

HEREOC

Same-Sex: Same Entitlements

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

Submission by:

Dr Samantha Hardy

Lecturer, Faculty of Law, University of Tasmania

Dr Sarah Middleton

Lecturer, Faculty of Law, Monash University

Dr Lisa Butler

Lecturer, Faculty of Law, University of Tasmania

May 2006



MONASH University

1 Introduction

On 3 April 2006 the Australian Human Rights and Equal Opportunity Commission launched 'Same-Sex: Same Entitlements', a National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits. The Inquiry will consider Federal, State and Territory laws including, but not limited to, those dealing with the following issues:

1. Workplace leave entitlements;
2. Social security benefits;
3. Tax concessions;
4. Medicare and the Pharmaceutical Benefits Scheme;
5. Superannuation entitlements;
6. Workers' Compensation;
7. Veteran's pensions and entitlements;
8. Parliamentary entitlements;
9. Judicial pensions;
10. Inheritance.

The Inquiry also intends to describe the impact of laws on same-sex couples, and any children of same-sex couples. It will also make recommendations about what needs to be done to eliminate any discrimination. As the Inquiry Discussion paper points out, the Inquiry is more concerned about the practical impact of laws on the daily lives of same-sex couples, rather than the issue of marriage between same-sex partners.

The Terms of Reference for the Inquiry are to inquire into laws regarding financial and employment-related entitlements and benefits to consider the impact of those laws on:

- (a) The equal enjoyment of human rights by people who are, or have been, a member of a same-sex couple and any children of a same-sex couple; and
- (b) Equality of opportunity and treatment in employment or occupation for people who are, or have been, a member of a same-sex couple.

The Inquiry has encouraged submissions that provide:

- (a) Information and analysis about State and Territory laws which discriminate against same-sex couples, and any children of same-sex couples, in the context of financial and work-related benefits and entitlements;
- (b) Examples of the impact that discriminatory State and Territory laws have had on the lives of same-sex couples and any children of same-sex couples;
- (c) Suggestions about how to rectify the discriminatory aspects of the State and Territory laws.

This submission addresses the terms of reference from a Tasmanian perspective, not only describing the current Tasmanian position but explaining the historical development of present day laws. The submission shows that, through an exhaustive process of Parliamentary inquiry and public consultation, previous systemic discrimination against those in same-sex relationship has been rectified. The submission concludes that in relation to financial and employment benefits and entitlements, Tasmanian law now provides equal enjoyment of human rights and equality of opportunity and treatment to *all* couples regardless of sexual orientation.

2 Tasmanian Legislative History on Same-Sex Rights

While de facto relationships have been legally recognised in Tasmania for various purposes for some time now,¹ legal recognition of same-sex relationships has been only a recent phenomenon. Up until 2003 legislative reform had been achieved on a piecemeal basis only. For example, in 1993 Tasmania enacted the *HIV/AIDS Preventative Measures Act 1993* (Tas) which was one of the first pieces of legislation in Australia to include same-sex partners within the definition of 'spouse'. In 1997 the Tasmanian legislature repealed the laws that had criminalized all consensual sex acts between men. In 2000,

¹ Tasmania appears to have been the first common law country in the world to give legal recognition to de facto relationships when it introduced an Act of Council in 1837 enabling a de facto wife to claim maintenance from her de facto husband (8 Will IV No 9). See S Middleton, 'Cruelty Against Concubines: Maintenance for De Facto Wives in Tasmania' (1999) 13 *Australian Journal of Family Law* 140. The much later enactment of the *De Facto Relationships Act 1999* (Tas) saw de facto couples afforded virtually the same financial rights as married couples upon the breakdown of the relationship. See S Middleton, 'De Facto Relationships Bill 1999 (Tas)' (1999) 13 *Australian Journal of Family Law* 194.

the Bacon Labor Government changed the regulations governing the State Retirement Benefits Fund to explicitly recognise same sex relationships.

There had also been some non-legislative reform. For example, following the Port Arthur massacre compensation was paid to the bereaved male partner of one of the men killed by Martin Bryant. The sum was equivalent to that received by bereaved heterosexual partners. The rights of same-sex partners in cases of bereavement was further extended by a decision of the Tasmanian Industrial Commission allowing some health workers to take leave upon the death of a same-sex partner, family member of a de facto couple, or a close member of the same household.² Moreover, in 1999 the Tasmanian Education Department amended its Teacher Transfer Policy to include a gender neutral definition of partner for the purposes of relocation and transfer of benefits and allowances. However, these non-legislative reforms were equally ad hoc and so in most areas same-sex couples were not afforded the same legal protection and entitlements of their heterosexual counterparts.

In the latter half of the 1990s, this inadequate legal recognition and protection of same-sex couples became the subject of ongoing Parliamentary inquiries aimed at legislative reform. This process began in 1998 when the *Significant Personal Relationships (No.2) Bill 1998 (Tas)* (the 'SPRB') was tabled in Parliament by the Tasmanian Greens and subsequently referred to the House of Assembly Select Committee on Community Development.³ The Bill was substantially the same as the Bill introduced in the NSW Parliament by Clover Moore in 1997. The dissolution of Parliament prior to the election curtailed this inquiry before its conclusion.

Under the new Parliament, the House of Assembly Community Development Committee was re-established with all new membership. The Committee received a reference from the Attorney-General to inquire into the need for the legal recognition of significant personal relationships. The SPRB was not the focus of this inquiry. The Bill was however forwarded to the Committee by the Tasmanian Greens as part of their submission.

² However, this right was limited in scope in that it only covered private hospitals, medical diagnostic services, medical practitioners and dentists' surgeries in Tasmania.

³ See for discussion S Middleton and M Otlowski, 'De Facto and Other Significant Relationships—Possible Tasmanian Directions for Reform' (1998) 13(1) *Australian Family Lawyer* 25.

The Committee did not complete its inquiry before it was dissolved once again. The dissolution of the Committee this time was as part of the ongoing reform of Parliament as recommended by the Joint Select Committee on the Working Arrangements of Parliament. In its place a Joint Standing Committee with equal membership from both Houses was established.

In May 2001 this Committee then received a new reference from the Attorney-General to continue the inquiry into the need for the legal recognition of significant personal relationships in Tasmania. The Committee was to investigate issues associated with the legal recognition of significant personal relationships, including but not limited to the inclusion of same sex relationships in the *De Facto Relationships Act 1999* (Tas).⁴ Deliberations were also to include, but not be limited to, the legal status of significant personal relationships with respect to their impact upon:

- Financial issues including property division and maintenance after relationship breakdown;
- Employment entitlements and benefits, for example:- Superannuation, Industrial awards, etc;
- Succession and intestacy legislation;
- Rights as next of kin including circumstances of illness or death;
- Statutory compensation schemes, for example:- *Fatal Accidents Act 1934* (Tas), *Workers Rehabilitation and Compensation Act 1988* (Tas), *Motor Accidents (Liability and Compensation) Act 1973* (Tas), etc; and
- Any other relevant matter.

⁴ Under this legislation which was enacted in 1999, a ‘de facto relationship’ was defined as ‘the relationship between a man and a woman, who although not legally married to each other, live together on a genuine domestic basis as husband and wife’ (s 3) This definition limited the application of this statutory regime to relationships closely resembling marriage and left a range of relationships beyond the scope of the reforms, including same-sex relationships and other non-marriage-like relationships. The Tasmanian legislature did not attempt to justify the exclusion of these other categories of relationship. Instead, it stressed the need for immediate de facto relationships reform and left the issue of wider recognition of ‘significant personal relationships’ for future consideration.

The term 'significant personal relationship' was not defined for the purposes of the terms of reference. It is a term taken from the SPRB which defined it as a relationship other than a marriage, 'in which the parties mutually acknowledge their emotional interdependency, or the fellowship and support that each provides to the other, or both, and believe that the relationship will continue and are mutually committed to the relationship continuing'.⁵

The Committee publicly advertised the inquiry and received 155 written public submissions. It also took oral evidence from individuals and groups including the Anti-Discrimination Commissioner, the Law Society of Tasmania, the Retirement Benefits Fund, the Tasmanian Gay and Lesbian Rights Group, the Carers Association of Tasmania, the Tasmanian Trades and Labour Council and the Department of Justice. Most of the submissions focused on same-sex relationships, however there were some submissions addressing the concerns of people in a broader range of relationships, including those between carers and patients.

On 19 December 2001 the Committee released its report.⁶ The Committee found that many aspects of Tasmanian law discriminated against people in non-traditional (or non-marriage-like) significant personal relationships. It recommended that there be statutory reform to redress this situation, and concluded that the most appropriate method for the implementation of such reform was by amending the *De Facto Relationships Act* to accommodate a broader range of relationships.

The Committee, in its report, made various findings. For the purposes of the present discussion, the most relevant findings are as follows:

- Under Tasmanian law significant personal relationships, other than marriage and de facto relationships between heterosexual partners, were not recognised.⁷

⁵ Cl 5(1). While the term 'significant personal relationship' is wide enough to encompass heterosexual de facto relationships, in view of the legal recognition already afforded to these relationships, the Committee was concerned only with legal deficiencies relating to same-sex couples and other non-traditional significant personal relationships.

⁶ Parliament of Tasmania, Joint Standing Committee on Community Development, *Report on the Legal Recognition of Significant Personal Relationships*, Hobart, December 2001. See for discussion S Middleton and S Hardy, 'Legal Recognition of Significant Personal Relationships in Tasmania' (2001) 20 *University of Tasmania Law Review*, 159.

⁷ Parliament of Tasmania, above n 6 p 9.

- Tasmanian statutes that regulated relationships generally did not extend to non-traditional relationships because the Acts only attached rights to people who fall within narrow definitions of ‘spouse’ and ‘de facto partner’.⁸
- This differential treatment seriously disadvantaged people in non-recognised relationships as they shared many of the difficulties faced by married and de facto couples without having the benefit of equivalent legal protection.⁹
- The denial of legal recognition to non-traditional relationships created unjustifiable hardship and expense, as claims for entitlements that would automatically flow to married couples or de facto partners had to be fought for in court under the general law with no certainty of outcome. Further, these actions often needed to be taken in times of crisis, such as the death of a partner, or the breakdown of a relationship.¹⁰

Given the inequity caused by the state of the law at that time, and in view of increasing community acceptance of non-traditional relationships, the Committee perceived a clear need for legislative reform. The Committee’s position was strengthened having regard to Australia’s obligations under international law, human rights laws, the principle of equality before the law and anti-discrimination laws.

The particular areas identified as most in need of reform included property disputes, stamp duty, superannuation, employment, succession and intestacy, rights of next of kin and statutory compensation schemes. The difficulties identified with each of these areas are briefly discussed below.

(i) *Property disputes*

The Committee noted that one of the most pressing needs for reform stemmed from the lack of a mechanism to provide a just and equitable settlement of property disputes between parties to non-traditional relationships.¹¹ In particular, a partner to a non-traditional relationship did not have the protection otherwise afforded to married

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid, p 6.

¹¹ Ibid, p 26.

and de facto couples under the *Family Law Act 1975* (Cth)¹² and the *De Facto Relationships Act* respectively. Instead, such partners could seek redress only through the general law, which could be time consuming, costly and unpredictable in outcome. Moreover, common law and equitable remedies treated the individuals concerned as if they were strangers and not parties to an intimate relationship. Accordingly, matters taken into account in determining the property entitlements of married or de facto couples, such as contributions to the welfare of the family and the respective future financial circumstances of the parties, were irrelevant.

(ii) *Stamp duty*

The Committee identified that partners to non-traditional relationships did not have the stamp duty exemptions granted to ‘parties to a marriage’ and ‘de facto partners’ under the *Duties Act 2001* (Tas)¹³ on the transfer of property between them during their relationship.¹⁴ Moreover, unlike their married and de facto counterparts, partners to non-traditional relationships were not exempted from stamp duty if, by order of a court, property is transferred between them after the breakdown of their relationship.¹⁵

(iii) *Superannuation*

The Committee recognised that same-sex couples contributed to superannuation schemes in the same way as their heterosexual counterparts, but were discriminated against in the allocation of benefits.¹⁶ In particular, a same-sex partner, or partner to

¹² Section 79 of the *Family Law Act* gives the Family Court power to make orders altering the interests of ‘parties to a marriage’ in their property.

¹³ Sections 56 and 57. Section 3 of the Act defined a de facto relationship to mean ‘the relationship between a man and a woman who, although not legally married to each other, live together on a genuine domestic basis as husband and wife’.

¹⁴ Parliament of Tasmania, above, n 6, p 28.

¹⁵ Compare *Family Law Act*, s 90(1) and *De Facto Relationships Act*, s 50.

¹⁶ Parliament of Tasmania, above, n 6, pp 28-32. In Tasmania, those people employed by the State were entitled to superannuation and associated benefits pursuant to the superannuation schemes established by the following Acts: *Governor of Tasmania Act 1982* (Tas); *Judges’ Contributory Pensions Act 1968* (Tas); *Parliamentary Retiring Benefits Act 1985* (Tas); *Parliamentary Superannuation Act 1973* (Tas); *Parliamentary Salaries, Superannuation and Allowances Act 1973* (Tas); *Retirement Benefits Act 1993* (Tas); and *Solicitor-General Act 1983* (Tas). All other people in Tasmania were subject to the Commonwealth superannuation regime, over which the State parliament had no jurisdiction. See Human Rights and Equal Opportunity Commission, *Superannuation Entitlements of Same-Sex Couples*, Report of Examination of Federal Legislation, HRC Report No7, 1999.

some other non-traditional relationship, had no automatic entitlement to death benefits, even if he or she was the nominated beneficiary.¹⁷

(iv) *Employment*

The Committee identified a number of employment related benefits that were often provided to spouses in married and de facto relationships, but to which partners to non-traditional relationships did not have access.¹⁸ These included travel allowances for an accompanying spouse, removal costs upon transfer, health insurance and payment of school fees. Other general entitlements such as carer's, bereavement and parental leave were also identified as sometimes difficult to obtain by partners to non-traditional relationships. For example, under the *State Service Regulations* an employee could be granted special leave of absence in the event of the serious illness of a relative of the employee. 'Relative' was defined as:

- (a) *the husband or wife of the employee; and*
- (b) *a person with whom the employee has cohabited for substantially the whole of the period of 12 months immediately preceding that person's illness or death; and*
- (c) *the parent or step-parent of the employee; and*
- (d) *the father-in-law or mother-in-law of the employee; and*
- (e) *a child or stepchild of the employee; and*
- (f) *a brother or sister, or stepbrother or stepsister, of the employee; and*
- (g) *a grandparent of the employee.*

If the person who was seriously ill did not fit within one of the categories of 'traditional' family members, the criteria on which the status of relative was granted must be that of cohabitation. It would, however, have been more appropriate for the status to be based on criteria relevant to the benefit being granted, such as a close

¹⁷ The relevant schemes generally provided for automatic payment of death benefits to a 'spouse'. The definition of spouse included a de facto spouse. However, the definition of de facto spouse was limited to heterosexual relationships.

¹⁸ Parliament of Tasmania, above n 6, p 17.

emotional relationship. Moreover, as people who fit within the ‘traditional’ categories do not have to show the additional criteria of cohabitation, this resulted in discrimination against people in same-sex and other non-traditional significant personal relationships.

The Tasmanian *Anti-Discrimination Act* 1988 did not alleviate these kinds of difficulties in that, although it prohibited discrimination in employment, the provisions relating to discrimination based on marital status and family responsibilities only related to heterosexual partners and traditional family members.¹⁹

(v) *Succession and Intestacy*

The Committee reviewed the *Testator’s Family Maintenance Act* 1912 (Tas) and found that the Act excluded same sex partners as eligible claimants for family provision and in cases of intestacy.²⁰ Instead, partners to non-traditional relationships were required to meet onerous evidentiary requirements to establish dependency irrespective of their relationship with the deceased. The intestacy rules set out in the *Administration and Probate Act* 1935 (Tas) similarly excluded same sex partners.²¹

(vi) *Rights of next of kin*

The Committee expressed concern over the limitations imposed upon non-traditional partners in situations involving the illness or death of their partner.²² The Committee

¹⁹ See the former definitions of ‘de facto spouse’, ‘family responsibilities’ and ‘immediate family member’ in s 3 of the Act.

²⁰ Section 3A defined eligible applicants as: the widow, children or parents of the deceased person; a person who was formerly married to the deceased person and who was being maintained by the deceased; and a person who was a de facto spouse of the deceased person. In s 2, ‘de facto spouse’ was defined as a person ‘(a) who cohabited with another person of the opposite sex as the spouse of the other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and (b) who was principally dependent on that other person for financial support at the time of death of that other person’.

²¹ Section 44 provided that estates valued at less than \$50,000 go to the deceased’s children, husband or wife, de facto husband or wife, parents, brothers and sisters, grandparents, uncles and aunts and next-of-kin. Section 44(9) restricted the term ‘de facto relationship’ to that between a man and a woman who, although not legally married to each other, live together as husband and wife on a genuine domestic basis.

²² Parliament of Tasmania, above n 6, pp 39-41.

found that partners to non-traditional relationships could be denied visitation rights to their partner in times of medical emergencies because hospital policy generally restricted access to ‘close family’ and was usually determined on the basis of marital or blood ties. Furthermore, partners to non-traditional relationships were not always given the right to make decisions for their incapacitated partner, and could be excluded from the right to make decisions on behalf of a deceased partner in matters concerning organ donation and autopsies.²³ The Committee acknowledged that these difficulties could, to a certain extent, be avoided by a partner making specific provision for these kinds of events in documents such as enduring guardianships and advanced medical directives. However, it concluded that the right to equal treatment should not be contingent upon such documents having been prepared in foresight.

(vii) *Statutory compensation schemes*

The Committee noted that statutory compensation schemes generally represent the community’s interest in protecting families and dependents.²⁴ In Tasmania the *Fatal Accidents Act 1934*,²⁵ the *Workers Rehabilitation and Compensation Act 1988*²⁶ and the *Motor Accidents (Liability and Compensation) Act 1973*²⁷ provided compensation to the spouse or de facto partner of a person who is killed or injured in their work place or by other misadventure. Unlike their married or de facto counterparts, partners

²³ A number of Tasmanian Acts related to these issues, such as the *Guardianship and Administration Act 1995*, the *Mental Health Act 1963*, the *Alcohol and Drug Dependency Act 1968*, and the *Cremation Regulations 1999*. Generally, these Acts give decision making rights to people in order of priority of their relationship on a ‘next of kin’ scale. The person with the highest priority was the spouse, and then other ‘traditional’ family members, followed by people in dependency or other close relationships. What this meant was that same-sex partners, excluded from the definition of spouse or de facto, had to establish that they fell within another category such as ‘a close friend’ and which was generally lower on the priority list.

²⁴ Parliament of Tasmania, above n 6, pp 41-3.

²⁵ Section 5 provides that actions may be taken by ‘members of the family’ of the person killed by accident. Section 3 defined a ‘member of the family’ to mean the deceased person’s spouse, de facto spouse, parent, stepparent, grandparent, child, stepchild, grandchild, brother, sister, half-brother or half-sister. The term ‘de facto spouse’ was defined as a person of the ‘opposite sex’ to the deceased person.

²⁶ Definitions of family member and de facto spouse were found in ss 3 and 68A and were substantially the same as those in the *Fatal Accidents Act 1934* (see above, n 25).

²⁷ Sections 1 and 7 of Schedule 1 of the *Motor Accidents (Liabilities and Compensation) Regulations 2000* defined ‘de facto relationship’ and ‘de facto spouse’ as being limited to partners of the opposite sex.

to non-traditional relationships had no automatic entitlement to such compensation. Instead they were required to prove dependence, often through expensive litigation.

3 Legislative Reform after the Tasmanian Inquiry

In 2003 the Tasmanian Parliament passed the *Relationships Act 2003* (Tas) and the *Relationships (Consequential Amendment) Act 2003* (Tas). This package of reforms was directed at removing the discrimination against same-sex couples in Tasmanian law that had been identified by the Joint Stranding Committee on Community Development in its 2001 Report.

The *Relationships Act* repealed and replaced the *De Facto Relationships Act*.²⁸ It regulates ‘personal relationships’, which may be either a ‘significant relationship’ or a ‘caring relationship’.²⁹ A ‘significant relationship’ is a relationship between two adult persons who have a relationship as a couple and who are not married to one another or related by family.³⁰ The Act provides for a register of significant relationships, and makes proof of registration equivalent to proof of the relationship.³¹ As at as at 30th March 2005 46 couples had registered a significant relationship and of these 40 were same-sex couples (22 males and 18 female). Part 5 of the Act allows a person in a significant relationship to institute proceedings for financial adjustment and maintenance from their partner under certain circumstances. This provides those in same-sex relationships with the same protection previously only afforded to de facto heterosexual couples under the previous *De Facto Relationships Act*. Notably, this protection equates to the rights conferred upon married partners by the *Family Law Act 1975* (Cth).

The *Relationship (Consequential Amendment) Act* made amendments to a host of Tasmanian statutes aimed at ensuring equitable treatment of those in same-sex relationship vis-à-vis their heterosexual counterparts.

²⁸ Section 74 *Relationships Act 2003* (Tas).

²⁹ Section 6.

³⁰ Section 4(1) *Relationships Act 2003* (Tas).

³¹ Section 4(2) *Relationships Act 2003* (Tas).

The *Duties Act 2001* (Tas) was amended to include reference to ‘personal relationship’ as defined by the *Relationship Act*, thus removing the discrimination relating to stamp duty exemptions.

State legislation that previously discriminated against same-sex couples in the area of superannuation and pension entitlements was also amended, including the *Governor of Tasmania Act 1982* (Tas), the *Judges’ Contributory Pensions Act 1968* (Tas), the *Retirement Benefits Act 1993* (Tas), the *Retirement Benefits Regulations 2005* (Tas), the *Parliamentary Salaries, Superannuation and Allowances Act 1973* (Tas) and the *Solicitor-General Act 1983* (Tas), all of which now define ‘spouse’ as including the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act*. The *Parliamentary Salaries, Superannuation and Allowances Act 1973* (Tas) was also amended to extend the definition of ‘surviving partner’ to include a person with whom the member was in a significant relationship, within the meaning of the *Relationships Act*.

The *State Service Regulations 2001* (Tas) have been amended to define ‘spouse’ as including the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act*. This gives equal access for employees in a same-sex relationship to special leave of absence and other employment related benefits.

Amendments to the *Anti-Discrimination Act 1998* (Tas) also now include the concept of ‘partner’ under the *Relationships Act 2003* with any reference to ‘spouse’ in the Act. This provides additional protection for those in same-sex couples from discrimination in relation to family responsibilities or parental status.

The *Testator’s Family Maintenance Act 1912* (Tas) was amended to include in s 3A as persons entitled to claim:

- (e) A person whose significant relationship, within the meaning of the *Relationships Act 2003*, with the deceased person had ceased before the date of the death of the deceased person and who was receiving or entitled to receive maintenance from the deceased person whether pursuant to an order of a court or to an agreement or otherwise.

The *Administration and Probate Act 1935* (Tas) was similarly amended so that it no longer excludes same sex partners.

An inclusive definition of the term ‘spouse’ or ‘relative’ has also been included by amendments to the following Acts affecting the rights of next of kin in Tasmania:

- *Guardianship and Administration Act 1995*;
- *Mental Health Act 1963* (Tas);
- *Alcohol and Drug Dependency Act 1968* (Tas);
- *Fatal Accidents Act 1934* (Tas);
- *Workers’ Rehabilitation and Compensation Act 1973* (Tas);

In light of these reforms, there appear to be few remaining areas of Tasmanian law that discriminate between the rights of heterosexual and same-sex partners in relation to financial and employment-related entitlements and benefits.

Other areas still in need of reform relate to same-sex parenting issues. For example, a proposed amendment to the *Status of Children Act 1974* (Tas) that would have regarded the same-sex partner of a woman undergoing a fertilization procedure as a parent of the child was omitted from the *Relationships (Consequential Amendments) Act*.³² Similarly, an amendment proposed to the *Adoption Act 1988* with respect to the requirement that the consent of both women in a same-sex relationship be obtained before either is allowed to adopt a child out, was omitted.³³ These matters are, however, beyond the scope of the current HREOC inquiry.

4 Conclusion

The *Relationships Act* and *Relationships (Consequential Amendments) Act* appear to have achieved their aims with same-sex couples being afforded, on the whole, the same legal

³² Proposed s 10C(1A).

³³ Proposed s 29(4A).

rights as their heterosexual counterparts in areas of state law. On this basis, they are to be commended.

It is, however, important to acknowledge that more may still need to be done. Removing discrimination from the face of State legislation does not necessarily mean that discrimination has been eliminated in practice. Such discrimination may arise in the way that discretions are exercised under the law, or because the laws are simply not complied with. In the latter case it can be prohibitively expensive and difficult for people to take legal action to enforce their rights, and those who suffer discrimination may well choose not to pursue redress through the legal system.

It is also important to recognize that substantive inequalities may still affect Tasmanian residents through discrimination in Commonwealth laws. Further to this, inconsistency between the laws in the various States and Territories and the Commonwealth has the potential to create uncertainty for Tasmanians who move interstate, or whose work is covered by both State and Federal legislation. In order to ensure that discrimination is minimised as much as possible, a uniform approach is required across all Australian jurisdictions.