



## CHAPTER 7:

# *Workers' Compensation*

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## 7.1 What is this chapter about?

This chapter focuses on discrimination against same-sex couples and their families in the context of federal workers' compensation schemes.

Workers' compensation schemes are intended to provide compensation to an employee who is incapacitated because of a work-related accident or to an employee's dependants if the employee dies because of a work-related accident.

Most workers in Australia are covered by state and territory workers' compensation schemes. Those schemes appear to treat same-sex and opposite-sex couples in the same way.

However, federal public servants and employees of federal government agencies, amongst others, are covered by federal workers' compensation schemes (including Comcare). Those schemes do not recognise an employee's same-sex partner as someone eligible for compensation on an employee's death. Further, a same-sex partner is not automatically included in the calculation of compensation if an employee is incapacitated.

Thus, an opposite-sex partner of a federal employee has the security of knowing that he or she will receive financial support in the event of his or her partner's death or incapacitation. A same-sex partner has no such security.

There is discrimination against same-sex couples in federal workers' compensation schemes because the definition of 'dependant' in the *Safety, Rehabilitation and Compensation Act 1988* (Cth) and *Seafarers Rehabilitation and Compensation Act 1992* (Cth) relies on the definition of 'spouse'. The definition of 'spouse' only includes someone in an opposite-sex couple.

The definition of 'dependant' also includes the children of an injured or deceased federal worker. It appears that this definition may include the child of a lesbian co-mother and gay co-father(s) as well as a child's birth mother or birth father.<sup>1</sup>

This chapter explains how federal workers' compensation schemes apply to same-sex couples and their children. It also briefly discusses the application of state workers' compensation schemes to same-sex couples and families. The chapter sets out why the legislation breaches human rights and makes recommendations as to how to avoid discrimination in the future.

Specifically, this chapter addresses the following questions:

- What are the federal workers' compensation schemes?
- Do federal workers' compensation schemes recognise same-sex families?
- Can a same-sex family access workers' compensation death benefits?
- Is a same-sex family recognised in compensation calculations for an injured worker?
- Do state workers' compensation schemes discriminate against same-sex couples?
- Does workers' compensation legislation breach human rights?
- How should workers' compensation legislation be amended to avoid future breaches?

## 7.2 What are the federal workers' compensation schemes?

The main federal workers' compensation scheme is called Comcare. Comcare administers the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (Safety and Compensation Act).

The Victorian Gay and Lesbian Rights Lobby notes that Comcare applies to federal public servants, government agencies and, since 2005, employees of some private companies:

The [Safety, Rehabilitation and Compensation] Act applies to all Commonwealth public servants, employees of Government Business Agencies (Telstra, Australia Post, ADI, CSL etc) and, since 30 June, 2005 – applies to any private sector company that is granted a licence to self-insure under the scheme. To date, Optus, Linfox, Linfox Armaguard and K&S Freight have been granted a licence (K&S has not actually entered the scheme yet, but the others have). There are many other private sector companies interested in [Safety, Rehabilitation and Compensation] Act coverage.<sup>2</sup>

Licensing arrangements allow large companies to apply for a licence to opt out of compulsory state workers' compensation schemes. If a licence is granted to an eligible corporation, the Safety and Compensation Act will apply to employees of that corporation.<sup>3</sup> There appear to be financial advantages for private employers to use Comcare, however employees in same-sex families may be at a disadvantage, as discussed in this chapter.

The Seafarers Safety, Rehabilitation and Compensation Authority, known as the Seacare Authority, administers the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) (Seafarers Compensation Act). The Seacare Authority applies to all seafarers on prescribed ships in Australian waters.<sup>4</sup>

Finally there are workers' compensation schemes for members of the Australian Defence Force. Those schemes administer the *Veterans' Entitlements Act 1986* (Cth) and the *Military Rehabilitation and Compensation Act 2004* (Cth). These schemes are discussed in Chapter 10 on Veterans' Entitlements.

## 7.3 Do federal workers' compensation schemes recognise same-sex families?

Both the Safety and Compensation Act and the Seafarers Compensation Act provide workers' compensation benefits to the 'dependant' of an employee.<sup>5</sup>

The legislation also provides for additional compensation payments if a 'prescribed child' was 'wholly or mainly dependent' on the employee at the time of death; or a 'prescribed person' or 'prescribed child' was 'wholly or mainly dependent' on the employee at the time of injury.

The same-sex partner of a federal employee or seafarer cannot qualify as a 'dependant'. However, he or she may qualify as a 'prescribed person'.

The child of a same-sex couple may qualify as a 'dependant' or 'prescribed child' in certain circumstances.

### 7.3.1 'Dependant' excludes a same-sex partner

The Safety and Compensation Act and the Seafarers Compensation Act define a 'dependant' to include an employee's 'spouse'.<sup>6</sup>

Both acts define 'spouse' to be a person of the 'opposite-sex'.<sup>7</sup> Thus a same-sex partner will never be an employee's 'spouse'.

Since a same-sex partner cannot be a 'spouse' he or she will never be a 'dependant' for the purposes of federal workers' compensation.

### 7.3.2 'Dependant' may include the child of a same-sex couple

The definition of 'dependant' under the Safety and Compensation Act and the Seafarers Compensation Act includes the following list of people in addition to a 'spouse':

(a) ... father, mother, step-father, step-mother, father-in-law, mother-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister of the employee; or

(b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee;

being a person who was wholly or partly dependent on the employee at the date of the employee's death.<sup>8</sup>

Chapter 5 on Recognising Children notes that when children are born to a lesbian or gay couple, their parents may include a birth mother, lesbian co-mother, birth father or gay co-father(s).<sup>9</sup>

Chapter 5 explains that the reference to a 'mother', 'father', 'daughter' or 'son' in subsection (a) of the definition of 'dependant' is likely to recognise only a birth mother, birth father, birth daughter, birth son or an adoptive relationship. Thus, the child of a lesbian co-mother would only qualify as her 'daughter' or 'son' if federal law recognised parenting presumptions in her favour or the lesbian co-mother adopted the child. The child of a gay co-father would only be recognised as his 'daughter' or 'son' if the co-father adopted the child.<sup>10</sup>

Chapter 5 also explains that a person can only be a 'step-father', 'step-mother', 'step-son' or 'step-daughter' in a same-sex family if the lesbian co-mother or gay co-father marries the birth parent. This is not currently possible for a same-sex couple.

However, subsection (b) refers to a relationship where a person 'stands in the position of a parent'.

The legislation does not specify what is required to prove that a person is 'standing in the position of a parent'. But, in the Inquiry's view, a lesbian co-mother or gay co-father would likely qualify under this definition, especially if he or she has a parenting order from the Family Court of Australia.<sup>11</sup>

### 7.3.3 'Prescribed person' may include a same-sex partner or parent in limited circumstances

A 'prescribed person' is defined by the Safety and Compensation Act and the Seafarers Compensation Act to include a 'spouse' as well as a person who is:

- (i) the father, mother, step-father, step-mother, father-in-law, mother-in-law, grandfather, grandmother, son, daughter, step-son, step-daughter, grandson, granddaughter, brother, sister, half-brother or half-sister of the employee;
- (ii) a person in relation to whom the employee stands in the position of a parent or who stands in the position of a parent to the employee;
- (iii) a person (other than the spouse of the employee or a person referred to in subparagraph (i) or (ii)) who is wholly or mainly maintained by the employee and has the care of a prescribed child, being a child who is wholly or mainly dependent on the employee.<sup>12</sup>

A same-sex partner will not automatically qualify as a 'prescribed person' under this definition because he or she does not qualify as a 'spouse'. To this extent the definition of 'prescribed person' discriminates against a same-sex couple.

However, if the same-sex partner was 'wholly or mainly maintained' by his or her partner at the time of injury, and is looking after their child, he or she may qualify as a 'prescribed person'.

Further, a birth mother, lesbian co-mother, birth father, gay co-father and their children may all qualify as a 'prescribed person' because they are a birth parent or they 'stand in the position of a parent' (see section 7.3.2 above).

### 7.3.4 'Prescribed child' may include the child of a same-sex couple

A 'prescribed child' is defined by both the Safety and Compensation Act and the Seafarers Compensation Act to include a person under the age of 16, or aged between 16 and 25 and receiving full-time education and not working.<sup>13</sup> This definition could include any child.

## 7.4 Can a same-sex family access workers' compensation death benefits?

The 'dependant' of an employee who dies as a direct result of a work-related injury or illness is entitled to receive a lump sum compensation payment under Comcare and the Seacare Authority.<sup>14</sup>

### 7.4.1 A same-sex partner does not qualify for death benefits

A same-sex partner of a deceased employee will not be entitled to this lump sum payment. The Castan Centre for Human Rights Law explains as follows:

- [I]f a Commonwealth employee dies, their same-sex partner will not be entitled to compensation that would otherwise be provided to the dependants of an employee. In comparison with most

State jurisdictions, the Federal Government has failed to recognise that surviving same-sex partners should be entitled to compensation if the death of their partner has been caused by a workplace injury.<sup>15</sup>

Dr Rob Guthrie from Women in Social and Economic Research, comments at the Perth Hearing:

Commonwealth legislation stands out as excluding same-sex couples because it requires a dependant to be an opposite-sex partner of the employee.<sup>16</sup>

## 7.4.2 The child of a lesbian or gay co-parent may qualify for death benefits

The child of a same-sex couple may be entitled to the lump sum payment irrespective of whether it is the birth mother, birth father, lesbian co-mother or gay co-father who dies. However, it may be easier to prove the right to the entitlement in the case of a deceased birth parent.

Additional regular payments may be made regarding a 'prescribed child' who was 'wholly or mainly dependent' on the deceased employee.<sup>17</sup> The child of a same-sex couple may also qualify for this payment.

## 7.4.3 Any person can qualify for funeral expenses

Comcare and the Seacare Authority will pay funeral expenses to any person who paid for the funeral of a deceased employee.<sup>18</sup> It does not matter whether a person is a 'dependant' for this payment. If a same-sex partner pays for the funeral, he or she may be reimbursed.

## 7.5 Is a same-sex family recognised in compensation calculations for an injured worker?

Comcare and the Seacare Authority will pay compensation to an employee whose injury results in incapacity. The amount of that payment will depend on whether there is a 'prescribed person' or 'prescribed child' who was 'wholly or mainly dependent' on the employee at the time of injury.<sup>19</sup>

### 7.5.1 A same-sex partner is not automatically relevant to compensation calculations

An opposite-sex partner would automatically qualify as a 'prescribed person' for the purposes of calculating the amount of compensation payable to an incapacitated employee. A same-sex partner will not automatically qualify because he or she is not a 'spouse'.

However, a same-sex partner may be recognised for the purposes of payments if he or she was 'wholly or mainly maintained' by his or her partner at the time of injury, and is looking after their child.

### 7.5.2 A dependent child of a lesbian or gay co-parent will generally be relevant to compensation calculations

The child of an injured employee will generally qualify as a 'prescribed child' or a 'prescribed person' for the purposes of calculating the payment, if he or she was 'wholly or mainly dependent' on the employee at the time of injury.

## 7.6 Do state workers' compensation schemes discriminate against same-sex couples?

Workers' compensation arrangements in Australia are primarily a state and territory responsibility.<sup>20</sup> Some submissions to the Inquiry suggested that there is still discrimination against same-sex couples in state workers' compensation schemes.<sup>21</sup>

However, Inquiry research suggests that same-sex couples have equivalent entitlements to opposite-sex partners under workers' compensation law in all states.

### 7.6.1 A same-sex partner is recognised under state and territory workers' compensation schemes

In most cases, the discrimination was removed as part of the broad state and territory reforms changing the relevant definitions relating to couples. These reforms are generally described in Chapter 4 on Recognising Relationships. The following lists the amendments to the relevant state and territory legislation.

- In the Australian Capital Territory, 'domestic partners', including same-sex partners, are included in the definition of 'dependant' in the *Workers Compensation Act 1951* (ACT).<sup>22</sup>
- In Queensland, same-sex partners may be considered dependants in the *Workers' Compensation and Rehabilitation Act 2003* (Qld) as the relevant definition of 'de facto partner' includes same-sex partners.<sup>23</sup>
- In South Australia, a 'domestic partner', including a same-sex partner, will have equivalent entitlements to a spouse under the *Workers Rehabilitation and Compensation Act 1986* (SA).<sup>24</sup>
- In Tasmania, under the *Workers Rehabilitation and Compensation Act 1988* (Tas), a 'spouse' includes a person with whom the deceased was in a 'significant relationship' within the meaning of the *Relationships Act 2003* (Tas). This includes a same-sex partner.<sup>25</sup>
- In Western Australia, the definition of 'dependant' in the *Workers' Compensation and Rehabilitation Act 1981* (WA) includes same-sex partners as they are captured by the definition of 'de facto partner'.<sup>26</sup>
- In Victoria, a 'domestic partner', including a same-sex partner, is included in the definition of 'partner' in the *Accident Compensation Act 1985* (Vic).<sup>27</sup>



- In the Northern Territory, the definition of 'spouse' in the *Work Health Act* (NT) includes a 'de facto partner' of a person. The definition of 'de facto partner' in the *Work Health Act* (NT) includes those in a same-sex relationship.<sup>28</sup>
- In New South Wales, the definition of 'de facto relationship' in the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) includes a same-sex partner.<sup>29</sup>

The Gay and Lesbian Rights Lobby (NSW) emphasises in their submission that:

...a discrepancy exists between NSW and federal worker's compensation legislation, which affects whether or not a surviving same-sex partner is eligible for workers' compensation in the event of the employee's death. Under the NSW *Workers' Compensation Act 1997*, same-sex de facto spouses are considered dependants and therefore may qualify for lump sum compensation in the event that their partner dies, or a weekly payment where they are totally incapacitated.<sup>30</sup>

## 7.6.2 A child in a same-sex family is recognised under state and territory workers' compensation schemes

State, territory and federal laws use similar terms to describe the parent-child relationship. State and territory laws use language such as:

a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.<sup>31</sup>

The state and territory definitions also require that the child is financially dependent on the deceased worker in order to receive compensation following a work-related death.

In Victoria, the definition is slightly different:

'dependent child' means a child, including an orphan child, wholly, mainly or partly dependent on the worker's earnings.<sup>32</sup>

In all cases the definitions appear to be sufficiently broad to include the child of a birth mother, birth father, lesbian co-mother and gay co-father.

## 7.7 Does workers' compensation legislation breach human rights?

The failure to recognise a same-sex partner as a 'spouse' in the Safety and Compensation Act and the Seafarers Compensation Act means that a same-sex partner cannot receive certain workers' compensation payments. It also means that an employee with a same-sex partner may receive less compensation than an employee with an opposite-sex partner.

The Inquiry therefore finds that the Safety and Compensation Act and the Seafarers Compensation Act breach Australia's obligations under article 26 of the *International Covenant of Civil and Political Rights* (ICCPR).

This discrimination also breaches Australia's obligations under:

- *Discrimination (Employment and Occupation) Convention 1958* (ILO 111) – articles 2, 3(b) and 3(c) (equal opportunity in the workplace).

- *International Covenant of Economic Social and Cultural Rights (ICESCR)* – articles 9 and 2(2) (right to social security – which includes employment injury benefits – without discrimination).

These principles are discussed in more detail in Chapter 3 on Human Rights Protections.

The children of a same-sex couple may have more difficulty in proving their right to workers' compensation benefits on the death or injury of a lesbian co-mother or gay co-father. However, the legislation does not deny them access to those benefits outright so the Inquiry makes no finding of breach insofar as the laws apply to the children of same-sex couples.

Nevertheless, to the extent that a same-sex family may be financially worse-off because of discrimination, the best interests of the child (which are protected by article 3(1) of the *Convention on the Rights of the Child*) may be compromised.

## **7.8 How should workers' compensation legislation be amended to avoid future breaches?**

This chapter describes the treatment of same-sex couples and families under the Safety and Compensation Act and the Seafarers Compensation Act.

A same-sex partner is denied access to lump sum death benefits which are available to an opposite-sex partner. And a same-sex partner is not automatically counted for the purposes of calculating the amount of compensation payable upon an employee's incapacitation.

A child of a same-sex couple can generally access death benefits and will usually be counted in compensation calculations. However, the child of a birth mother or birth father will be assumed to have those rights, whereas the child of a lesbian co-mother or gay co-father will need to prove those rights.

These consequences may affect more and more employees as private companies seek to move from state regulation of workers' compensation entitlements to the federal system under the Safety and Compensation Act's licensing arrangements.<sup>33</sup>

The Inquiry recommends amending federal workers' compensation legislation to avoid future breaches of the human rights of people in same-sex relationships.

The following sections summarise where the problems lie and how to fix them.

### **7.8.1 Definitions are the main cause of discrimination**

The definition of 'dependant' under the Safety and Compensation Act and the Seafarers Compensation Act relies on the definition of 'spouse' and the definition of 'spouse' is limited to a person of the opposite-sex.

The definition of 'prescribed person' also relies on the definition of 'spouse' and discriminates against a same-sex partner to that extent. However, a 'prescribed person' also includes a person who is:

- 'wholly or mainly maintained' by an employee at the time of death or injury, and
- looking after a child who was dependent on the employee.

Thus, a 'prescribed person' may include a same-sex partner in limited circumstances, but a same-sex partner's access will be far more limited than an opposite-sex partner.

The definition of 'dependant' and 'prescribed person' may include a child of a same-sex couple. But the child of a birth mother or birth father will automatically be included within that definition, whereas a child of a lesbian co-mother or gay co-father will have to prove the parent-child relationship.

### 7.8.2 The solution is to amend the definitions and clearly recognise both same-sex parents of a child

Chapter 4 on Recognising Relationships presents two alternative approaches to amending discriminatory definitions within federal law as it relates to *same-sex couples*.

The Inquiry's preferred approach for bringing equality to same-sex couples is to:

- retain the current terminology used in federal legislation (for example retain the terms 'dependant' and 'spouse' in the Safety and Compensation Act and the Seafarers Compensation Act)
- redefine the terms in the legislation to include same-sex couples (for example, redefine 'spouse' to include a 'de facto partner')
- insert new definitions of 'de facto relationship' and 'de facto partner' which include same-sex couples.

Chapter 5 on Recognising Children sets out how to better protect the rights of the *children of same-sex couples*.

Chapter 5 recommends that the federal government implement parenting presumptions in favour of a lesbian co-mother of a child conceived through assisted reproductive technology (ART). This would mean that a lesbian co-mother of an ART child would automatically be the 'mother' of the child (in the same way as the father in an opposite-sex couple is automatically the 'father').

Chapter 5 also suggests that it should be easier for a lesbian co-mother and gay co-father to adopt a child, for the same reasons.

Chapter 5 further recommends the insertion of a new definition of 'step-child' (or 'step-parent') which would include a child under the care of a 'de facto partner' of the birth parent. This would make it easier for the child of a lesbian co-mother or gay co-father to qualify under the definition of 'dependant'.

Finally, Chapter 5 suggests that federal legislation should clearly recognise the status of a person who has a parenting order from the Family Court of Australia. This would mean that gay and lesbian parents with parenting orders could more confidently assert their rights as a person 'who stands in the position of a parent'.

The following list sets out the definitions which would need to be amended according to these suggested approaches.

The Inquiry notes that if the government were to adopt the alternative approaches set out in Chapter 4, then different amendments would be required.

### 7.8.3 A list of legislation to be amended

The Inquiry recommends amendments to the following legislation discussed in this chapter:

#### ***Safety, Rehabilitation and Compensation Act 1988 (Cth)***

‘de facto partner’ (insert new definition)

‘de facto relationship’ (insert new definition)

‘dependant’ (s 4(1) – amend to clarify the role of a parenting order and to change references to a ‘step-son’, ‘step-daughter’, ‘step-mother’ and ‘step-father’ to ‘step-child’ and ‘step-parent’ respectively. Otherwise no need to amend if ‘spouse’ is amended and a lesbian co-mother or gay co-father and their children may also be recognised through reformed parenting presumptions, adoption laws or a new definition of ‘step-child’ and ‘step-parent’)

‘prescribed child’ (s 4(1) – no need to amend)

‘prescribed person’ (s 19(12) – amend to clarify the role of a parenting order and to change references to a ‘step-son’, ‘step-daughter’, ‘step-mother’ and ‘step-father’ to ‘step-child’ and ‘step-parent’ respectively. Otherwise no need to amend if ‘spouse’ is amended and a lesbian co-mother or gay co-father and their children may also be recognised through reformed parenting presumptions, adoption laws or a new definition of ‘step-child’ and ‘step-parent’)

‘spouse’ (s 4(1) – amend to include a ‘de facto partner’)

‘step-child’ (insert new definition)

‘step-parent’ (insert new definition)

#### ***Seafarers Rehabilitation and Compensation Act 1992 (Cth)***

‘de facto partner’ (insert new definition)

‘de facto relationship’ (insert new definition)

‘dependant’ (s 3 – amend to clarify the role of a parenting order and to change references to a ‘step-son’, ‘step-daughter’, ‘step-mother’ and ‘step-father’ to ‘step-child’ and ‘step-parent’ respectively. Otherwise no need to amend if ‘spouse’ is amended and a lesbian co-mother or gay co-father and their children may also be recognised through reformed parenting presumptions, adoption laws or a new definition of ‘step-child’ and ‘step-parent’)

‘prescribed child’ (s 3 – no need to amend)

'prescribed person' (s 3 – amend to clarify the role of a parenting order and to change references to a 'step-son', 'step-daughter', 'step-mother' and 'step-father' to 'step-child' and 'step-parent' respectively. Otherwise no need to amend if 'spouse' is amended and a lesbian co-mother or gay co-father and their children may also be recognised through reformed parenting presumptions, adoption laws or a new definition of 'step-child' and 'step-parent')

'spouse' (s 3 – amend to include a 'de facto partner')

'step-child' (insert new definition)

'step-parent' (insert new definition)

## Endnotes

- 1 See the Glossary of Terms and Chapter 5 on Recognising Children for an explanation of these terms.
- 2 Victorian Gay and Lesbian Rights Lobby, Submission 256.
- 3 The Minister may grant a licence to a corporation that: was previously a Commonwealth authority; is about to cease being a Commonwealth authority; or is carrying on business in competition with a Commonwealth authority or previous Commonwealth authority: *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 100. See also *Safety, Rehabilitation and Compensation Act 1988* (Cth), pt VIII, ss 104(1), 108(1). The High Court of Australia recently held that these licensing provisions are valid: *Attorney-General (Vic) v Andrews* [2007] HCA 9 (21 March 2007).
- 4 The term 'seafarer' refers to a person employed in any capacity on a prescribed ship, on the business of the ship, other than: (a) a pilot; or (b) a person temporarily employed on the ship in port; or (c) a person included in the class of persons defined as *special personnel* in section 283 of the *Navigation Act 1912* (Cth): *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3. 'Special personnel' includes persons carried on board a 'special purpose ship' other than the master, any crew member, a pilot, or any person temporarily employed on the ship in port: *Navigation Act 1912* (Cth), s 283.
- 5 *Safety, Rehabilitation and Compensation Act 1988* (Cth), ss 17, 19; *Seafarers Rehabilitation and Compensation Act 1992* (Cth), ss 29, 31.
- 6 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 4(1); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3.
- 7 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 4(1); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3.
- 8 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 4(1); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3.
- 9 For an explanation of these terms see the Glossary of Terms.
- 10 For further background on adoption and parenting presumptions, see Chapter 5 on Recognising Children.
- 11 For further background on parenting orders, see Chapter 5 on Recognising Children.
- 12 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 19(12); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3.
- 13 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 4(1); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 3.
- 14 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 17(3)-(4); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 29(3)-(4).
- 15 Castan Centre for Human Rights Law, Monash University, Submission 126.
- 16 Women in Social and Economic Research (WISER), Perth Hearing, 9 August 2006.
- 17 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 17(5)-(6); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 29(5)-(6).
- 18 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 18; *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 30.
- 19 *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 19(8)-(9); *Seafarers Rehabilitation and Compensation Act 1992* (Cth), s 31(9)-(11).
- 20 K Purse, R Guthrie and F Meredith, 'Faulty Frameworks: The Productivity Commission and Workers' Compensation', *Australian Journal of Labour Law*, vol 17, no 3, 2004, p306. See also A Clayton, R Johnstone and S Sceats, 'The Legal Concept of Work-Related Injury and Disease in Australian OHS and Workers' Compensation Systems', *Australian Journal of Labour Law*, vol 15, no 2, 2002, p105.
- 21 Castan Centre For Human Rights Law, Monash University, Submission 126; Women in Social and Economic Research (WISER), Submission 221.
- 22 *Workers Compensation Act 1951* (ACT), Dictionary. See definitions of 'dependant', 'domestic partner' and 'member of the family'.

- 23 A 'dependant' may include a spouse: *Workers' Compensation and Rehabilitation Act 2003* (Qld), ss 27-28. A 'spouse' may include a 'de facto partner' within the meaning of the *Acts Interpretation Act 1954* (Qld), s 32DA: *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 29. The non-gender specific definition of 'de facto partner' set out in section 32DA of the *Acts Interpretation Act 1954* (Qld) applies to all Queensland legislation unless an Act expressly provides to the contrary: *Acts Interpretation Act 1954* (Qld), s 32DA(6).
- 24 The *Workers Rehabilitation and Compensation Act 1986* (SA) will be amended by the *Statutes Amendment (Domestic Partners) Act 2006* (SA). Compensation payments to a person on the death of a partner at work are only payable if the death occurs after the commencement of the amendment: *Statutes Amendment (Domestic Partners) Act 2006* (SA), s 228. This Act had not commenced as at 5 April 2007.
- 25 *Workers Rehabilitation and Compensation Act 1988* (Tas), s 3(1).
- 26 *Workers' Compensation and Rehabilitation Act 1981* (WA), s 5(1).
- 27 *Accident Compensation Act 1985* (Vic), ss 5, 92A. A same-sex partner is only entitled to compensation where the worker died after the commencement of the *Statute Law (Relationships) Amendment Act 2001* (Vic), (June 2001): see *Accident Compensation Act 1985* (Vic), s 5, definition of 'partner'; Castan Centre For Human Rights Law, Monash University, Submission 126.
- 28 *Work Health Act* (NT), s 49. The definition of 'de facto partner' and 'de facto relationship' are contained within sections 3(2) and 3A of the *De Facto Relationships Act* (NT) and apply to all legislation in the Northern Territory: *Interpretation Act* (NT), s 19A(3). These definitions were added by the *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (NT). Compensation is only payable in relation to an injury that occurred after the commencement of schedule 1, part 48 of the Act on 17 March 2004: *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (NT), ss 82, 89.
- 29 *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 4(1). This definition is different to that contained in section 4(1) of the *Property (Relationships) Act 1984* (NSW), which applies to most other NSW legislation. A person in a same-sex relationship is only eligible for workers' compensation where a worker died or received an injury after 1 December 1998 (the commencement of Schedule 7 to the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998* (NSW): *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 4(1), definition of 'spouse'.
- 30 Gay and Lesbian Rights Lobby (NSW), Submission 333.
- 31 *Workers Compensation Act 1951* (ACT), Dictionary. See also *Workers' Compensation and Rehabilitation Act 2003* (Qld), ss 27-28; *Workers Rehabilitation and Compensation Act 1986* (SA), s 3(1); *Workers Rehabilitation and Compensation Act 1988* (Tas), s 3; *Workers' Compensation and Rehabilitation Act 1981* (WA), s 5(1); *Work Health Act* (NT), s 49(1); *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 4(1).
- 32 'Child' means a person who (a) is under the age of 16 years; or (b) is 16 years or more but under the age of 21 years and is a full-time student: *Accident Compensation Act 1985* (Vic), s 92A(1).
- 33 *Safety, Rehabilitation and Compensation Act 1988* (Cth), ss 100, 104(1), 108(1). See also *Attorney-General (Vic) v Andrews* [2007] HCA 9 (21 March 2007).

