Exposure draft
Human Rights and Anti-Discrimination Bill 2012

December 2012

Rainbow Families Council

We are a volunteer community organisation based in Victoria, Australia. We support and promote equality for 'rainbow' families (parents and prospective parents who identify as lesbian, gay, bi, transgender or intersex, and their children).

http://www.rainbowfamilies.org.au/

Introduction

The Rainbow Families Council welcomes the consolidation of anti-discrimination legislation and in particular:

- a single, simplified test for discrimination;
- the inclusion of protections against sexual orientation and gender identity discrimination;
- extension of protections against relationship discrimination to same-sex couples in any area of public life;
- recognition of discrimination on the basis of a combination of attributes; and
- coverage of discrimination and sexual harassment in any area of public life.

We support the Bill and ask the Committee to recommend it be passed this parliamentary term.

Our members are families and prospective families which include lesbian, gay, bisexual, transgender or intersex people. We promote inclusion, law reform and safe and health families. Freedom from discrimination or avenues for redress if it happens is a fundamental component of our growing confidence, resilience and happiness as rainbow families and in the best interests of our children.

Our work

Love Makes a Family was the community advocacy campaign of the Rainbow Families Council that ran from 2004 until 2010. Founded in 2004, Love Makes A Family aimed to provide a community response to the Victorian Law Reform Commission's initial consultation paper on Assisted Reproductive Technology and Adoption. The campaign was originally coordinated through the Fertility Access Rights Lobby, at that time a working group of the Victorian Gay and Lesbian Rights Lobby. At the third Rainbow Families Conference in September 2006, the interim Rainbow Families Council was created to replace Fertility Access Rights Lobby, and Love Makes a Family became the campaign of the Rainbow Families Council. The campaign for adoption law reform continues today under the banner of Love Makes A Family.

We also produce resources and information to support rainbow families, including our highly popular posters on different family structures which have been distributed to child care centres, schools and other places where families and children congregate. We organize social events for rainbow families in Melbourne, hold information stalls at LGBTI events and have held a number of Melbourne based conferences for rainbow families over the years.

Research

There is a significant body of research from Australia and overseas that has compared the outcomes for children raised in same-sex and opposite-sex parented families. The research

consistently shows that children raised in same-sex parented families do at least as well as children in opposite-sex parented families.

The following is a summary of what research tells us, with some references below:

About Children

Studies show there is no difference between the children raised by same-sex and opposite-sex parents in terms of their:

- intelligence and academic and physical competence, as measured by teachers
- emotional function, either as children or adults – in particular, adult offspring of same-sex parents show no greater incidence of stress, anxiety or depression
- psychological or behavioural development
- sexual orientation – children raised by same-sex parents are no more likely to identify as lesbian or gay in adulthood than children raised by opposite sex parents.

About Lesbian Mothers

The research shows that lesbian parents:

- tend to spend longer planning families and considering decisions about use of donors
- are equally as nurturing as heterosexual mothers.
- encourage relationships with grandparents and extended family and deliberately include male family members.
- have no higher risk of mental health problems, including stress, anxiety, depression, than heterosexual mothers.
- are almost universally honest with their children about the way they were conceived
- tend to share parenting tasks in a flexible, supportive and egalitarian way which has a positive effect on outcomes for children.

About Gay Fathers

There is less research on outcomes for children raised by gay men, but what there is tells us that:

- children of gay parents show no difference in emotional, psychological and behavioural development or in social activities, problem solving ability and levels of autonomy to that of children raised by opposite-sex parents
- the sexual orientation of children is no different to that of children in opposite-sex parented families
- gay fathers tend to be more egalitarian in the division of parenting roles and responsibilities than opposite sex parents

About Relationships and Bullying

- Children of same-sex parented families often form positive relationships with their peers and extended family

- In general, children of same-sex parents are no more stigmatised than other children however, there is evidence to suggest some children experience peer group hostility.
- A number of studies have reported bullying of children of same-sex parents
- Parents report a using range of methods to deal with bullying and overcome a homophobic environment.
- Despite a significant level of bullying, children in same-sex families develop effective peer relationships and have the same levels of emotional functioning.
- Children raised in same-sex families tend to demonstrate a greater acceptance of difference generally. Teachers report these children may be more tolerant, broad-minded and empathetic.

References

This research summary was based on the following literature reviews and studies:

- the Victorian Law Reform Commission Occasional Paper Outcomes for children born of Assisted Reproductive Technologies in a Diverse Range of Families, written by Dr Ruth McNair (2004).
- the Australian Psychological Society's paper Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families A Literature Review prepared for The Australian Psychological Society by Elizabeth Short, Damien W. Riggs, Amaryll Perlesz, Rhonda Brown and Graeme Kane (2007) See http://www.psychology.org.au/Assets/Files/LGBT-Families-Lit-Review.pdf
- Guasp, A (2010), Different families: The experiences of children with lesbian and gay parents, Centre for Family Research, University of Cambridge. Available on the Stonewall website http://www.stonewall.org.uk/what_we_do/research_and_policy/4171.asp
- Gartrell, N and Bos, H (2010), 'US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents', Pediatrics, published online June 7, 2010. See http://pediatrics.aappublications.org/content/early/2010/06/07/peds.2009-3153

Response to the Draft Bill

Importance of Commonwealth recognition

The Rainbow Families Council welcomes the move to include the grounds of sexual orientation and gender identity in federal anti-discrimination legislation. Inclusion of these grounds in state legislation has been an important development in human rights protection for our communities. We recognise that anti-discrimination protection has contributed to cultural change and better acceptance of LGBTI people and their families, so extending it to matters where Commonwealth law applies is an important next step. The breadth of the application of these protections, to all aspects of public life is also applauded. We support the definitions of 'sexual orientation' and 'relationship status'. We do however regret that a wider definition of gender identity has not been included, and that there is no explicit protection on the ground of intersex.

Recommendations:

1. We recommend using the 2012 Tasmanian definition of "Gender Identity" (which is inclusive of Gender Expression/ Presentation.

2. We recommend that "Intersex" be also included as a protected attribute, using the 2012 Tasmanian Definition.

3. We Recommend a Commissioner responsible for Sexual Orientation and Gender Identity discrimination be appointed.

Religious Exceptions

Unfortunately, a common feature of resistance to rights for LGBTI people in Australia has been discomfort or downright antagonism to the idea that we will have children in our care. This has emerged in marriage equality debates and in reform to parenting legislation at the State level. Very often, these views are tied to statements of religious affiliation or belief. But is it really about religion? Fundamentally, it appears to be expressed more in terms of prejudice, ignorance and fear. We are therefore disappointed that no changes to the broad exceptions available to faith based organisations have been proposed in the legislation.

We understand the importance of balancing the right to expression and nurturance of religious and spiritual doctrines and principles. However, these rights need to be balanced against the rights of minority groups to engage in all aspects of society without fear of prejudice, barriers to accessing mainstream services or outright exclusion. The language of exclusion, fear, misunderstanding and judgementalism in some of the submissions already made to this inquiry make this point very well. If these views extend beyond individuals to organisations involved in aspects of public life, then they should not be permitted to rely on religious doctrine or beliefs to nurture discriminatory ideas and practices.

The faith based organisations and groups who have embraced the notion of human rights and acceptance, have challenged themselves to distinguish between doctrine and prejudicial

or ignorant views about minority groups. All religious groups should be encouraged and supported to do this. If this is unpalatable, then we support the call for a more transparent system of exceptions, such as through applications for temporary exception to the Australian Human Rights Commission and the requirement for organisations seeking to discriminate on the grounds of doctrine to provide publicly accessible versions of the relevant aspects of their doctrine to justify this. We also note that in Tasmania, where despite a quite recent history of state supported discrimination and vocal anti-LGBTI sentiment from some faith based organisations, their anti-discrimination legislation does not let religious organisations off the hook. Neither should the Commonwealth legislation.

Services provided by faith based organisations

The movement to understand and better respond to the needs of older LGBTI Australians is very important, and we agree with the provisions in the draft bill that aged care services not be allowed to make exceptions.

On what public policy grounds are the religious exemptions retained for other service providing religious bodies? Rainbow families access a huge range of education, health, mediation and other services as their children grow. Some children and parents report experiences of peer hostility or discrimination from organisations because of their family structure. When families are accessing support or mediation services during times of family stress, the last thing they want is to have to justify their choices about having children with a same sex partner or be excluded on the arbitrary basis of their alternative family structure.

Recently family dispute resolution centres funded by the Commonwealth government have begun consulting rainbow families to find out how they can make their services more accessible and relevant to our communities. We hope that this legislation will support other Commonwealth government agencies and funded services to continue this engagement with our families, resulting in equitable treatment and preventing or responding to discriminatory practices where they occur. However, if some agencies that happen to be run by faith based organisations are exempt, then families in stress may face discrimination from service providers and be unable to complain about it. Rainbow families have experienced significant changes in their legal rights and responsibilities in recent years and increasingly expect (and indeed often receive) welcoming, inclusive and appropriate help from health and welfare services. They will be outraged when others providing similar services are able to justify their poor approach by failing to provide a service to rainbow families or refusing to employ a rainbow family member.

Recommendations

1. All Commonwealth government funded services be restricted from discriminating, including religious organisations.
2. All Commonwealth government funded aged care services including religious organisations not be allowed to discriminate against employees.
3. Religious organisations wanting to discriminate must apply for temporary exception to the Australian Human Rights Commission and publish their position on relevant position descriptions, websites and in any marketing materials about the service.

4. Religious organisations wanting to discriminate must provide publicly accessible versions of the relevant aspects of their doctrine relied on to justify discrimination.