



*Human Rights and Equal
Opportunity Commission*
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Same-Sex: Same Entitlements

**A community guide to the National Inquiry into
Discrimination against People in Same-Sex Relationships:
Financial and Work-Related Entitlements and Benefits**



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<http://www.humanrights.gov.au/samesex/index.html>

For further information about the work of the Human Rights Unit of the Human Rights and Equal Opportunity Commission, please visit:

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Introduction

At least 20 000 same-sex couples in Australia experience systematic discrimination on a daily basis.

Fifty-eight federal laws deny same-sex couples and their children basic financial and work-related entitlements which are available to opposite-sex couples and their children.

During 2006, the Human Rights and Equal Opportunity Commission's *Same-Sex: Same Entitlements* Inquiry travelled around Australia holding public hearings and community forums to hear, first hand, about the impact of discriminatory laws on same-sex couples and their children.

The public consultations, and some of the 680 written submissions received by the Inquiry, clearly describe the financial and emotional strain placed on same-sex couples who are trying to enjoy their lives like everybody else in the community.

This community guide sets out just a small sample of the federal financial and work-related entitlements and benefits which are denied to same-sex couples and their children.

For a more comprehensive analysis of the federal laws which discriminate against same-sex families and further information on how those laws impact on same-sex couples and their children, please go to the Inquiry's main report at: www.humanrights.gov.au/samesex.

“ *I am a first-class taxpayer but a second-class citizen.* ”



Inquiry Findings and Recommendations

The *Same-Sex: Same Entitlements* Inquiry finds that there are 58 federal laws which discriminate against same-sex couples and their children.

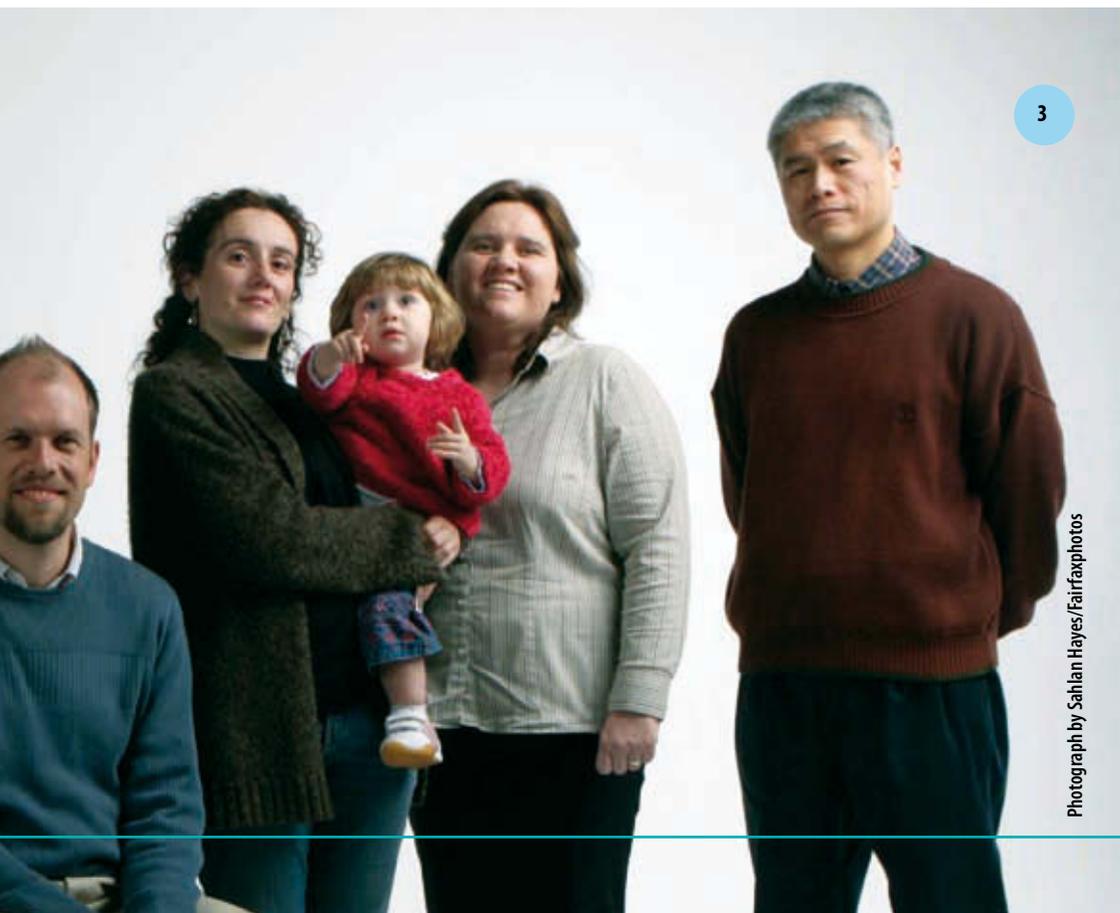
People who gave evidence to the Inquiry in Sydney: Andreas Ohm and Jim Woulfe, Michelle McCormack and Lynne Martin with son Tom, Michael Burge, Maria Vidal and Susan Everingham with daughter Antonia, and Jiro Takamisawa.





The Inquiry recommends simple amendments to those laws; just change the definitions describing de facto relationships to include same-sex couples.

The *Same-Sex: Same Entitlements* Inquiry also recommends changes to federal, state and territory laws to recognise the relationship between a child and both parents in a same-sex couple. This would better protect the best interests of the child.





Discrimination in Employment

Same-sex couples do not always enjoy the same employment conditions as opposite-sex couples. This can affect the economic livelihood, work security and family life of same-sex couples and their children.

For example, same-sex couples are not guaranteed the following basic work entitlements under federal law:

- parental leave
- carer's leave
- compassionate leave
- travel entitlements.

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“*My (same-sex) partner suffers a long term debilitating illness and as I am the sole wage earner in our household/family it is very difficult for me to take time off to care for her...when I do need to stay home to care for her, I have to use my annual leave as she is not legally recognized as my partner, therefore I am not entitled to carer's leave...*”

Discrimination in Workers' Compensation

Usually the partner of a person who has been injured or killed in a workplace accident can expect financial support through workers' compensation payments.

However, the same-sex partner of a worker covered by Comcare and other federal workers' compensation schemes is not entitled to lump sum workers' compensation death benefits. Nor is a same-sex partner taken into account when calculating the federal workers' compensation sums available to an incapacitated employee.

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“*An opposite-sex partner of an employee covered by a federal workers' compensation scheme has the security of knowing that he or she will be financially supported if his or her partner dies or is injured on the job. A same-sex partner has no such security.*”





Discrimination in Tax Benefits

Tax is one of the main financial expenses facing any family in Australia.

Same-sex couples will often pay more tax than opposite-sex couples because they are not eligible for a range of rebates and tax concessions. Further, the same-sex parents of children may miss out on tax benefits intended to help families.

For example, same-sex couples are not entitled to the following tax concessions:

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- dependent spouse tax offset
- tax offset for partner's parent
- housekeeper tax offset
- child-housekeeper tax offset
- zone tax offset for a partner
- capital gains tax concessions when transferring property to a partner
- fringe benefits tax exemptions for a partner.

“*We are an average suburban family. We are working hard and contributing to our community. We don't want special treatment – just what others can expect from their legal and social community. Our rights are denied simply because of who we love. We just want equality.*”





Discrimination in Social Security Benefits

Social security is a safety net for people who are unable to financially support themselves.

However, social security laws treat same-sex couples differently to opposite-sex couples.

Sometimes the differential treatment has a negative impact on same-sex families. For example, a same-sex partner is not entitled to the following benefits:

- partner allowance
- bereavement benefits
- widow allowance
- concession card benefits
- gaoled partner's pension.

Other times the differential treatment benefits a same-sex couple. This is because the law treats the couple as two single people, so a same-sex partner can access benefits normally available to singles.

Several same-sex couples told the Inquiry that they would willingly trade the advantages in social security law for equal treatment under all federal laws.

“ We are a family unit – our family acknowledges it, our work colleagues acknowledge it and our community acknowledges it; why then, can’t the Australian Government do the same by affording us the same rights as heterosexual de facto couples? ”





Discrimination in Veterans' Entitlements

Australian Defence Force veterans and their families are generally entitled to a range of special benefits and entitlements in recognition of their military service.

However, many of those benefits are not available to veteran same-sex couples and their children.

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For example, the same-sex partner of a veteran cannot access the following benefits:

- War Widow/Widower's Pension
- Bereavement Payment
- Gold Repatriation Card
- Income Support Supplement
- Partner Service Pension
- military compensation.

“*Gay war veterans laid down their lives or were injured for our country. They protected us. We should protect them and their families. Why are their families less deserving of being afforded this protection?*”

Discrimination in Health Care Subsidies

The Medicare and Pharmaceutical Benefits Scheme (PBS) Safety Nets provide extra subsidies to families with high medical costs.

However, a same-sex couple will have to spend much more on doctors visits and medicines than an opposite-sex couple to qualify for the extra subsidies. This is because the law does not recognise a same-sex couple as a family.

“*The exclusion of same-sex couples financially disadvantages an already marginalised group, has a negative impact on dependent children of same-sex couples and is out of touch with community values. Every couple living together in a domestic relationship should have access to the Safety Net, regardless of their sexuality.*”

“*Because we are not recognised as a couple for the Medicare Safety Net, we are required to meet out-of-pocket expenses as two single people....We are also unable to register as a couple for the pharmaceutical benefits scheme and once again pay twice the amount a heterosexual couple pays for medications.*”



Discrimination in Family Law

A separating same-sex couple must go to state or territory courts to resolve property division issues and the federal Family Court to resolve child-related issues. This means that same-sex couples cannot access the more flexible federal property settlement schemes and must pay two sets of court costs if they have children.

Some separating same-sex parents will also have difficulty pursuing child support because the laws do not recognise a lesbian co-mother or gay co-father as a parent.

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“ *If separation occurs, my daughter could be left to totally supporting herself and her daughter...Ironically even fathers who don't pay maintenance are still recognised as parents.* ”
(parent of a lesbian mother)

“ *In a same-sex relationship where there's children concerned, if the biological mother does pass away, the child does not automatically get to stay with the non-biological parent... If one member of the biological mother's family comes forth to take that child out of that house, that child is gone. You would have to fight it in the Family Court – it is not a right of ours for the child to stay where it has grown up.* ”

Discrimination in Superannuation Entitlements

Superannuation is one of the main ways for a couple to save for retirement and is often a person's largest asset apart from the family home. Most people expect that their superannuation entitlements will be inherited by their partner or children when they die. However, this is not always the case for same-sex couples and families.

For example, a same-sex partner cannot always access the following superannuation benefits and superannuation tax concessions:

- superannuation contributions splitting
- superannuation spouse tax offset
- lump sum or reversionary direct death benefits
- death benefits anti-detriment payments.

In particular, the same-sex partner of a federal government employee cannot access direct death benefits under a federal superannuation scheme, unless the employee joined the public service after 1 July 2005.

“ *[W]e would like to equalise the amounts saved in superannuation. The ability to do this by splitting superannuation contributions would be of great benefit to our retirement savings. The potential tax saving is over \$20,000 at retirement. We are unable to take advantage of this initiative as it is not available to same-sex couples.* ”



Discrimination in Aged Care Fees

When people enter an aged care facility they generally have to pay certain daily fees and bonds to fund their care and residence. The amount of those fees is calculated by applying assets and income tests.

A same-sex couple is treated differently to an opposite-sex couple under these tests. In particular, the home of a same-sex couple is not exempted from the assets test as it is for an opposite-sex couple.

As a result, a person in a same-sex couple will generally pay more for residential aged care than a person in an opposite-sex couple.

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“ *I have recently started thinking about what will happen if or when one of us requires some sort of assisted accommodation or nursing home care and the prospect of that alienation in our elderly years because we will no longer be recognised as a couple is distressing to say the least.* ”

“ *[W]here a member of an opposite-sex couple is incapacitated and requires nursing home care, the means test for an accommodation bond excludes the family home. However, if one member of a same-sex couple requires residential nursing care, then that person’s share of the family home is treated as an asset...if either of us were ever incapacitated, we would face the possibility of being forced to sell our home out from under the other one...* ”





Discrimination in Access to Visas

Same-sex couples are denied access to the full-range of visas available to opposite-sex couples.

There is only one visa available to same-sex couples who wish to migrate to Australia as a couple – the Temporary Business (Long Stay) 457 visa.

There is also only one category of visa available to the same-sex partner of an Australian citizen or permanent resident – the Interdependency visa.

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As a result, there is additional expense and disruption to the lives of same-sex couples wanting to live together in Australia.

“*Because we are not a young couple...I had great difficulty in getting a visa in my own right, and we had to rely on a series of tourist visas, failed visa applications and appeals to stay together until he eventually gained permanent residency and I could apply as his dependent partner... For more than five years I was unable to work, and had to leave the country regularly, never knowing if I would be allowed back. This not only imposed a great strain on our relationship, but also a considerable financial burden.*”



Get in contact

For more information about this Inquiry please go to:
www.humanrights.gov.au/samesex.

To order copies of the *Same-Sex: Same Entitlements* Report or for additional copies of this community guide, call our Publications Officer on **(02) 9284 9600** or email: publications@humanrights.gov.au.

If you'd like to share your thoughts, ideas or feedback on the issues raised in this community guide or the full *Same-Sex: Same Entitlements* Report, a feedback form is available on our website at: www.humanrights.gov.au/samesex.

For free advice on discrimination and your rights, or to make a complaint about discrimination because of sexual orientation or other grounds, call our Complaints Information Line on **(02) 9284 9888, 1300 656 419 or TTY 1800 620 241**.

Information about making or responding to a complaint is available at www.humanrights.gov.au. You can also email us on complaintsinfo@humanrights.gov.au.

The *Same-Sex: Same Entitlements* Inquiry commenced in April 2006. The Inquiry examined discrimination against same-sex couples and their children in the area of financial and work-related entitlements. This community guide summarises the final report of the Inquiry. The community guide and final report are the result of a public consultation process, national consultations and ongoing research.

Visit www.humanrights.gov.au/samesex for:

- the final report of the *Same-Sex: Same Entitlements* Inquiry
- background information and submissions received by the *Same-Sex: Same Entitlements* Inquiry
- electronic versions of this community guide.

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