

4 July 2008

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate

Dear Committee Secretary,

**RE: Senate Legal and Constitutional Affairs Committee inquiry into amendments to recognise same-sex partners in superannuation, and inquiries into amendments to the Family Law Act.**

We, Michael Smith and Warren Fuge, are writing to support proposed amendments to the above. As a gay male couple, who are in a loving and committed relationship, own a house together, financially support one another, and pay taxes to the government, we believe we have the right to equality within the law. Currently we have no guarantee that our superannuation will be paid out to our partner in the case of our respective deaths. We live with constant anxiety of the fact our partner may not be recognised, and receive their rightful entitlement. We also live with the daily reality that our relationship is not legally recognised. Hence, we are not eligible for what other couples (i.e. heterosexual) take for granted; equal treatment and legal recognition. We believe we have the right to be treated with the same dignity and equality as other Australian citizens, not as “second class citizens”, as the law now stands.

Major examples of discrimination that have affected our family and friends.

**A:** A close gay male friend’s same-sex partner died three years ago. Due to the discriminating laws, he had to endure a 12 month battle to receive his partner’s superannuation. He also had to fight to receive his partner’s life insurance money, due to the partner’s family not recognising their relationship. Unfortunately, this type of prejudice and discrimination is reflected and entrenched in current laws which need to be changed.

**B:** My (Michael’s) brother is gay, and holds a prominent position within the arts community. When his previous relationship broke down, after 14 years, the dispute could not be heard in the Family Court, and accorded the privacy that Court provides. The details of the dispute were available to the public and media, who keenly followed the “story”. In fact, it became known as “Curatorgate”. The publicity generated ultimately led to my brother losing his job at the National Gallery of Victoria. This would not have happened if the dispute had been heard in the Family Court, which would have been the case had he been in a heterosexual, rather than same-sex, relationship.

**C:** The commitment ceremony we undertook at the Metropolitan Community Church of Melbourne on 23<sup>rd</sup> September, 2006 has no legal status or recognition. In fact, they were the only church we could find who would perform the ceremony. Though this is perhaps more of a spiritual or religious issue, there are legal implications. When heterosexual

couples undertake such ceremonies they are not only regarded as “married” but are automatically entitled to the legal rights marriage entails. Same-sex couples have no such rights under current laws, making those laws discriminatory.

Hence we both urge the committee to support the following six proposals of change:

- 1.** The elimination of discrimination against same-sex couples in superannuation is urgent. The Human Rights and Equal Opportunity Commission (HREOC) has already conducted a thorough inquiry into the discrimination faced by same-sex partners. The elimination of discrimination is particularly urgent for older and retired partners who currently experience financial insecurity and disadvantage in the absence of equal superannuation laws.
- 2.** We strongly support the HREOC recommendation to expand the definition of defacto partner to include same-sex partners. We oppose any attempt to mischaracterise same-sex partners as interdependents. In principle, eliminating discrimination against interdependent partners is important. However, this should not be allowed to delay the removal of discrimination against same-sex partners.
- 3.** We strongly support the Government’s use of the umbrella term ‘couple relationship’ to describe all the relationships recognised by federal law. This is a simple and easy way for all legally-recognised relationships to be given equal legal entitlements. We strongly oppose removing marriage from the class of ‘couple relationships’. To do so would inscribe a second-class status for same- and opposite-sex defacto relationships. The law should not be discriminatory by elevating one form of relationship over others.
- 4.** We strongly support equal recognition and equal protection of the children born to and raised by same-sex couples. We agree with the HREOC inquiry finding that removing discrimination against same-sex partners in areas of law dealing with family and children is in the best interests of the child.
- 5.** Same-sex defacto couples should not be compelled to testify against their partners in a court of law. This is an important recognition of the special status of a loving relationship between two individuals committed to a shared life. We support amendment to the Evidence Act which will equally recognise same-sex partners.
- 6.** Disputes arising from the breakdown of same-sex relationships are best dealt with by the Family Court. This will reduce the cost and trauma associated with property and other disputes, and will ensure greater privacy for those involved. We support amendments to

the Family Law Act which will provide equal access to the Family Court for same-sex partners.

Furthermore, other countries, such as the United Kingdom, from who many of our legal traditions derive, have sought to end legal discrimination for same-sex couples. Surely it is time for Australia, who prides itself as being a tolerant, fair and egalitarian society to do the same?

Thank you for your time and considering our submission.

Regards

Michael G. Smith & Warren Fuge