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Committee Secretary
Senate Standing Committee on
Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Legal and Constitutional Affairs Committee,

Same-Sex Relationships (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008

Hawkesbury Nepean Community Legal Centre, located in Richmond NSW, provides free legal information and advice to people living in the Hawkesbury, Nepean and Hills areas of NSW and is one of 39 community legal centres in NSW.

Community legal centres work for the public interest, particularly for disadvantaged and marginalised people and communities. We promote human rights, social justice and a better environment by advocating for access to justice and equitable laws and legal systems and through the provision of legal services including strategic casework, community legal education and law reform campaigns.

Community legal centres work with a range of people who face considerable disadvantage and often face substantial barriers in accessing legal systems. One of such disadvantaged groups includes gay, lesbian and transgender people who, in addition to the common barriers faced by many disadvantaged people, also face significant discrimination and harassment at work and difficulties in accessing legal rights when a relationship ends or a partner dies.

Hawkesbury Nepean Community Legal Centre strongly supports the removal of all discrimination against gay and lesbian people and advocates for equality of laws for all people, regardless of their sexual orientation and equality of laws for all relationships, whether they be opposite-sex or same-sex relationships.

We would like to thank the Committee for the opportunity to make a submission to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008*.

Superannuation is the most commonly used method of saving for retirement and most people expect that their partner or children will inherit their superannuation. However, under current laws, same-sex couples do not have access to the range of superannuation benefits and tax concessions available to opposite-sex couples.

The Human Rights and Equal Opportunity Commission's *Same Sex: Same Entitlements* report shows that the same-sex partner of a federal public servant does not have access to direct death benefits unless his or her partner joined the public service after 1 July 2005, because the definition of 'spouse' does not extend to same-sex couples. Further, the same-sex partner of a federal government public servant may not get the same tax benefits and earnings as an opposite-sex partner, again, because the definition of 'spouse' does not include a same-sex couple. Finally, the child of a same-sex couple may not be entitled to the same superannuation benefits and tax concessions as a child of an opposite-sex couple. This is because of the way 'child' is defined in the relevant legislation. Further, whilst a same-sex partner may be able to access some benefits in private superannuation schemes if he or she can establish financial dependence on his or her partner or meet the 'interdependency' relationship criteria, it must be noted that both these categories impose more onerous qualifying criteria than for an opposite-sex partner in the same position.

Such differential treatment not only puts same-sex couples at a significant financial disadvantage but it also amounts to a breach of human rights under the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic Social and Cultural Rights (ICESCR)*, each of to which Australia is a signatory. Such differential treatment also contributes to perpetuating the legal and social inequities currently experienced by gay and lesbian people in Australia.

Accordingly, Hawkesbury Nepean Community Legal Centre strongly supports the objectives of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008*. If passed in its current form, the legislation will remove discrimination against same-sex couples and their children in relation to Commonwealth superannuation and related benefits and will ensure that same-sex de facto couples are treated in the same way as married or heterosexual de facto couples when it comes to dealing with Commonwealth superannuation and related benefits.

Hawkesbury Nepean Community Legal Centre supports the inclusion of a definition of "couple relationship" which captures married couples as well as heterosexual and same-sex de facto couples. Such a definition

mirrors a commitment to providing equal and non-differential treatment to all persons regardless of sexual orientation.

Hawkesbury Nepean Community Legal Centre rejects the suggestion that same-sex couples should be recognised as “inter-dependents,” along with other caring non-couple relationships such as siblings. Same-sex relationships are not the same as those between caring non-couple people and should not be characterised as such. To adopt such a definition denigrates the relationships of same-sex people and places them on a level below those of married and heterosexual de facto couples because the definition of inter-dependency does not recognise same-sex relationships as equal to heterosexual relationships. Such a definition would also mean that Australia will continue to have one set of laws for heterosexual relationships and another for same-sex relationships. Further, the *Same Sex: Same Rights* report states that interdependency definitions previously used in private superannuation funds have failed to provide same-sex couples with true equality. Interdependency definitions do not give the clear, certain and appropriate protection that de facto definitions provide. Accordingly, we ask that the Committee reject all suggestions that an interdependency definition be adopted and favour instead, a generalised de facto definition.

Hawkesbury Nepean Community Legal Centre also notes the inclusion of the recognition of children of same-sex parents under the Bill. Such recognition is applauded. Recognition of children of same-sex couples responds to the reality of the many and ever increasing number of children being born to same-sex parents and recognises the diversity of family types in Australian society. Further, such recognition would mean that a child would automatically be entitled to receive the superannuation benefits of the child's non-birth mother or father rather than being forced to prove financial dependence.

In closing, we urge the Committee to commend the Bill in its current form to Parliament as a matter of urgency so as to ensure that the discrimination currently faced by same-sex couples is removed and Australia is able to take a step forward in ensuring that all people in Australia are treated equally regardless of their sexual orientation. Such legislation is a critical first step in providing legal, financial and social equality for same-sex couples. It is our further hope that the Australian Government will not further delay the implementation of the omnibus legislation to address the remaining areas of law in which gay and lesbian people are treated differentially to heterosexual people before the law.

Yours sincerely,

Hawkesbury Nepean Community Legal Centre



Philippa Davis

Principal Solicitor