



**Gay & Lesbian
Rights Lobby**

Key Issues in Federal Gay and Lesbian Law Reform

December 2004

About the Gay and Lesbian Rights Lobby

The Gay and Lesbian Rights Lobby (GLRL), established in 1988, is the peak representative organisation for gay and lesbian rights in New South Wales. Our mission is “affirming our pride in our identity by achieving legal equality and social justice for lesbians and gay men”.

The GLRL has a strong history in legislative reform. In New South Wales, we led the fight for recognition of same sex de facto relationships, which led to the passage of the *Property (Relationships) Legislation Amendment Act 1999* and subsequent amendments. The GLRL was also successful in lobbying for the equalisation of the age of consent in NSW for gay men in 2003. At the federal level, the organisation has led the campaign for the recognition of same sex couples under superannuation law, working with both the government and the opposition parties to achieve this important area of reform.

Lesbians and Gay men are still not equal before the law

At the federal level, lesbians and gay men are still not treated the same as heterosexuals. Whilst most states have adopted legislation that recognises same-sex de facto relationships as the same as heterosexual de facto relationships, no such legislation exists at a federal level. The lack of legal recognition has a real and daily impact on the lives of thousands of gay and lesbian Australians. In the federal legislative areas of superannuation, insurance, social security, immigration and taxation, the status of “spouse” is defined as heterosexual only, excluding same-sex couples from the rights and obligations held by heterosexual couples.

Superannuation

In 2004, the Howard Government passed the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act*, which extended the definition of dependant in a number of laws dealing with superannuation. The inclusion of the term “interdependency relationship” means that same-sex de facto relationships may now fall within the definition of dependent in these pieces of legislation. However, the legislation did not amend the laws that cover the superannuation of government and public sector employees, as well as military personnel. As a result some lesbians and gay men, and their children, may be excluded from superannuation entitlements, as these laws still do not recognise them as dependants.

The definition of dependant must be expanded to recognise same-sex relationships under the *Superannuation Act 1976*, the *Superannuation Act 1990*, and the *Military Superannuation and Benefits Act 1991*. This will ensure that the superannuation of all lesbians and gay men, which is covered under commonwealth law, is treated the same as that of heterosexuals.

Social Security

Many pensions, allowances and family payment entitlements are affected by whether the person claiming is a 'member of a couple'. The social security system is based on the premise that living costs more for a single adult person than for each member of a couple. The implications are spread across the range of social security payments.

Under the *Social Security Act 1991* (Cth) a 'member of a couple' is someone who:

- is legally married, unless 'living separately and apart on a permanent basis', or
- is not legally married but is living with a person of the opposite sex in a marriage-like' relationship as defined by the Act (s4).

This definition excludes same sex relationships. Lesbians and gay men are therefore assessed as individuals, and the income of a partner in a same sex couple is not taken into account for income or assets tests.

As a result of these exclusionary definitions of a couple under social security law, lesbians and gay men are not eligible for a number of benefits. For instance, a partner allowance cannot be paid to a lesbian or gay man whose partner is receiving the disability support pension, age pension, mature age allowance, sickness allowance, special benefit, newstart allowance, youth allowance, austudy or abstudy. Neither the widow B pension nor the widow allowance are available to lesbians, as these payments are only made to women who were in a heterosexual relationship and have been widowed, deserted or divorced. The bereavement allowance is only payable to a person whose heterosexual partner has died.

Insurance

The health insurance industry is governed under commonwealth law by the *National Health Act 1953*, and Medibank Private is regulated by the *Health Insurance Commission Act 1973*. It is standard industry practice for health insurers to offer discounted cover for families. Under both acts, it is left open to the insurers to define what "family" means. Whilst some private health insurers do recognise lesbian and gay families for this purpose, the law does not protect same-sex families from discrimination in regards to their private health insurance.

Immigration

Interdependency Visa

Australian citizens and permanent residents can sponsor their lesbian or gay partner to migrate to Australia or stay in Australia permanently (if they are already legally here) under the interdependency visa category. However only a small number of such visas

are granted each year and quotas are set annually with numbers varying depending on the whim of the government of the day.

Family Unit

When people migrate to Australia they are entitled to bring their family unit with them. The definition of family unit includes spouses and heterosexual de facto partners, but excludes lesbian or gay partners. This means that a lesbian or a gay man applying for permanent residency must come to Australia alone.

Taxation

The absence of lesbians and gay men from the definition of spouse under the *Income Tax Assessment Act 1997* (s995-1) means that same-sex couples are excluded from the income tax benefits available to heterosexual couples. It also means that lesbians and gay men who are non-biological co-parents of children will not have access to the same income tax benefits relating to their child as heterosexual parents do.

Under the *Income Tax Assessment Act 1936* the following income tax benefits are not available to same-sex couples:

- *dependent spouse rebate* (s159J)
- *housekeeper rebate* (s159L)
- *child-housekeeper rebate* (s159J)
- *parent rebate* (s159J)
- *superannuation rebate* (s159T-159TC)
- *medical expenses rebate* (s159P)

For other benefits, heterosexual couples are given concessional rates in determining their eligibility. The same does not apply for same-sex couples. These benefits include:

- *pensioner rebate* (s160AAA)
- *low-income aged person's rebate* (s160AAA)
- *medical expenses rebate* (s159P)

The eligibility of a taxpayer for payment of the *Medicare Levy* is decreased if they have a dependant spouse. This option is not available for lesbians and gay men in de facto relationships, as the law does not recognise a same-sex partner as a spouse.

Anti-discrimination Legislation

Federal anti-discrimination legislation prohibits discrimination on several grounds, including sex, race, ethnicity, marital status and disability. This legislation has proven to be a positive tool in promoting equality, however there is no such protection for lesbians and gay men.

Legislation is needed because:

- Research shows high levels of workplace discrimination, refusal of services and other forms of discrimination. Violence and harassment is common in schools and elsewhere.
- State coverage is patchy and leads to many anomalies. For example, in NSW teacher working in a school may be covered but those working in universities have no protection.
- It is essential that Commonwealth services, in particular those relating to welfare and employment, are non-discriminatory. Also it is important that the Commonwealth, as the largest single employer in the country, is also subject to anti-discrimination law.
- Lesbian and Gay couples are not effectively covered in some states but are in others.

Legislation is consistent with Australia's international obligations. It is urgently needed as a practical matter and to send an important message that the Commonwealth Government does not support discrimination.

What needs to be done

Comprehensive reform of a number of federal laws is needed to ensure that lesbians and gay men across Australia are treated equally and fairly before the law. In particular, the NSW GLRL believes the following must be done:

1. A full audit of Commonwealth Legislation that deals with issues specific to lesbians and gay men, identifying areas of discrimination and inequality.
2. An expansion of the definition of "spouse" under all Commonwealth legislation to include the partner of someone living in a same-sex relationship.
3. In particular, reform in superannuation, taxation, immigration, social security and insurance law must take place to ensure that lesbians and gay men are not treated unequally in these important areas of daily life.
4. The enactment of anti-discrimination legislation that deals specifically with discrimination on the basis of a person's actual or perceived homosexuality.

Further Information

For further information on any of the issues raised in this report please feel free to contact David Scamell on 0433284929 or Julie McConnell on 0403791944.