



CHAPTER 2: *Methodology*

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2.1 What is this chapter about?

This chapter describes how the Inquiry gathered information and community views about discrimination against same-sex couples and their children. In particular, the chapter addresses the following questions:

- What are the Inquiry's Terms of Reference?
- What discussion and research papers did the Inquiry release?
- How did the Inquiry gather written submissions?
- How else did the Inquiry hear community views?
- What information did the federal government provide to the Inquiry?
- What are the Inquiry's next steps?

2.2 What are the Inquiry's Terms of Reference?

On 3 April 2006, the Inquiry was launched with the following Terms of Reference:

1. The President, Mr John William von Doussa QC, and the Human Rights Commissioner, Mr Graeme Gordon Innes AM, will conduct an inquiry (the Inquiry), on behalf of the Human Rights and Equal Opportunity Commission, 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.
2. The Inquiry's goals are to:
 - a. ascertain whether relevant Commonwealth laws may be or are inconsistent with or contrary to any human right of people who are, or have been, a member of a same-sex couple and any children of a same-sex couple;
 - b. ascertain whether relevant Commonwealth laws may have the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation of people who are, or have been, a member of a same-sex couple;
 - c. consider what effect relevant State and Territory laws have on the human rights of people who are, or have been, a member of a same-sex couple and any children of a same-sex couple;
 - d. consider what effect relevant State and Territory laws have on the equality of opportunity and treatment in employment or occupation of people who are, or have been, a member of a same-sex couple.
3. The President and the Human Rights Commissioner will report, on behalf of the Commission, to the Minister the results of the Inquiry. That report may include recommendations as to action that should be taken by the Commonwealth and/or laws that should be made by the Parliament, in order to:

- a. protect and promote the equal enjoyment of human rights;
 - b. protect and promote equality of opportunity and treatment in employment; and
 - c. ensure that Australia is in compliance with the provisions of the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child* and the *Discrimination (Employment and Occupation) Convention 1958*.
4. For the purposes of the Inquiry, ‘laws regarding financial and employment-related entitlements and benefits’ shall be taken to include, but not be limited to, laws relating to taxation, social security, Medicare, concessions available under the Pharmaceutical Benefits Scheme, conditions of employment such as leave entitlements, compensation for workplace injuries, pensions, retirement benefits, superannuation, benefits payable to veterans of the Australian armed forces and intestacy.

2.3 What discussion and research papers did the Inquiry release?

The Inquiry released several discussion papers as a way to encourage community responses and elicit further information from experts in the field.

2.3.1 Discussion Paper I

When the Inquiry was launched, the Human Rights and Equal Opportunity Commission (HREOC) released Discussion Paper I. The paper presented the Inquiry’s initial research into the area of discrimination against same-sex couples. It set the background for the Inquiry’s ongoing research.

Discussion Paper I was designed to focus attention on possible areas of financial and work-related discrimination in Commonwealth, and some state and territory, laws.

The paper provided some background information on the Inquiry. It outlined the human rights protections that are relevant to people in same-sex relationships and their children under the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Rights of the Child* (CRC) and the *Discrimination (Employment and Occupation) Convention* (ILO 111).

The paper covered the following issues:

- workplace leave and other entitlements
- social security benefits
- tax concessions
- health concessions
- superannuation entitlements
- workers’ compensation under Comcare
- pensions and compensation for veterans
- travel entitlements for parliamentarians
- judicial pensions.

It also included the Terms of Reference for the Inquiry and a Guide for Submissions.

Discussion Paper I is available on the Inquiry website at <http://www.humanrights.gov.au/samesex/>.

2.3.2 Preliminary List of Legislation

The Inquiry commissioned independent research to identify a Preliminary List of Commonwealth laws that discriminate against same-sex couples. The research was conducted by Professor Jenni Millbank from the University of Sydney.

The Preliminary List identified more than 60 federal laws which currently discriminate against same-sex couples and their children.

The Inquiry published the Preliminary List in September 2006 in order to prompt further consideration and discussion of discrimination in federal legislation. It also requested comments, additions or amendments to the list.

The Preliminary List is available on the Inquiry website at <http://www.humanrights.gov.au/samesex/>.

2.3.3 Detailed Research Paper

In addition to a list of legislation, the Inquiry commissioned Professor Millbank to conduct more detailed research on federal laws that discriminate against same-sex couples and their children.

The Inquiry published the results as a Research Paper on 28 September 2006. The Research Paper, called *Areas of Federal Law that Exclude Same-Sex Couples and their Children*, examined a wide range of federal statutes and regulations.

The views expressed in the Research Paper were those of Professor Millbank and not those of the Inquiry. However, the Inquiry has used the research to develop its own findings and recommendations.

The Research Paper is available on the Inquiry website at <http://www.humanrights.gov.au/samesex/>.

2.3.4 Discussion Paper II

Discussion Paper II aimed to provide a short summary of the areas of discrimination in federal law, according to the Inquiry's updated research.

The Discussion Paper is structured in a similar way to the Research Paper by Professor Millbank, so readers can cross-reference between them.

The Inquiry used Discussion Paper II to seek further input from community groups, government and individuals.

Discussion Paper II is available on the Inquiry website at <http://www.humanrights.gov.au/samesex/>.

2.4 How did the Inquiry gather written submissions?

The Inquiry made a substantial effort to ensure that all interested individuals and organisations were able to contribute their views.

The Inquiry invited submissions through the media, the internet and through a broad range of email lists. Submissions could be made in any format, including email, floppy disk, hard copy, audio tape, video tape, CD or DVD.

In total, the Inquiry received submissions from 680 organisations and individuals. A full list of submissions can be found in Appendix 3 to this report. Copies of many of the submissions can be found on the Inquiry website at: <http://www.humanrights.gov.au/samesex/submissions.html>.

The Inquiry is extremely grateful to all those who made submissions. Members of the public as well as organisations devoted considerable time, energy and expertise to this task. We are especially thankful to those individuals who were willing to share their personal experiences of discrimination under current federal, state and territory laws.

There were two phases to the submission process, as described below.

2.4.1 First Round of Submissions

The Inquiry called for public submissions on 3 April 2006, with a deadline of 2 June 2006. That date was extended to 16 June 2006 in response to a number of requests for further time. The Inquiry accepted submissions after that date at its discretion.

The Inquiry received submissions from 389 individuals and organisations as a result of this call for submissions.

Submissions were numbered as they were received.

Copies of the submissions are available on the Inquiry website at: <http://www.humanrights.gov.au/samesex/submissions.html>.

2.4.2 Second Round of Submissions

The deadline for submissions in response to the Discussion Paper II and the Research Paper was 3 November 2006. The Inquiry accepted submissions after this date at its discretion.

The Inquiry received submissions from an additional 291 individuals and organisations in this second round of submissions.

Due to resource constraints in this second round of submissions, only those from organisations were placed on the Inquiry website. However, a list of the names of individuals who made submissions is available at: <http://www.humanrights.gov.au/samesex/submissions.html>.

2.4.3 Who wrote the submissions received by the Inquiry?

Submissions came from a wide range of organisations and individuals including:

- employment bodies
- gay, lesbian, bisexual, transgender and intersex individuals and couples
- human rights, advocacy and legal bodies
- members of the public
- non-government organisations
- organisations representing gay, lesbian, bisexual, transgender and/or intersex people
- parents, friends or family members of same-sex couples
- peak bodies
- religious organisations
- state and territory government agencies
- state equal opportunity commissions
- unions
- universities and academics

2.4.4 How did the Inquiry use the submissions?

The submissions have been a vital resource to the Inquiry.

They have helped to highlight the impact of discriminatory laws on same-sex couples, their children and their families. They identify a number of laws and issues which were previously unknown to the Inquiry. They provide substance to the text of this report and guidance to the recommendations made by the Inquiry.

A large number of submissions made arguments for and against changing the law to allow marriage or civil union for same-sex couples. The debate about the most appropriate form of relationship recognition for same-sex couples is not strictly within the Inquiry's Terms of Reference. However, the Inquiry has considered the role that relationship recognition plays in accessing financial and work-related benefits in Chapter 4 on Recognising Relationships.

Some of the submissions and consultations raised other issues which were not part of the Inquiry's Terms of Reference. Where possible, these issues are discussed at the end of each relevant chapter. Chapter 17 discusses general issues of homophobia and gender identity. However, the Inquiry has not made findings or recommendations about issues outside the Inquiry's Terms of Reference.

2.5 How else did the Inquiry hear community views?

The Inquiry held seven formal public hearings and 18 community forums around Australia between 26 July 2006 and 16 November 2006.

The Inquiry also held a number of meetings with specific groups and individuals, including gay parent groups, parliamentarians and retirement groups.

The Inquiry contacted key groups and individuals in Sydney, Darwin and Townsville to try and hold specific meetings with gay and lesbian Aboriginal and Torres Strait Islander people however, unfortunately no meetings could be arranged. One person explained that this was due to cultural taboos and discrimination faced by same-sex attracted Aboriginal people both within their own community and from the wider community. This made it difficult for gay and lesbian Aboriginal people to potentially 'out' themselves by meeting with representatives from the Inquiry.

The Inquiry also made a number of attempts to meet with gay and lesbian people from Culturally and Linguistically Diverse (CALD) backgrounds. A broadcast email to CALD groups in Melbourne resulted in only one reply from one CALD group. A specific CALD forum was also arranged in Sydney. Unfortunately the forum had to be cancelled due to a lack of response. However a number of submissions were received from gay and lesbian CALD groups and individuals.

2.5.1 How did the Inquiry run the public hearings?

The primary purpose of the public hearings was to allow the Inquiry to further explore information contained in written submissions. They also provided an opportunity to:

- clarify issues raised in submissions and Inquiry research
- compare legislation relating to same-sex entitlements
- hear real life examples of the impact of same-sex discrimination
- learn about further research useful to the Inquiry.

The Inquiry is grateful to all those who contributed their time, expertise and experiences to the hearing process.

A great deal of media interest was generated by the public hearings. Many of the stories and experiences explained during the hearings were recorded in the print media, on radio and on television. This provided the general community with an opportunity to hear about the impact of discrimination on people's lives first hand. Thus making the hearings a useful community education and public awareness-raising tool.

(a) When and where did the public hearings take place?

Public hearings were held in:

Sydney	26 July 2006
Perth	9 August 2006

Adelaide	28 August 2006
Hobart	25 September 2006
Melbourne	26-27 September 2006
Brisbane	11 October 2006
Canberra	20 October 2006

The formal hearings were conducted either by the President of HREOC or the Human Rights Commissioner, assisted by Inquiry staff.

(b) *Who appeared at the public hearings?*

Overall, 32 organisations and 44 individuals appeared at the public hearings.

Organisations that attended the hearings included the state and territory based equal opportunity commissions, gay and lesbian lobby groups, legal and human rights groups, non-government organisations, universities, employer bodies and unions.

Individuals with a diverse range of experiences appeared at the hearings. They included people presenting their own independent or university research, parliamentarians and ex-parliamentarians and parent groups.

A list of witnesses who appeared at the hearings can be found in Appendix 4 to this report.

(c) *Where can you find records of the public hearings?*

Audio and written notes from the hearings are available on the Inquiry website at <http://www.humanrights.gov.au/samesex/hearings.html>.

2.5.2 How did the Inquiry run the community forums?

The main purpose of the community forums was to listen to and gather people's stories of discrimination.

The Inquiry has used the information gathered in the community forums to show how same-sex couples experience discrimination and how this impacts on their family.

(a) *When and where did the community forums take place?*

A concerted effort was made to engage with the rural and regional same-sex attracted community. People living in rural and regional areas often have different issues or experiences to those people living in metropolitan areas.

Overall 488 participants attended the community forums. Their ages ranged from the late teens to the late seventies.

Appendix 5 to this report provides details on where and when the various forums took place and how many people attended each of them.

(b) *How did the Inquiry conduct the community forums?*

The community forums were facilitated by either the President of HREOC, the Human Rights Commissioner or Inquiry staff.

Prior to each community forum participants were sent a background briefing document that summarised the purpose of the Inquiry.

Whenever possible the community forum was opened by a number of arranged speakers to ‘break the ice’. These speakers discussed their submission to the Inquiry and spoke about their personal experiences of the impact of discrimination on their lives. The forum was then opened to the floor. Many people spoke about the impact of financial and work-related discrimination on their lives and the lives of their partners, families and children. Participants also asked questions of Inquiry staff about specific aspects of the Inquiry.

(c) *What were some of the themes covered in the community forums?*

Issues covered at the forums included ageing, Medicare and health issues, social security, superannuation, tax, medical consent, powers of attorney, adoption and parental recognition, veterans’ affairs, employment and access to leave from work, and general issues of discrimination.

As with the written submissions, marriage or relationship recognition was a key issue for same-sex couples at these forums. The Commissioner, President or Inquiry staff stated at the start of each forum that the goal of the Inquiry was to focus public attention on financial and work-related discrimination over formal relationship recognition. However, the Inquiry acknowledges the importance of relationship recognition to same-sex couples.

The Inquiry appreciates the frankness of the participants and their willingness to share personal aspects of their lives. At times the stories were deeply emotional.

(d) *What did participants think about the community forums?*

Participants were provided with an evaluation form at the end of the forum.

Overall 161 evaluation forms were completed and returned to the Inquiry. However, not all people who completed the forms answered all the questions.

86% of respondents rated the forums as ‘good’ or ‘excellent’.

The aspects of the community forums which people liked included hearing about other people’s stories and listening to the wide variety of issues that people raised. Participants also liked the openness of the discussions and the respect given to the speakers. Respondents also indicated that being able to have their say and the inclusive manner of the forum was important. The facilitation skills of the Inquiry staff were also highly appreciated.

The aspect that people least liked about the forums was the focus on legal and financial issues over marriage and civil union. Other things that people did not like about the forums included: starting late, relevance of some of the stories, seating and time given to speak.

(e) Where can you find records of the community forums?

Audio (for some forums) and written notes from the community forums are available on the Inquiry website at <http://www.humanrights.gov.au/samesex/hearings.html>.

2.6 What information did the federal government provide to the Inquiry?

In June 2006, the federal Cabinet issued a direction that no federal department or agency should provide a written submission to the Inquiry. However, in July 2006 the Attorney-General indicated that the Attorney-General's Department would be open to accepting any requests for factual information.

In response to that offer, the President of HREOC wrote to the Secretary of the Attorney-General's Department, on 23 August 2006. The letter requested that the Attorney-General's Department provide copies of relevant internal policies, guidelines, instructions, directives, circulars, departmental or ministerial instructions and departmental, ministerial or tribunal decisions from 28 Commonwealth departments and agencies. The letter also requested assistance from the Attorney-General's Department to collect information from other relevant agencies.

On 18 October 2006, the Secretary of the Attorney-General's Department sent out a letter to the agencies listed in the President's letter, requesting that a response be sent directly to HREOC by 3 November 2006.

The following agencies and departments provided information to the Inquiry:

- Attorney-General's Department
- AusAID
- Australian Public Service Commission
- Defence Housing Authority
- Department of Defence
- Department of Families, Community Services and Indigenous Affairs
- Department of Finance and Administration
- Department of Foreign Affairs and Trade
- Department of Health and Ageing
- Department of Human Services
- Department of Treasury
- Department of Veterans' Affairs
- Migration Review Tribunal
- Remuneration Tribunal
- Superannuation Complaints Tribunal.

The information has been incorporated throughout this report, where relevant.

2.7 What are the Inquiry's next steps?

The publication and national launch of this final report marks the completion of the *Same-Sex: Same Entitlements Inquiry*.

However, HREOC will continue to advocate that the government implement the recommendations made in this report. HREOC is also interested to hear about additional issues facing gay and lesbian members of the community for the purposes of future projects.

