 (Cth)*

Insert definition of de facto partner

*Public Service Act 1999 (Cth)*

Insert definition of spouse

*Remuneration Tribunal Act 1973 (Cth)*

Insert definition of spouse or de facto partner

*Retirement Savings Accounts Act 1997 (Cth)*

s 20(2) replace definition of spouse

s 20(3) replace definition of child

s 20A delete interdependency relationship

*Safety, Rehabilitation and Compensation Act 1988 (Cth)*

Insert definition of child

s 4(1) replace definition of spouse, dependant

*Seafarers Rehabilitation and Compensation Act 1992 (Cth)*

s 3 replace definition of spouse, prescribed child

*Sex Discrimination Act 1984 (Cth)*

s 4(1) replace definition of de facto spouse, marital status,  
family responsibilities, child

*Social Security Act 1991 (Cth)*

Insert definition of child

s 4(2) replace definition of member of a couple

s 4(3) replace criteria for forming opinion about relationship

s 5(1) replace definition of parent

ss 408-408GI replace provisions with gender neutral terms

s 1067C replace definition of Youth Allowance couple

*Superannuation Act 1976 (Cth)*

- s 8B(2) replace definition of surviving spouse
- s 8A(1) replace definition of marital relationship
- s 3(1) replace definition of child

*Superannuation Act 1990 (Cth)*

- r 1.1.1 replace definition of spouse
- r 1.1.1 replace definition of child

*Superannuation Act 2005 (Cth)*

Section 10 of the Act provides for a trust deed to establish the PSSap fund, and all relevant definitions and entitlements are contained within the Deed.

In the PSSap Trust Deed:

Replace definition of spouse

*Superannuation Industry (Supervision) Act 1993 (Cth)*

- s 10 replace definition of spouse, child
- s 10A delete definition of interdependency relationship

*Veterans' Entitlements Act 1986 (Cth)*

- s 5E replace terms 'widow' and 'widower'
- s 5E(2) replace definition of member of a couple
- s 5F(1) replace definition of child
- s 118NA replace definition of partner

*Workplace Relations Act 1996 (Cth)*

- s 240 replace definition of de facto spouse
- s 263 replace definition of de facto spouse
- s 240 replace definition of child