



Mr Peter Hallahan  
Committee Secretary  
Standing Committee on Legal and Constitutional Affairs  
PO Box 6100, Parliament House  
Canberra ACT 2600

Dear Mr Hallahan

**Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws – Superannuation Bill 2008)**

Thank you for your letter of 1 July 2008 inviting the Anti-Discrimination Board of NSW to make a submission to your Inquiry.

The purpose of Same-Sex Relationship (Equal Treatment in Commonwealth Laws – Superannuation Bill 2008) (The “Bill”) is to eliminate discrimination against same sex couples and their children in certain Commonwealth legislation that provides for reversionary superannuation benefits upon the death of a scheme member, and in related taxation of superannuation benefits. The Bill will amend various legislation to provide equal treatment to same sex-couples and their children.

The Board strongly supports the objects and purposes of the Bill to ensure equality under superannuation legislation; to avoid future breaches of the human rights of people in same-sex couples, and their families, by preventing future discrimination against them; and to ensure that the best interests of the children of same sex couples are protected.

**Discrimination against same sex couples and their children**

Whilst some protection is provided against discrimination on the basis of sexuality in state and territory laws, this does not provide adequate protection for same sex couples and their children. As the HREOC *Same Sex: Same Entitlement Inquiry*<sup>1</sup> reported same sex couples and their children do not enjoy the same entitlements as couples who are married or in opposite-sex de fact relationships particularly in relation to financial and work related entitlements and benefits.

Same sex couples are often excluded from statutory definitions of “spouse” or de “facto relationships” and children of same sex couples are often excluded from statutory definitions of parent/child relationships. This is particularly the case in the area of superannuation, which has led to same sex partners and their children being

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<sup>1</sup> *National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits* (May 2007)

unfairly denied considerable financial benefits and entitlements. This discrimination and inequitable treatment is not only unfair but is contrary to Australia's international human rights obligations.<sup>2</sup>

### **The practical and financial importance of accessing superannuation benefits**

The HREOC Report noted that superannuation is one of the main ways of saving for retirement.<sup>3</sup> It is designed to provide financial security for individuals and their families in retirement; or when a person dies unexpectedly. Superannuation is often a person's largest asset apart from the family home. Most people expect that their superannuation entitlements will be inherited by a partner, children or other dependants. However, for same-sex couples and families, this is not always the case. For example 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. However, both these categories impose more onerous qualifying criteria than for an opposite-sex de facto partner in the same position. This state of affairs is clearly arbitrary, unfair and discriminatory and can cause same sex partners and their children to suffer significant financial detriment, when they are unable to access benefits under superannuation schemes.

### **Proposed new definitions**

The Board welcomes the proposed amendments to revise the existing definitions "spouse" and "child" which will be more inclusive and provide equal recognition for opposite-sex and same-sex relationships and partners and the children of those relationships.

In particular, the Board welcomes the substitution of the new inclusive terms "couple relationship" and "partner", for marital relationship and husband and wife, which will expand the current definition of de facto relationships to include same sex partners. This will extend the range of persons who can be considered to be eligible for death benefits to include a person in a same- sex relationship with a scheme member.

The Board also welcomes the aim of the Bill to allow for the equal recognition for the children of same sex and opposite sex relationships. The Board agrees that the Bill will recognise real and existing family situations, and that this recognition is necessary+ if we are as a community to remove discrimination against same sex families and their children.<sup>4</sup>

### **Conclusion**

The Bill will allow equal access to superannuation entitlements for same sex and opposite sex couples and their children, by amending discriminatory legislation. This is to be applauded.

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<sup>2</sup> For example, the International Covenant of Economic, Social and Cultural Rights Articles 9, 2(2); International Covenant on Civil and Political Rights Article 26;

<sup>3</sup> Chapter 13

<sup>4</sup> Attorney General, Robert McClelland, Second Reading Speech, 28 May 2008



The Attorney General has stated that this *Bill* "introduces the first part of historic reforms to amend Commonwealth Laws that discriminate on the basis of sexuality ... marking a new ... commitment to promoting and protecting human rights in Australia – a commitment that is based on the belief of the fundamental equality of all persons."

The Board welcomes this commitment to address the widespread inequitable treatment of same sex couples and their children in a wide range of legislation, to ensure consistency, fairness and recognition of same sex relationships and same sex families in the community, with the Superannuation Bill the first step.

If you require any further information please contact the Board's Legal Officer, Lorraine Rivlin on 9268 5555.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stepan Kerkyasharian', with a date '21 July 2008' written below it.

Stepan Kerkyasharian AM  
President