

Submission

on the

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

to the

National Inquiry into Discrimination against People in Same-Sex Relationships

by the

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1. Introduction

This submission complements an earlier submission¹ from Festival of Light Australia to the National Inquiry into Discrimination against People in Same-Sex Relationships on the first discussion paper published by the inquiry. This submission comments on additional issues raised by Discussion Paper II: Same-Sex Couples and their Children in Federal Law.

This discussion paper proposes amendments to at least 68 Commonwealth statutes. The proposed amendments include fundamental changes to the definitions of spouse, de facto relationship or child in many of these statutes.

The earlier submission from Festival of Light Australia cited research in support of the conclusion that there are “good reasons for society, and therefore also for government, to distinguish marriage from other possible relationships, including heterosexual cohabitation and same-sex relationships, and to privilege marriage over such relationships by bestowing particular benefits only on married couples.”²

2. Definition of ‘de facto’

The discussion paper (p.5) proposes a new definition of ‘de facto relationship’ which includes a statement that “A de facto relationship may be between a couple of the same sex or different sex.”

The discussion paper further proposes amending all Commonwealth statutes in such a way all provisions relating to married couples apply on the same terms to couples in a de facto relationship, including same sex couples.

If these proposals were adopted Commonwealth law would no longer give any recognition to the unique status of marriage. Consequently the Commonwealth would no longer bestow any particular benefits on married couples. This outcome would not be in the best interests of society for the reasons cited in the earlier submission from Festival of Light Australia.

As well as this fundamental objection to the proposed new definition of ‘de facto relationship’, the definition is also problematic because it requires the consideration of nine distinct factors before a determination can be made as to whether two people are in a de facto relationship or not. This kind of loose definition is not suitable for generic use in Commonwealth statutes.

3. Definition of ‘child’

The discussion paper (p. 6-7) canvasses various options for a new definition of ‘child’ to be used in Commonwealth statutes. The overall aim of the proposed new definition is to amend Commonwealth statutes in such a way that same-sex partners of biological parents are treated as parents of the biological children of their partners.

The earlier submission from Festival of Light Australia³ (pp.2-4) cites research in support of the proposition that children flourish best when raised by a mother and father.

For this reason Commonwealth statutes should not be amended in any way that treats a same-sex partner as a parent of a biological child of his or her partner.

Same-sex relationships are of shorter duration and break down at a higher rate than heterosexual cohabitation and at a much higher rate than marriage. Any legal recognition of same-sex partners as parents could lead to a claim that parenting rights in relation to a child endure even after separation from the biological parent of the child. This is not in the best interests of children or their biological parents.

4. Advantages for same-sex couples

The discussion paper correctly identifies (p.15-16) several advantages in relation to social security for same-sex couples in comparison to married couples.

Same-sex couples achieve these advantages because social security law treats them as two individuals. They gain the advantage by pooling their individual resources. This advantage is not only open to same-sex couples but to any two or more individuals, other than married couples or heterosexual de facto couples, who choose to pool their resources.

There may be a case for changing social security law so that married couples are not disadvantaged in this way. However, while the present provisions are in place it is quite correct to treat same-sex couples as two individuals. If, like other individuals, they pool resources that is an entirely private matter of no concern to social security or any other law.

5. Endnotes

¹ Available at: www.humanrights.gov.au/samesex/submissions/031.html

² Ibid, pp. 1-4

³ Ibid, pp.2-4