



Gay Dads Australia

a resource for gay dads and those
who are thinking of becoming dads

Not such a gay life



Fighting discrimination ... from left, Andreas Ohm and Jim Woulfe, Michelle McCormack and Lynne Martin with son Tom, Michael Burge, Maria Vidal and Susan Everingham with daughter Antonia, and Jiro Takamisawa.

Photo: *Sahlan Hayes*

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Gay rights have come a long way in the past 30 years, but state and federal laws ensure homosexual couples are treated as second-class citizens. Adele Horin writes.

BECAUSE of the 36-year age difference they had seemed an unlikely pair. Yet it had been love at first sight when Jiro Takamisawa met World War II veteran John George in Tokyo in 1984.

George impressed the younger man with his "amazing personality", his kindness, his sense of humour and his knowledge of theatre. The Australian immigration officer was sceptical of the relationship when she later approved Takamisawa's application for permanent residency in Australia.

But the relationship stood the test of time. "In the beginning I was dependent on him," Takamisawa, 48, says. "But in the last years he was dependent on me. I told him, 'I will be with you whatever happens'."

They lived together for 20 years, and Takamisawa gave up his job to care for his ailing partner in the last years of his life. After George died of heart disease in October 2004, aged 83, his grieving partner applied - on principle - for a war widow's pension. In the same situation a wife would have qualified.

Takamisawa was taken aback when the Department of Veterans Affairs granted him the pension in January last year. The only catch was the letter addressed him as "Miss". When he informed the department he was a "Mr" the pension was rescinded immediately. There was sympathy but the law did not allow it.

The passionate debate around gay marriage and civil unions has obscured the continuing discrimination against homosexual couples embedded in dozens of pieces of federal and some state legislation. From the Veterans Entitlements Act to the Workplace Relations Act, from the Income Tax Assessment Act to the National Health Act, gay couples are excluded from receiving a range of benefits available to married and de facto heterosexual couples. Definitions of the term "spouse", "partner" or "dependent" explicitly exclude people in same-sex relationships.

This can affect access to carer's leave, bereavement leave and bereavement payments, the widow's allowance, health care and pensioner concession cards, superannuation spouse contributions, "paternity" leave, and child-care rebates where the non-biological mother pays the child-care fees.

It means the couple - because of a lack of acknowledgement of their combined income or expenditure - cannot qualify for a reduced Medicare levy and other benefits that flow to families under the Pharmaceutical Benefits and Medicare Safety Net schemes. Federal public servants, defence force members, veterans, members of Parliament and judges face particular discrimination in areas such as superannuation, pensions and workers' compensation.

Stories of discrimination are pouring forth at moving public hearings the Human Rights and Equal Opportunity Commission is holding around the country. Its investigation into discrimination against people in same-sex relationships, focusing on financial and work-related entitlements, is bringing to light the extent to which gay couples are treated as second-class citizens.

Stevie Clayton, chief executive of the AIDS Council of NSW, told the Sydney hearing the impact of the discrimination was "not that we miss out on a few dollars: when you have laws that say your relationships are not as real and whole and as important as everyone else's you see yourself in that way - it leads to higher rates of depression, alcohol and drug use".

The people coming forward at the hearings - or making written submissions - are the kind that have converted staunch conservatives such as Warren Entsch, the Liberal backbencher from northern Queensland, to the cause of equal rights for same-sex couples. He has drafted a bill, to be presented to Coalition colleagues soon, to eliminate discrimination against these couples.

Thirty years after gays came out of the closet, many now have lived with their partner for two decades or more. They are federal public servants such as Brian McKinlay, 58, who wrote to the inquiry that he had been required, when he joined the Australian Public Service 30 years ago, to join the Public Sector Superannuation Scheme. "Of itself, that is no bad thing," he says. His salary is double that of his 60-year-old long-term partner "and I want to provide security for him should I die before he does".

But as the legislated definition of "eligible spouse" for the scheme excludes a person of the same sex, he cannot provide that security through superannuation death benefits. They hold all their "debts and assets in common - house, mortgage, car, bank account, furniture, insurance, etc. Superannuation is the only asset of importance that we cannot share."

John Goldbaum wrote that he is in "a same-sex de facto marriage" of 30 years. His "husband" has three biological children and "we now have seven grandchildren and they all love me and regard me as their grandfather". But they had not been eligible for a family rate for private health insurance.

"That's in the past ... We are now getting old," he wrote. And the discrimination continues. They cannot combine their expenditure in order to reach the Medicare and Pharmaceutical Benefit safety net thresholds, and pay out twice as much as their heterosexual counterparts because they each must reach the thresholds. "It's not the money ... it's the principle. It makes us second-class citizens despite the fact that we are first-class taxpayers."

Jim Woulfe is looking further ahead, to the possibility of nursing home care. Though he and Andreas Ohm, his partner of 19 years, are fit 49-year-olds, they know that without changes to the Aged Care Act they may suffer discrimination should one of them need to move into an aged-care residence. Under the act, the family home does not have to be sold to pay for the accommodation bond if a spouse or heterosexual de facto partner is still living in it. But a gay partner is not given the same protection.

Entsch, who describe himself as "fiercely heterosexual", says his bill would eliminate such discrimination by inserting where appropriate in all relevant laws the words "same sex and interdependent couples".

Friendship with gay people has opened his eyes. "I've had one fellow working for me, he's been in a gay relationship for 15 years. He bleeds when you cut him. He's a decent human being," he says. "I know people in Canberra together for 40 years. An ex-public servant who is 78 with a partner 72. If the older man dies his partner gets nothing out of Commonwealth super. I have a wonderful partner but if I broke up with her, walked down the street and met someone, lived with her six months and nominated her as my 'spouse' she would get five-eighths of my pension."

Some progress has been made in eliminating discrimination. For example, gay partners of serving military are treated as an "interdependent partner" and have their moving costs covered in transfers. As well, changes in superannuation laws in 2004 mean people in "interdependency relationships" can receive the same super benefits as married or de facto partners, but this does not apply to federal public servants, defence force personnel, or parliamentarians.

Changes to state law have put same-sex couples on an equal footing in areas such as inheritance, division of property and next-of-kin rights.

But parenting rights remain unequal. Susan Everingham and Maria Vidal, together for 13 years, have a 20-month-old daughter, Antonia. Everingham told the Sydney hearing: "I am her biological mother but my partner loves her just as much and yet our daughter's birth certificate states she has only one parent. I find that very sad."

An increasing number of lesbians use artificial insemination, but the non-biological parent - unlike a male partner in the same situation - has limited rights. The lack of formal recognition causes uncertainty in areas such as parental authority in relation to schooling and medical treatment. Under the federal laws, she is not eligible for "paternity" leave when the baby is born, and may not have equal rights to access if the relationship breaks up, or a responsibility to pay child support.

"We are a family and yet if I die, Maria would have to rely on the good will of my parents and three siblings not to challenge her right to have custody," Everingham says.

Lynne Martin and her partner of 12 years, Michelle McCormack, have an eight-week-old son, Tom. Dismay over discrimination has prompted them to consider taking advantage of a rare benefit available to them that is not available to heterosexual couples - the sole parent payment. As their relationship is not recognised under the Social Security Act, McCormack, the biological mother, is eligible for the payment. "It's a moral dilemma," Martin says.

In comparison with gay marriage or civil unions, the push for equality before the law in these less contentious areas has more chance of success. Entsch says most of his colleagues are giving strong support: "A number of them want to second my bill."

The Prime Minister, John Howard, while leading the charge against civil unions, has said: "We will always seek to remove areas of discrimination against homosexual, gay and lesbian people..."

Michael Burge, like the others who spoke at the Sydney hearings, believes legal changes would help soften homophobic attitudes. But his experience tells him that will not be enough.

After his partner of four years, Jonathan Rosten, died suddenly, he found his name had been removed from the death certificate when the funeral director complied with requests of Rosten's family even though under NSW law Burge was next of kin.

"Change will come when parents and family accept their sons and daughters are openly gay and have relationships which are in every way equal to heterosexual relationships," he says.

Source: <http://www.smh.com.au/news/national/not-such-a-gay-life/2006/08/04/1154198329047.html?page=fullpage#>