

“How can we deny to others that which we freely enjoy for ourselves”

Specific Issues

Recommendations:

- Backdate the eligibility of these bills (if not the payments)
- Backdate war veterans benefits
- All superannuation funds be required to make allowance for same-sex couples and their children (not to be optional)
- An education campaign to communicate these new rights to government bodies, industry, and same-sex families.

16. Backdating

“The key point that I wish to make now is that if the government wishes to have the benefits of this legislation available to people who would benefit from it, were it to be law today, it could choose to backdate the effective date of this legislation from whenever it chose.”

The Hon Malcolm Turnbull MP
Hansard, p. 4506, 4 June 2008

“These particular amendments that relate to these particular superannuation laws are time critical because of the benefits that will flow to people who are grieving from the loss of a loved one. For that reason, we have split the legislation into two parts to enable these amendments to pass now while the rest of the legislation is drafted.”

The Hon Robert McClelland MP
Hansard, p. 4520, 4 June 2008

A question that has been raised by some contributors to the debate is: why the urgency? The urgency is really, if we want to call it urgent, [is] because it is about time this was done. Every day that it is not done somewhere in this country someone in a same-sex relationship is losing a partner to death and is being discriminated against under the current law. That is the reason for the urgency. Every day that this act is de-

This submission is addressed to all three inquiries,
however one section in the third part addresses superannuation specifically.

[On a PC, hold down the Alt key and press V and then D, to view the useful click-able document map.]

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layed is another day where we will see that discrimination continue. The urgency is also because it should have been done years ago and it was not.

The Hon Annette Ellis MP
Hansard, p. 4505, 4 June 2008

The government understands the urgency of introducing these bills, and the fact that every additional day these bills are not passed, same-sex couples or their surviving partners, miss out on rights they are entitled to.

One option, which has the implied support of Mr Turnbull, is to backdate these bills.

Another option would be to backdate the eligibility date of the bills, but not to backdate the payments. For example, a war veteran may have died a few years ago, but their surviving same-sex partner is still alive. The surviving partner can be offered a war widow(er)'s pension starting from today's date.

17. Backdating war veterans benefits

At the very least, you could backdate one group of same-sex couples – that of same-sex war veterans.

The benefits available under the Same Sex Relationships (Equal Treatment in Commonwealth Laws) 2008 bill are usually accessed towards the end of one's life: namely, pensions and superannuation.

Given the age group of those who defended our nation during the World Wars, some 70 or so years ago, many of their surviving partners would, as a group, be in the relevant life stage to claim these benefits.

And given their service and sacrifice to this nation, this is perhaps the very least we can offer their families.

18. Does interdependency respect War Veterans?

“As partners of veterans, [same-sex couples] are not entitled to a range of pensions or concessions and in their old age they pay more for access to aged-care facilities.”

The Hon Petro Georgiou MP
Hansard, p. 4501, 4 June 2008

Gay war veterans did not fight solely to protect those in same-sex relationships – they fought to protect all of us, regardless of our sexual preference.

Ironically, they even fought to protect those who would come to institute laws and policies which would discriminate against them and their families.

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Gay war veterans laid down their lives or were injured for our country. They protected us. We should rightly protect them and their families.

Why are their families less deserving of being afforded this protection?

Why are their families less deserving of being recognised as real families, instead of a relationship akin to two siblings? Is this really affording them the respect and dignity they deserve?

Many of them fought and gave their lives to make this world a better place. Let us not dishonour and tarnish the world they fought to defend, by continuing to uphold bigotry and discrimination. Have we learned nothing from their sacrifice?

Did they fight for a country that would intentionally build discrimination into its laws?

19. The model decided here will be brought into the future

“The Attorney-General also indicated ... that his department will apply lessons learnt from the legislative drafting of these provisions and definitions for a future reform program in this area.”

The Hon Greg Combet MP
Hansard, p. 4511, 4 June 2008

“I therefore foreshadow that it is the intention of the opposition to refer this additional [omnibus] bill to the Senate Standing Committee on Legal and Constitutional Affairs as well so that the whole issue of the elimination of unjust economic discrimination against same-sex partners and the potential expansion of the reach of anti-discrimination laws to other categories of interdependent relationships can be considered together.”

The Hon Dr Brendan Nelson MP
Hansard, p. 4480, 4 June 2008

Your choice to give same-sex couples defacto or interdependency rights here, will extend into the future.

Most likely, the model chosen here will be used for all future bills which the government introduces to confer equal rights to same-sex couples.

It would be difficult and somewhat of a mess for both citizens and organisations to manage, if same-sex couples were covered under interdependency rules for some purposes, but under defacto for others.

Therefore I ask you to consider this issue carefully and to view the wider, whole-scale implications of your decision.

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I would also ask the opposition not to push for another inquiry when the upcoming omnibus bill is introduced. There is no need to hold another inquiry on the issue of interdependency for same-sex couples if that issue is settled here, and it would cause unnecessarily delay and distress. However if you wish to hold an inquiry into other aspects of the upcoming bills, then that may still be justified – however let the issue of the vehicle by which these rights are delivered remain resolved.

In your decision on the vehicle, please consider:

- Whether interdependency is a secure family model for couples with children – or does the defacto model provide more security for these children, ie more secure access to their rights and benefits?
- If proving interdependency is onerous, will it deny rights to genuine couples? And is it complex for companies and organisations to administer interdependency?

20. Health funds and definition of family

“Private organisations such as health insurance funds should not be legally bound to recognise homosexual couples and children as families. Some funds may have an ethical objection to this and they should retain the right to uphold their views of what constitutes marriage and family life. Market forces will regulate this, as they do at present, as some funds provide for homosexual families and others do not.”

The Hon. Stuart Robert MP
Hansard, p. 4492, 4 June 2008

Actually, I have an ethical objection to discrimination.

Two parents with children should be a family in anyone’s books.

It is ironic that these health funds would accept a single parent with children as a legitimate family, however if an additional same-sex parent joins that household, that family ceases to be a family.

Even though Mr Robert states that market forces will regulate this, it is still not obvious even now which health funds do not recognise same-sex families. Market forces simply have not made this clear. I do not believe there is upfront disclosure by those health funds that refuse to accommodate same-sex families in their application forms and promotional material.

I support the government’s decision to make this situation more equitable, by requiring all health funds to recognise same-sex couples with children as families.

21. A requirement for all superannuation funds (not optional)

This bill will also amend the Superannuation Industry (Supervision) Act 1993, which establishes the superannuation regulatory framework for regulated superannuation funds. This will mean that superannuation funds, should they wish to do so, will be able to make allowance for same-sex couples and their children in the same way that Commonwealth (defined benefit) superannuation schemes will be able to do.

If this bill is passed, I encourage all superannuation funds across Australia to make provision for same-sex couples and their children so that this discrimination is completely removed from the superannuation industry.

The Hon Robert McClelland MP
Hansard, p. 3470, 28 May 2008

I ask that it be a requirement of *all* superannuation funds to make provision for same-sex couples and their children, and that this not be optional.

It would be difficult from the outset for the layperson to work out which superannuation funds make provision for same-sex couples (or which make *greater* provision).

Even now, same-sex couples do not know which superannuation funds make greater provision.

Just as one of these bills makes it a requirement for *all* health funds to consider same-sex couples and their children as valid family models, we should also make it a requirement for all superannuation funds to make provision for these families – it should not be optional. It should not be a legitimate choice to discriminate.

At the very least, those superannuation funds which have an “ethical objection” to same sex relationships should be required be open and upfront about this, so that those of us in the community (whether straight or gay) who have an ethical objection to discrimination can deliberately avoid or boycott these companies.

22. Superannuation funds to accept relationship, civil union, and overseas marriage certificates

“Any foreign marriage certificate issued to a same sex couple overseas could only be accepted as part of the evidence required for proof of an interdependency relationship.”

Michelle Taylor, Compliance Manager
Zurich Financial Services Australia Limited
Letter, 30 January 2006, p. 2
(attached to Part A of this submission)

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“A New Zealand Civil Union certificate, of itself, would be irrelevant in the determination of a spousal relationship for Australian superannuation death benefit purposes.”

Keith Stribling, Complaint Resolutions
MLC Limited
Letter, 10 January 2006, p 2
(attached to Part A of this submission)

Currently, superannuation funds such as Zurich and MLC will not accept overseas same-sex marriage certificates or civil union certificates as providing full proof of the existence of an interdependency relationship.

“You have requested specific information on how a certificate from the City of Sydney’s Relationships Declaration program, or similar, could be used as evidence of an interdependency relationship. This type of certificate merely tells the Trustee that a relationship existed at some point but, as you rightly state, there is always the chance that it may have deteriorated over time. Zurich would consider the date of the certificate was issued in conjunction with other evidence to ascertain if the relationship was still in existence at the time of the member’s death.”

Michelle Taylor, Compliance Manager
Zurich Financial Services Australia Limited
Letter, 5 (6) January 2005, p. 3
(attached to Part A of this submission)

I ask that these bills stipulate that all companies and organisations be required to accept:

- interstate relationship registrations (same-sex and opposite-sex),
- overseas civil unions certificates (same-sex and opposite-sex),
- overseas same-sex marriage certificates, and
- local council relationship declarations (same-sex and opposite-sex)

as full and satisfactory proof that a defacto relationship exists (for the time periods discussed above – eg 5 years for relationship registration certificates).

16. An education campaign on these new rights, to both industry and families

Even after the introduction of defacto rights for same-sex couples in NSW in 1999, same-sex couples were still being denied their rights because they and some organisations and businesses were not aware that they had been granted new rights.

In 2004, some five years after these rights were introduced, Mr Michael Burge was denied the right to have his name on his partner’s death certificate by the funeral director.

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The funeral director was unaware of legislative changes that occurred in 1999 (or at least he seemed to be unaware, or he disagreed with those rights so he did not inform Mr Burge of them).

Mr Burge also had not heard of these new rights, so he did not know he had any legal right to challenge the funeral director. (See attached article.)

He is not alone, and even last year I was informed of a similar case with a funeral director (in that case, the surviving partner sought help through the Hon Clover Moore’s office).

In addition, the attached 2006 article quotes priest, Glenn Boyd, who says that some same-sex partners are being restricted from having any say in their partner’s funeral arrangements (see second last paragraph of Glenn Boyd article)¹. Same-sex couples were given the right to arrange the funeral of their partner in 1999 in NSW – why are they still being denied these basic and important rights?

Rights, without a knowledge of those rights, does not grant real equality.

Not only does the same-sex community need to be informed, but the wider community – especially those government organisations and departments, industries and businesses which will come into contact with these situations, such as superannuation funds – all need to be made explicitly aware of these changes and the new rights that same-sex couples have.

Perhaps there can also be a website, that same-sex couples could point businesses to, if they need to prove to those companies that they now have new rights.

In addition, if not all superannuation funds are going to be required to provide for same-sex families, a website listing those superannuation funds which do and which do not provide for same-sex couples would be useful in making an informed choice – along with an education campaign to the same-sex community pointing out that there are significant differences between superannuation funds.

¹ Sydney Star Observer newspaper, p. 10, 26/10/2006. (also attached)