

# **The Human Rights and Equal Opportunity Commission National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits**

**Notes for Giving Evidence  
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## **Introduction**

Women's Health Victoria is an independent Victorian state-wide women's health promotion organisation run by women for women. We have a role in creating and using women's health knowledge to:

- Inform health, social and economic policy
- Inform the design and delivery of better health responses, systems and models of care
- Inform, support and empower women in their health choices

We work from a feminist framework that incorporates a rights based approach and recognise the diversity of women's lives. We acknowledge the critical importance of respect and an approach that informs and empowers. We believe that a holistic way of working that takes into account all of life's circumstances is critical to the promotion of good health and to the provision of care and treatment of illness.

Women's Health Victoria understands that health and well-being are created outside the health system, such as financial legislation and working conditions, and that investment in better health outcomes for women means better health outcomes for women, children, families and communities.

We thank the Human Rights and Equal Opportunity Commission's for their work on this enquiry and for the opportunity to speak here today. We acknowledge that the Inquiry currently underway is considering discrimination against all Australians in same-sex relationships. As Women's Health Victoria's area of expertise is in women's experiences, it is from this perspective that I will give evidence today. However, much of our submission is relevant to both women and men in same-sex relationships.

## **Discrimination and Health**

The development of a full understanding of how women in same-sex relationships are discriminated against when attempting to access financial and work-related entitlements and benefits is of specific concern to WHV given the strong connection between women's health and wellbeing, and their experiences of discrimination.

Evidence shows that the increased rates of substance abuse, depression, low self-esteem and attempted suicide recorded among same-sex attracted women, lesbians in particular, are a consequence of heterosexism<sup>1,2,3</sup> – the process of promoting heterosexuality as

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<sup>1</sup> Ettore, Elizabeth (1980). *Lesbians, Women, and Society*, Routledge and Kegan Paul: London, p.5

<sup>2</sup> Hillier, Lynne. *et al* (2005). *Writing Themselves In Again Six Years On: The Second National Report on the Health and Well-Being of Same-Sex Attracted Young People*, Australian Research Centre in Sex, Health and Society, La Trobe University: Carlton

<sup>3</sup> Ministerial Advisory Committee on Gay and Lesbian Health (2002).

normative sexuality<sup>4</sup>. Hence, legislation which does not adequately recognise people in same-sex relationships reinforces heterosexism and in doing so contributes to the health status of women in same-sex relationships. Legislation that privileges those in heterosexual relationships also infringes upon the rights of all Australians to live a life free from discrimination.

### **Relationship definition in legislation**

Victorian women in same-sex relationships are influenced most acutely by the financial and work-related entitlements and benefits set out in Victorian and Federal legislation. In Victoria the passing of the Statute Law Amendment (Relationships) Act and the Statute Law Further Amendment (Relationships) Act in 2001, through inclusion of 'domestic partners', recognised same-sex couples in a number of areas, including inheritance rights, stamp duty exemption and access to accident and worker's compensation in instances where one member of a couple dies<sup>5</sup>.

At the federal level, in 2004 the term 'interdependency relationship' was coined to enable those in same-sex de facto relationships to fall under the definition of a dependent person in some pieces of federal legislation<sup>6</sup>. These Acts offered improved financial security to some women in same-sex relationships, though they did not seek to remove discrimination in all areas of law<sup>7</sup>. Consequently, discrimination continues to have an impact on those in same-sex relationships.

Recognition of 'domestic partnerships' and 'interdependency relationships' does not go far enough for the women in same-sex relationships who wish to have their relationships consistently attributed with the same economic privileges as opposite-sex marriages. For instance, federally legislated income taxation does not recognise women in same-sex relationships<sup>8</sup>. The dependent spouse rebate is not applied to a financially dependent same-sex partner and other tax concessions and rebates available to same-sex couples, including medical expense rebates, are unavailable to same-sex couples<sup>9</sup>. This legislated distinction between women in opposite-sex relationships and women in same-sex relationships is discriminatory. Indeed it contravenes Australia's obligations under the United Nations' Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The Victorian Government health portal 'Better Health Channel' indicates that 40% of lesbians, as well as gay men, report workplace discrimination which may extend to limited promotions and pay rise prospects<sup>10</sup>. The situation for lesbians is particularly concerning given their simultaneous exposure to heterosexism and sexism. If discrimination against women in same-sex relationships is to be eradicated then the sexist underpinnings of financial and work-related entitlements also need to be addressed.

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<sup>4</sup> Ross, Michael (1996). 'Social Reaction and Homosexuality: Culture, Acculturation, Life Events and Social Supports as Mediators of Response to Homonegative Attitudes', in Esther Rothblum and Lynne Bond (Eds), *Preventing Heterosexism and Homophobia*, Sage Publications: London, p.205-209

<sup>5</sup> Victorian Gay and Lesbian Rights Lobby and Law Institute of Victoria (2005). *Over the Rainbow: A guide to the Law for Lesbians and Gay Men in Victoria*, Victorian Gay and Lesbian Rights Lobby: Melbourne, p.2-5

<sup>6</sup> Gay and Lesbian Rights Lobby (2004) 'Key Issues on Federal Gay and Lesbian Law Reform', [http://www.glril.org.au/publications/major\\_reports/Federal\\_issues/Key%20Issues%20in%20Federal%20Gay%20and%20Lesbian%20Law%20Reform.pdf](http://www.glril.org.au/publications/major_reports/Federal_issues/Key%20Issues%20in%20Federal%20Gay%20and%20Lesbian%20Law%20Reform.pdf), accessed 20/04/06.

<sup>7</sup> Victorian Gay and Lesbian Rights Lobby and Law Institute of Victoria (2005), p.2-3

<sup>8</sup> Victorian Gay and Lesbian Rights Lobby and Law Institute of Victoria (2005), p.49

<sup>9</sup> Victorian Gay and Lesbian Rights Lobby and Law Institute of Victoria (2005), p.49

<sup>10</sup> Better Health Channel (2006). 'Gay and Lesbian Issues- Discrimination', State Government of Victoria, [http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Gay\\_and\\_lesbian\\_issues\\_discrimination?OpenDocument](http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Gay_and_lesbian_issues_discrimination?OpenDocument). Accessed 20/04/06.

## Interdependency

I'll try not to say too much about 'interdependency' as I know that you have heard evidence about it through many other written and verbal submissions. What I will say is that there are many limitations associated with interdependency.

One characteristic of interdependency is shared finances. For women financial interdependency is limiting and socially sanctioned economic dependence can have grave consequences<sup>11,12</sup>. Financial independence is something which should be available to all women, to ensure that they do not end up in relationships where access to material needs can be manipulated by economically advantaged partners<sup>13</sup>. This social reality has an adverse impact on women's health<sup>14</sup>, and legislation that perpetuates women's economic dependence and/or interdependence in any form must be reassessed. This would ensure that women in both opposite and same-sex relationships are able to have financial control over their lives.

An interdependency relationship, as outlined in current legislation, identifies economic interdependence as a criterion for securing some entitlements and benefits. Financial independence is thus discouraged. Ironically, the heterosexism evident in social security law – law which does not recognise same-sex relationships – may be financially advantageous to recipients in same-sex relationships who have working partners. These women do not lose benefits and thus are not forced into dependence<sup>15</sup>. This is one of very few examples where people in same-sex relationships may benefit financially from discrimination. If improvements are to be made to the way in which financial and work-related entitlements are allocated then issues concerning gender need to be considered alongside sexuality. Abolishing promotion of financial dependence is central to this.

While interdependency may be critiqued on a number of levels, legislation which acknowledges same-sex relationships is a vast improvement on that which does not. The introduction of interdependency has also brought a selection of financial gains which were previously unattainable. In terms of its relevance, in Victoria over 80% of participants in the 2005 Victorian Gay and Lesbian Rights Lobby Same-sex Relationship Survey were interdependent on at least one measure<sup>16</sup>. 60% had their partner as next of kin and/or shared some finances, 54% shared some assets, 50% nominated their partner on their superannuation or other benefits, 48% had their partner as the primary beneficiary on their will, and 6% shared legal parenting of children. This shows that people in same-sex couples are able to access some of the economic privileges previously reserved for people in

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<sup>11</sup> Office of Women's Policy (2004) *Leading with Victoria's Women: Progress Report 2004-05*, Department of Victorian Communities: Melbourne, p.3,16-18

<sup>12</sup> The Regional Office for Europe and the Women in Development Service/Sustainable Development Department (1996) 'Overview of the socio-economic position of rural women in selected Central and Eastern European countries - Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia', [http://www.fao.org/documents/show\\_cdr.asp?url\\_file=/docrep/W2356E/w2356e11.htm](http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/W2356E/w2356e11.htm), accessed 04/05/06.

<sup>13</sup> Division for the Advancement of Women (1995) 'The United Nations Fourth World Conference on Women', Department of Social and Economic Affairs: Beijing, <http://www.un.org/womenwatch/daw/beijing/platform/health.htm>, accessed 04/05/06.

<sup>14</sup> Division for the Advancement of Women (1995).

<sup>15</sup> Gay and lesbian Rights Lobby (2006). 'Federal Laws Discriminate Against Gay men and Lesbians- Federal Relationship Recognition', [www.girl.org.au/publications/fact\\_sheets/Federal\\_discrimination.html](http://www.girl.org.au/publications/fact_sheets/Federal_discrimination.html), accessed 20/04/06.

<sup>16</sup> McNair, Ruth &, Nikos Thomacos (2005). *Not Yet Equal*, Victorian Gay and Lesbian Rights Lobby with the assistance of Gay and Lesbian Health Victoria: Fitzroy.

heterosexual couples. However, the results of this study also showed that none of the measures for interdependency were able to be secured by almost 20% of the sample<sup>17</sup>. This is significant given that the average length of current relationships among the respondents was 4.7 years, with 13.5% having been together for at least ten years<sup>18</sup>.

WHV acknowledges that for many same-sex couples proving interdependency is possible, however there are significant limitations. The most noteworthy of these is that 'interdependency relationships' are not recognised in all pieces of federal legislation or by all federal entities, schemes and rebates. This includes Medicare and the Pharmaceutical Benefits Scheme, childcare rebates, house keeper rebates, and some pensions and compensation entitlements for same-sex partners of veteran's. The inconsistent recognition of 'interdependency relationships' results in those in same-sex relationships being excluded from receipt of many financial and work-related entitlements.

Opposite-sex married couples would automatically qualify for relevant entitlements regardless of the relationship length and financial arrangements, while people in same-sex couples may only acquire them once they have actively demonstrated interdependency.

Interdependency may also be critiqued based upon the other measures used to assess same-sex relationships. The linking of interdependency to live-in relationships is narrow given that women in same-sex relationships may either choose to live separately or may not live with their partner due to fear, social or family pressure. These women should not be denied the entitlements made available to opposite-sex married couples, particularly when live-in relationships are a relationship form they would like to emulate, but feel they may not be able to do so safely.

### **Superannuation**

Same-sex couples have been recognised in superannuation law since the Superannuation Legislation Amendment (Choice of Superannuation Funds) Act was passed in 2004. While legislation pertaining to superannuation of public sector employees and military personnel was not amended, all other employees in same-sex relationships are now granted similar rights to their heterosexual counterparts. This recognition may have improved the financial positioning of women in same-sex relationships who have since lost their partners, but it has not reduced the gender divide that exists between women and men. Women require greater savings in retirement, because they have increased life expectancy<sup>19</sup>, though their average earnings are less than that of men<sup>20</sup>. Superannuation legislation does not adequately address this shortfall, making women-only households and women in same-sex relationships particularly susceptible to dependence on the aged pension in retirement.

The system for recording superannuation benefactors is also problematic given the prevalence of heterosexism. In some workplaces listing a same-sex partner as a benefactor is not feasible. A same-sex relationship may be discovered by employers as superannuation forms commonly request that the employee indicate the address of their nominated benefactor. While it is possible for employees to contact their superannuation fund directly to change their benefactors this is a time consuming process. As gay men and lesbians have been identified in health research as populations which may be reluctant to have their sexuality recorded in their medical histories for fear of discrimination by health practitioners<sup>21</sup>,

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<sup>17</sup> McNair, Ruth &, Nikos Thomacos (2005), p.31-32

<sup>18</sup> McNair, Ruth &, Nikos Thomacos (2005), p.31-32

<sup>19</sup> Burrow, Sharan (2005). International Women's Day Address, Super Women: Reflections on Gender, Work and Equity in Australia today, citing Rice Walker Analysis, 8/3/05, <http://www.actu.asn.au/cgi-bin/printpage/printpage.pl>, accessed 17/3/05.

<sup>20</sup> Burrow, Sharan (2005).

<sup>21</sup> Better Health Channel (2006).

it is highly likely that they may similarly hesitate to list a same-sex partner as their benefactor when beginning a job. For teachers in Catholic schools this could be grounds for dismissal. In addition, the new industrial reforms make listing a same-sex partner even more risky for those in same-sex relationships as employers who have less than 100 members of staff no longer have to provide detailed justification for dismissing workers. The growth of casual employment also means that the number of hours allocated to employees in same-sex relationships may be reduced by homophobic employers. This is not readily able to be measured or proven. These outcomes bear directly upon the superannuation able to be accumulated by women in same-sex relationships.

### **Conclusion**

'Economic well-being and financial security are essential to achieving equity for women'<sup>22</sup>. Women's Health Victoria recognises that a person's health is partly determined by their work and socioeconomic status<sup>23</sup>, and that having financial independence has a positive influence upon health. Financial and work-related entitlements and benefits that discriminate against women in same-sex relationships hinder their ability to achieve equality. Women's Health Victoria stresses that all people are entitled to fundamental human rights including the right to non-discrimination. We recognises that many of Australia's laws continue to discriminate against women in same-sex relationships and identifies such laws as having an impact upon these women's health. We encourage law reform that is informed by people in same-sex relationships and mindful of the diverse needs and relationship forms women in same-sex relationships have.

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<sup>22</sup> Doughney, James; Fiona MacDonald; Joanne Pyke; Anne Lyon; Maru Leahy and Jeannie Rea (2003) *Lifelong economic well-being for women: Summary paper: What women want*, Security4Women, Work and Economic policy Research Unit, Victoria University: Melbourne.

<sup>23</sup> Better Health Channel (2006).