INQUIRY INTO THE SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS – SUPERANNUATION) BILL 2008 (CTH)

SUBMISSION OF THE GAY & LESBIAN RIGHTS LOBBY (NSW)

JULY 2008

About the Gay & Lesbian Rights Lobby

Established in 1988, the Gay & Lesbian Rights Lobby (GLRL) is the peak representative organisation for lesbian and gay rights in New South Wales. Our mission is to achieve legal equality and social justice for lesbians and gay men.

The GLRL has a strong history in legislative relationship reform. In NSW, we led the fight for the recognition of same sex de facto relationships, which led to the passage of the *Property (Relationships) Amendment Act 1999* and subsequent amendments. The GLRL was also successful in lobbying for the equalisation of the age of consent in NSW for gay men in 2003 and the first recognition of same-sex partners in federal superannuation law in 2004. In 2006, we conducted the largest consultation on same-sex relationship recognition in Australia, with over 1,300 gay, lesbian, bisexual and transgender people in metropolitan, regional and rural NSW.

The rights and recognition of children raised by lesbians and gay men have also been a strong focus in our work for over ten years. In 2002, we launched *Meet the Parents*, a review of social research on same-sex families. From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the law reform recommendations outlined in our 2003 report, *And Then … The Bride Changed Nappies*. Several of our recommendations were enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* (NSW). We continue to work towards the outstanding recommendations.

CONTENTS

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

Remove references in the definition of a child to a child who is the 'product of a relationship'. Insert a new definition of a child which recognises children under separate tiers that reflect existing and evolving parent-child definitions under federal, state and territory law.

This should include recognition of:

- Children born through intercourse (see section 3.2.1)
- Children adopted by the couple (see section 3.2.1)
- Children born through assisted reproductive technology recognised under inclusive parentage presumptions (see section 3.2.2)
- Children recognised under prescribed state or territory surrogacy parentage transferral schemes (see section 3.2.3)
- In the interim, children born through surrogacy arrangements recognised under parenting orders (see section 3.2.3)
- Where appropriate, children under the care of a person who is acting in the position of a parent ('in loco parentis') or children normally resident in the household (see section 3.2.4)
- Where appropriate, step-children, defined to include the step-children of married *and* de facto couples (whether of the same or opposite sex) (see section 3.2.5)

Recommendation 2:

We recommend government support for a public education campaign educating same-sex couples about their new rights and responsibilities.

INTRODUCTION

The Gay & Lesbian Rights Lobby (NSW) (GLRL) welcomes the opportunity to provide comment on the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008 (Cth) (the "**Super Bill**"). The GLRL fully supports the objective of the Super Bill in its current form; primarily to provide equality for same-sex couples with heterosexual unmarried couples in respect to Commonwealth superannuation entitlements.

In this submission, we provide specific comments upon these aspects of the Bill:

- The inclusion of same-sex relationships under the "couple relationship" category
- The definition of a child under the new concept of "product of a relationship"
- The support for these reforms in the gay, lesbian, bisexual and transgender (GLBT), and broader communities
- Other issues, including the need for public education, and the need to bring legislation regulating private superannuation schemes in line with the current Super Bill's definitions of a couple.

These comments are provided with the intent of providing some suggestions in ways in which the Super Bill may be improved. At the Committee's request, the GLRL would be pleased to provide further submissions or appear at a public hearing to discuss further these and other issues.

PART ONE: THE CONCEPT OF A COUPLE RELATIONSHIP

1.1 'COUPLE RELATIONSHIP'

The GLRL notes that the Super Bill substitutes references to 'marital relationship' in the various Commonwealth superannuation schemes, with the term 'couple relationship'. Despite the terminology, the former definition of 'marital relationship' did not *only* include married couples but also (heterosexual)[1] *unmarried* couples.[2] The latter terminology – 'couple relationship' – takes a minimalist approach to include married couples, and unmarried heterosexual *and same-sex* couples. The Super Bill also substitutes terms such as 'husband' and 'wife' – which included married partners, as well as *unmarried* opposite-sex partners – with the gender-neutral term 'partner'. 'Partner' will include married spouses and unmarried partners (whether of the same sex or opposite sex).

1.2 OUR POSITION ON THE CONCEPT OF 'COUPLE RELATIONSHIP'

The GLRL fully supports the Super Bill's terminology of 'couple relationship' and 'partner' for these reasons:

- **The new terminology is clear and unambiguous.** The terms 'marital relationship', 'husband' and 'wife', are misleading because they also included *unmarried* (opposite-sex) partners.[3] The true shared characteristic between married *couples* and unmarried *couples* is not marriage, but the fact that these relationships are both types of *couple* relationships. Therefore, it clearly makes more sense to use terminology such as 'couple relationship' to apply to all couples, whether or not they are married.

- **The new terminology is inclusive of all partners, whether of the opposite or same sex.** Even where opposite-sex *de facto* partners have been recognised, the common law has shown a reluctance to interpret terms such as 'husband or wife' or 'spouse' as including same-sex partners. By sidestepping terms such as 'husband', 'wife' or 'spouse', the Super Bill therefore avoids the problem that common law interpretations of the legislation will lead to the exclusion of same-sex partners who are otherwise comparable to opposite-sex partners – but for their same gender. Therefore, the GLRL believes the terms 'couple relationship' and 'partner' give clear indication to courts and

[1] HREOC notes that there has been a tendency for terms such as 'husband or wife' and 'spouse' to be interpreted in common law as only referring to people in opposite-sex relationships, whether married *de jure* or *de facto*: see HREOC (2007) *Same-Sex: Same Entitlements – National Inquiry into Discrimination Against People in Same-Sex Relationship: Financial and Work-Related Entitlements and Benefits*, Sydney: HREOC, pp 64-66; see also *Gregory Brown v Commissioner of Superannuation* (1995) 21 AAR 378, *Commonwealth of Australia v Human Rights and Equal Opportunity Commission and Anor* (*Muller's Case*) [1998] 138 FCA.

[2] For example the *Superannuation Act 1976* (Cth) makes clear that the definition of 'marital relationship' includes (heterosexual) couples, whether or not legally married: s 8A(2). In fact, a legal marriage is fact only **one** relevant factor to consider, when determining if a person is in a marital relationship: s 8A(4)(2). That is, marriage is **not** conclusive proof of the existence of a marital relationship.

[3] For example, see *Gregory Brown v Commissioner of Superannuation* (1995) 21 AAR 378.

tribunals that same-sex de facto partners should be equally recognised with opposite-sex partners.

- **The new terminology does not devalue the status of any relationship, including married relationships.** The purpose of drafting is to make rights and entitlements clearly and easily discernable. The social status given to marriage and other relationships are not legal issues, but social ones on which many reasonable minds differ. Some Australians, including gay, lesbian, bisexual and transgender Australians, do believe that marriage carries a special status – whilst many others hold the view that day-to-day markers of commitment are no less important or valuable.[4] For some people, "I do" means a wedding, but for an increasing number of Australians[5], "I do", only involves the mortgage and picking the kids up from school.

- **There is precedent in inclusive, minimalist drafting.** Various drafting routes have been taken in previous reforms at the state level which have moved to include same-sex partners with married and heterosexual de facto partners. Whilst some drafting has added words or provisions[6], others have taken a more minimalist approach by changing previously discriminatory terms to explicitly include same-sex partners. For example, in the *Judges' Pension Act 1953* (NSW), the term 'spouse' which only applied to married partners and heterosexual de facto partners, was amended to include same-sex partners through a change in the definitions section of the Act. The word 'spouse' – which has been found to pertain to heterosexuals couples[7] – remained, but was amended in meaning by statute. Another example is the definition of a de facto relationship in Western Australia, which required persons to live together 'in a marriage-like relationship'. The definition was amended with a further clause saying that, in determining whether two persons were in a marriage-like relationship, it did not matter whether the persons were of different sexes or the same sex.[8] Yet, 'marriage-like', which is likely to have a common law interpretation that discriminates against same-sex couples[9], was never removed.[10] The clear benefit in minimalist amendments to existing

[4] See discussion on attitudes to de facto recognition and marriage held by gay, lesbian, bisexual and transgender people in NSW in Laurie Berg, Vicki Harding, David Scamell and Ben Bavinton (2007) *All Love is Equal… Isn't It?: The Recognition of Same-Sex Relationships under Federal Law*, Sydney: Gay and Lesbian Rights Lobby, pp. 14-8,

[5] The ABS notes that the proportion of people living in de facto relationships, as a proportion of all 'socially married' couples, increased from 8% in 1991 to 12% in 2001. ABS (2005) *Year Book Australia*, Canberra: ABS.

[6] For example, the *Superannuation Act 1916* (NSW) uses the term 'spouse or de facto partners'.

[7] See *Muller's Case*, n1.

[8] *Acts Interpretation Act 1984* (WA), s 13A(3).

[9] HREOC, n1, p 66.

[10] *Acts Interpretation Act 1984* (WA), s 13A(1)

provisions is that past common law otherwise prevails, making provisions more certain and clear in application.

For the above reasons, the GLRL supports the 'couple relationship' definition. The term 'marital relationship' was a misnomer, as the term clearly applied to people in *unmarried* heterosexual relationships. 'Couple relationship' will prove to be a more inclusive, unambiguous legal term which does nothing to change the meaning or status of marriage or other relationships, but *does* ensure that all relationships are treated equally for the purposes of federal superannuation entitlements. A minimalist drafting approach ensures that past common law will otherwise stand to give more meaning to provisions in the various superannuation-related statutes.

1.3 'INTERDEPENDENCY' IS NOT A SATISFACTORY MODEL FOR COUPLES

Before the announcement of the current Inquiry, several MPs suggested that same-sex couples should be recognised under an interdependency category with people in other, non-couple relationships. We note a similar category was introduced in 2004 in legislation pertaining to private superannuation.

Whilst there may be good arguments for recognising other caring or significant relationships for federal entitlements and benefits, the GLRL strongly believes it is inappropriate to group non-couple relationships with same-sex couple relationships under an 'interdependent relationship' category. This view is supported by the findings of the Human Rights and Equal Opportunity Commission Inquiry into Discrimination against People in Same-Sex Relationships, *Same-Sex: Same Entitlements.*

HREOC made these key observations about the inappropriateness of recognising couples through an interdependency category:

- Interdependency can place a more onerous burden on couples to prove their status, such as through definitions that require a level of financial interdependency.[11]

One person told the Same-Sex: Same Entitlements Inquiry:

> When I asked ASFA (Association of Super Funds of Australia) and the ATO (Australian Tax Office) how does one prove interdependency, they were unable to answer my query, except for stating that my partner would (probably) need to show banking records and photos as proof. Why is this necessary? Do heterosexual couples need to show banking records and personal effect to prove they are in a relationship? I can't imagine the horror that has been or will be faced by many Australian gay or lesbian people, when faced by death and subsequent grief of a loved partner to have to then prove their relationship status. What an inhumane request, especially seeing as though opposite-sex couples do not have to suffer the same experience.[12]

- Interdependency mischaracterises a genuine same-sex couple as different or inferior to a genuine opposite-sex de facto or domestic relationship. Like opposite-sex couples,

[11] HREOC, n1, p 68.

[12] HREOC, n1, p 297.

partners in same-sex relationships are more likely than other interdependent relationships to be the primary financial and emotional support for each other, and to raise children together.[13]

Another person told the Inquiry:

> It's a lessening, a diminishment and a failure to acknowledge the depth and sincerity of same-sex relationships by using that kind of language.[14]

- Interdependency has uncertain boundaries. It is not clear who it applies to and may unintentionally extend to people who may not want to be recognised.[15]
- Interdependency creates inconsistencies with definitions used in state and territory laws. The government should aim for the most consistent legal changes to help people know and understand their rights.[16]

Marcus Blease told the Inquiry:

> I have listed my partner down as the recipient of my Super, yet under legislation currently this can be challenged. This would not be the case for heterosexual couples. If my partner died I would have to prove an interdependent relationship, which has been interpreted very differently by different courts. There is no clean statement to clear the confusion up.[17]

[13] HREOC, n1, p 68.

[14] HREOC, n1, p 299.

[15] HREOC, n1, p 67.

[16] HREOC, n1, p 68-9.

[17] HREOC, n1, p 298.

PART TWO: THE DEFINITION OF A CHILD

2.1 'PRODUCT OF A RELATIONSHIP'

The GLRL notes that the Super Bill amends the definition of a child in Commonwealth superannuation-related legislation to include a new concept; a child who is the "product of a relationship". The "product of a relationship" definition appears in various forms, and is qualified by a further provision:

> A child cannot be the product of the relationship between two persons (whether the persons are the same sex or different sexes) … unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.[18]

2.2 OUR POSITION ON THE CONCEPT OF 'PRODUCT OF A RELATIONSHIP'

The GLRL supports the *objective* of the new definition of a child, which attempts to ensure that those children who are parented by same-sex couples will enjoy similar entitlements and benefits to children with opposite-sex parents.

Despite our support for the removal of discrimination against children parented by same-sex couples, we believe the "product of a relationship" definition has significant problems and should be changed for the following reasons:

- **The concept of a "product of a relationship" is not sufficiently clear.** The GLRL is concerned that, rather than using long-established means of defining the parent-child relationship (see **section 3.2**), the "product of a relationship" definition is an entirely new construct. Therefore, it is likely to remain uncertain in application until case law illuminates the scope of what is meant by the term, "product of a relationship". This could take many years, and is reliant on people who are facing discrimination in claiming entitlements at the time of a parent's death to take cases forward. The GLRL believes this is an unsatisfactory resolution for defining parent-child relationships (in all their complexity).

- **Uncertain terminology translates to a lack of knowledge about rights, and therefore a reluctance to claim them.** Our consultation with 1,300 gay, lesbian, bisexual and transgender people in NSW found that uncertainty and complexity in the law was a significant impediment to claiming rights – even rights to which people were clearly entitled.[19] In our consultation, terms such as "interdependent" were highlighted, in the context of immigration and superannuation, as causing confusion about whether same-sex partners were included in the law. The GLRL believes that uncertain and complex terms, such as the "product of a relationship", will cause similar confusion amongst our community, leading to an under-utilisation of existing rights and an

[18] See for example, amendments to *Judges' Pensions Act 1968* (Cth) in the Super Bill, Schedule 2, Clauses 14 & 19.

[19] Berg et al, n4, p 10.

apprehension to claim new rights. The GLRL believes that the parent-child relationship needs to be broken down into simpler categories, based in long-established legal definitions that have popular currency.

- **The definition as to what constitutes a child who is the "product of a relationship" may be both over inclusive or too restrictive for some families.** For example, unlike long-established parentage presumptions relating to children born through assisted reproductive technology (ART), the "product of a relationship" definition does not stipulate **if the consent** of the partner of the birth mother is necessary, or **when the consent** of the partner is required for the child to be deemed a "product of a relationship". Therefore the term "product of a relationship" may be over inclusive in such circumstances. Conversely, in families created through surrogacy, it is conceivable that both partners in a relationship may be infertile and use a sperm and an egg donor to conceive the child carried by the surrogate mother. Therefore, the biological nexus required by the definition would exclude such a couple. These are just some of the situations the GLRL envisages may create complexity and uncertainty for families created via assisted reproductive technologies and alternative conception methods under this definition.

For these reasons, the GLRL believes all references to children being the 'product of a relationship' should be removed. In its place, we offer an alternative definition of child below.

2.3 TOWARDS A MODEL DEFINITION OF 'CHILD'

The GLRL believes that a better definition of the parent-child relationship can be ascertained using a few key principles:

- All "easy" cases to define should be listed in separate tiers
- Wherever possible, definitions should be clear and draw upon existing and evolving parent-child terminology used in federal, state or territory law
- Where appropriate, a broader catch-all category should be used as the final tier in the definition to ensure that difficult cases are also included
- An appropriate distinction between **co-parents** (who are intended to be primary parents **from birth**) and **step-parents** (new partners who adopt the role of parents at a later stage in a child's life) should be clearly articulated by the law, and both types of parents recognised (where appropriate). (The importance of this distinction is that step-children will already potentially have already two legal parents.)

2.3.1 CHILDREN BORN THROUGH SEXUAL INTERCOURSE AND ADOPTED CHILDREN

Children who are conceived through intercourse between a man and woman, and children who are adopted are easily recognised under long-established tiers. The definition of a child should include these two tiers:

(a) A child born to the couple
(b) A child adopted by the couple

Where a same-sex couple has legally adopted a child through state or territory laws that allow same-sex adoption, then that couple will be recognised as parents of that child under such a

definition. This will include adoptive lesbian mothers or gay fathers will be included in this tier of the definition.

2.3.2 CHILDREN BORN THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

A child born through ART may or may not be biologically related to one (or both) of his or her parents. Therefore, under state, territory and federal law, a parentage presumption establishes that where a child is born through ART, the birth mother will be the legal mother (even if the child was conceived using another woman's egg). The mother's consenting **married** or **male de facto partner** will be deemed the father (even if the child was conceived using another man's sperm). The egg and sperm donors are not legal parents.[20]

In Western Australia, the ACT, the Northern Territory and NSW, a female partner to the birth mother, who consented to the ART at the time of conception, will be deemed the second mother/parent to the child. (Victoria has also announced its intention to introduce a bill this year which will introduce similar parentage presumptions to recognise co-mothers.)

Section 60H of the *Family Law Act 1975* (Cth) contains a similar parentage presumption to that which apply in state and territory laws. However, unlike the majority of states and territories, section 60H does not include lesbian co-mothers (but does include married and male de facto partners).

The significant advantage of parentage presumptions is that:

- Consent is necessary at the time of conception for parentage to be attributed to the partner of the birth mother
- If appropriately amended, parentage presumptions can easily apply to heterosexual and lesbian couples equally

The GLRL believes that the third tier of the definition of a child in federal law should refer to parent-child relationships recognised under parentage presumptions (appropriately amended to include lesbian co-mothers). For example, section 60H of the *Family Law Act* can be amended to include lesbian co-mothers, and then this parent-child presumption should be reflected in the definition of a child throughout federal law. In other words, the definition of a child could include:

(c) A child of the couple recognised within the meaning of section 60H(1) in the *Family Law Act*.

Alternatively, a parentage presumption could be centrally inserted in the Commonwealth *Acts Interpretation Act* and then reflected across federal law.

2.3.3 FAMILIES CREATED THROUGH SURROGACY

Like ART, a child born through a surrogacy arrangement may or may not be biologically related to one (or both) of his or her intended parents. However, unlike children born through regular ART, state and territory law has grappled with how to deal with the recognition of the intended parents at the conclusion of a successful surrogacy arrangement. At present, with the exception of the ACT, the surrogate mother, as the birth mother, will be a legal parent under the law – notwithstanding any surrogacy arrangement.

[20] For example, see the *Status of Children Act 1996* (NSW), s 14.

In most states and territories, there is currently no way for the surrogate mother to transfer her rights as a legal parent to the intended parents of the child (the 'commissioning couple'). In most states and territories, consenting parties in a surrogacy arrangement can only transfer *some* parental rights from the surrogate mother to the commissioning couple through a parenting order by consent via the Family Court. Whilst parenting orders do give parental responsibility to the commissioning couple in important areas, they do not confer full legal parentage to them, nor fully relinquish the rights and responsibility of the surrogate mother.

It is notable that surrogacy reform in the ACT under the *Parentage Act 2004* (ACT) introduced a mechanism by which consenting parties in a surrogacy arrangement can transfer legal parentage from the surrogate mother to the couple commissioning the surrogacy arrangement. This has a legal effect similar to adoption, whereby the surrogate mother relinquishes any rights she may have to be recognised as the legal mother. Western Australia has proposed similar changes.

The GLRL believes that the introduction of a mechanism for the transferral of parentage from a consenting surrogate mother to the commissioning couple is urgently needed to recognise the reality of opposite-sex and same-sex couples who are having children through surrogacy. States and territories have traditionally been the jurisdictions at which legal parentage is determined, and therefore such a mechanism should be introduced in every state and territory jurisdiction.

As the first step, federal law should automatically recognise any parent-child relationship recognised under a surrogacy parental order issued under a prescribed state or territory scheme, such as under the *Parentage Act 2004* (ACT). One way to do this would be to *prescribe* surrogacy parental orders issued under state or territory parentage laws as within the definition of a child:

(d) A child recognised by a surrogacy parental order issued under a prescribed state or territory scheme

The state or territory schemes could easily be prescribed under regulations, and regulations could be updated as more states and territories adopt surrogacy transferral of parental rights schemes. Alternatively, the word 'adopted' could be deemed under the Commonwealth *Acts Interpretation Act* to include a child over which a surrogacy parental order has been issued under a prescribed state or territory scheme. This will ensure that any federal law that includes 'adopted' children within the definition of a child, will also include children who have been "adopted" through a prescribed surrogacy parental order process.

One of the key problems in this area is that it may take states and territories many years to introduce transferral of parentage schemes for children born through surrogacy. As intended parents of children born through surrogacy may be issued with parenting orders through the Family Court, an interim solution may be to recognise these parenting orders within the definition of a child. For example, the definition of a child could include:

(e) A child born through a surrogacy arrangement recognised by a parenting order issued by the Family Court

The GLRL believes that a definition of a child rooted in state and territory law, as has been the case with adopted children, is the best long-term solution for recognising parent-child relationships for children born through surrogacy. However, to recognise these children in the interim in a consistent and certain fashion, we would suggest some further recognition of

people with parental responsibility under parenting orders as parents of a child born through surrogacy.

2.3.4 CHILDREN IN THE CARE OF PEOPLE IN THE POSITION OF PARENTS

In some circumstances, children will be parented by people who are not automatically recognised as legal parents. The law has recognised these broader child-parent relationships under terminology, such as people who are acting in the position of parents ('in loco parentis') or a 'child of the household'.

These catch-all categories are the **last resort** categories, which provide coverage to children living in atypical situations that should be covered but are difficult to classify. It is appropriate in this situation, that the legislative drafting is more open-ended and less certain. Certainty in this context is mitigated by the need for coverage and inclusiveness. The GLRL believes that all easily categorised types of parent-child relationships should first be tiered in the definition of a child, and a final catch-all category should be placed (where appropriate) as a final resort.

The "product of a relationship" definition is neither broad enough to be a catch-all category, not certain enough to be included in the tiers of easily-categorised parent-child relationships. For that reason, the GLRL believes that the "product of a relationship" tier should be removed entirely.

2.3.5 STEP-CHILDREN

In certain circumstances, step-children/step-parent relationships should also be recognised. Where there is done, it may be necessary to consider whether step-children of de facto couples should be recognised. HREOC notes that the term 'step child' under federal law, only applied to children of married couples.[21]

We note that the Super Bill does not recognise step-children of de facto couples.

[21] HREOC, n1, pp 100-1.

Recommendation 1:

Remove references in the definition of a 'child' to a child who is the 'product of a relationship'. Insert a new definition of a child which recognises children under separate tiers that reflect existing and evolving parent-child definitions under federal, state and territory law.

This should include recognition of:

- **Children born through intercourse (see section 3.2.1)**
- **Children adopted by the couple (see section 3.2.1)**
- **Children born through assisted reproductive technology recognised under inclusive parentage presumptions (see section 3.2.2)**
- **Children recognised under prescribed state or territory surrogacy parentage transferral schemes (see section 3.2.3)**
- **In the interim, children born through surrogacy arrangements recognised under parenting orders (see section 3.2.3)**
- **Where appropriate, children under the care of a person who is acting in the position of a parent ('in loco parentis') or children normally resident in the household (see section 3.2.4)**
- **Where appropriate, step-children, defined to include the step-children of married *and* de facto couples (whether of the same or opposite sex) (see section 3.2.5)**

PART THREE: SUPPORT FOR REFORM

3.1 GAY, LESBIAN, BISEXUAL AND TRANSGENDER COMMUNITIES SUPPORT REFORM

We have consulted widely with our communities in our home states who overwhelming support changes that would bring full equality to same-sex couples and their children. Large consultations with 1,313 people in NSW and 652 people in Victoria show that **98%** of our communities support the legal recognition of same-sex relationships.[22] In NSW, legal rights were the most significant reason for why relationship recognition was desired.[23]

In February 2008, the Gay & Lesbian Rights Lobby launched its 58 '08 campaign for equality in at least 58 laws which discriminate against same-sex couples by the end of 2008. In response to our campaign, over 1,000 letters have been sent to the Commonwealth Attorney-General highlighting personal stories of discrimination and support for reform. We have requested permission from some authors to publish these stories in our submission as they pertain to Commonwealth superannuation schemes.

On the 20 February 2008, Gloria Harrison & Katherine Weeks of Western Australia wrote:

> My partner and I have been together for more than 25 years, the majority of that time working for the Commonwealth and very aware that we are denied Superannuation equality. For at least the last six years we have been waiting for long promised changes that provide some of the same rights to us, that other Government employees enjoy - even if we are expected to accept the demeaning categorising of our relationship as one of 'interdependents'.
>
> A Media Statement issued by the previous Government (Nick Minchin) advised that Commonwealth Superannuation changes relating to interdependent couples had been costed and were scheduled to be implemented in July 08. We expect the Labor Government to at least honour that commitment, if not to act sooner. Every day that you delay has a potentially devastating impact on someone's future financial stability. A stability that other Commonwealth employees take for granted, but not us, even though we contribute to the fund on the same terms as everyone else.
>
> [...] More than six years should be sufficient time for reflection and consideration. We voted for you believing you were fair and decent. Now is your time for action.

On the 23 February 2008, Arthur Cheeseman of NSW wrote about discrimination facing him and his partner, John Challis:

> I am 75, my partner is 79. We have lived together for 40 years. I have no superannuation because it was not available to me. My partner has a Comsuper pension. While we both worked, we lived on my wages so that my partner could make the maximum contributions to his super fund, so the super belongs to both of us, and is our main household income. However, if my partner dies first, I will not receive the 2/3 reversionary pension which a heterosexual de facto partner would receive. At our age this is a matter of urgency. Please act now.

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[22] Berg et al, n4, p 21; Ruth McNair and Nikos Thomacos (2005) *Not Yet Equal: Report of the VGLRL Same Sex Relationships Survey*, Melbourne: Victorian Gay and Lesbian Rights Lobby, p 37.

[23] Berg et al, n4, p 6.

3.2 THE BROADER AUSTRALIAN COMMUNITY SUPPORT REFORM

A Galaxy Poll taken in June 2007 found that **71% of Australians** believe same-sex couples should have the same legal rights as those in a heterosexual de facto relationship. These figures included 63% of Coalition voters and 77% of ALP voters who agreed that same-sex couples should have equal de facto or domestic partnership rights.

In our 58 '08 campaign, many supportive family members have also written to show support for reform. On 22 February 2008, Lyndsay Connors of NSW wrote:

> As a loving parent of four adult children, I find it very painful for one of my children to be treated as a lesser citizen in our civil society, with inferior rights to her siblings. This is a personal issue for our family. But it is a wider social issue. I can find no rational explanation for discriminating against people on the grounds of sexuality and in my experience, irrational policies and laws have a corrosive effect on all of us.

On 25 February 2008, Dr Harry Knowles of NSW wrote:

> I have three daughters, one of whom is gay. Some years ago she met a British lass who was here on holiday. They became a couple and both returned to the UK and lived as a couple for the requisite period until her partner was granted residency here. They now live as a happy loving couple in the same way as my eldest daughter does with her husband and children
>
> The current laws mean I live in a country which treats one of my daughters differently in legal, cultural and economic terms than it does the others solely on the basis of her sexual preference.

On 1 March 2008, The Rev Martin O'Donovan wrote:

> I believe all people are equal and for the state to enforce the opposite is oppressive government. Laws must support the individual and serve his/her needs, not the other way round. Much is made of family values; the reality is there are many types of families today. Straight, gay, couples, children, many kinds.
>
> I speak as a committed Christian with a sense of shame about discrimination.

On 27 February 2008, Karen Rogers of Queensland wrote:

> I have a sister who is in a same-sex long term relationship with her partner. They are entitled as Australian Citizens, to live and be respected under the same laws as I do! This is very important to my whole family and all our friends. I am only one voice of many.

These stories are a simple testament to the level of support in the GLBT and broader community for these and further changes.

PART FOUR: OTHER ISSUES

4.1 THE NEED FOR EDUCATION

The GLRL believes that a public education campaign is required following the extensive recognition of same-sex couples in federal law. Our large consultations with over 1,300 lesbian, gay, bisexual and transgender people in NSW showed that state-based reforms as far back as 1999 were not well understood or even known about – despite a local and targeted education campaign at the time.[24]

Recommendation 2:

We recommend government support for a public education campaign educating same-sex couples about their new rights and responsibilities.

4.2 CONSISTENCY WITH PRIVATE SUPERANNUATION FUNDS

As outlined in section 1.3, the GLRL believes that the interdependency definition insert in private superannuation reform in 2004 is insufficient to cover same-sex couples equally. We therefore recommend that legislation pertaining to private superannuation funds be amended to reflect the changes in the existing Bill to recognise same-sex partners equally with heterosexual spouses.

[24] Berg et al, n4, p 10.