



Submission

To

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

From

**(CPSU) The Community and Public
Sector Union
PSU Group**

1st August 2008

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

Key recommendations:

1. CPSU supports the Same Sex Relationships Bill in its present form because it gives full equality to same sex couples as recommended by the HREOC Report.
2. CPSU agrees fully with the terminology of the Bill which gives same sex couples the same standing and entitlements as heterosexual de facto couples.

INTRODUCTION

1. The PSU Group of the Community and Public Sector Union (“CPSU”) represents over 200,000 employees in the Australian Public Service (“APS”), the Federal Public Sector, the ACT Public Service, the Northern Territory Public Service, and other sectors including the telecommunications sector, call centres, employment services and radio and television broadcasting.

2. This submission covers:

- some general observations and recommendations regarding public and private sector mechanisms that should further prevent discrimination,
- a sample analysis of a range of CPSU respondent agreements to determine whether any discriminatory provisions could exist,
- identification of discrimination that currently exists in regard to partners in same-sex relationships in regard to some federal public sector superannuation death benefits, and

3. Although this submission attempts to isolate discrimination that may apply to partners in same-sex relationships from general discriminatory practices, a number of CPSU observations and recommendations identify methods that could assist in reducing the potential for discrimination generally, which would include discrimination of partners in same-sex relationships.

4. In preparing this submission the CPSU refers to our previous submission to the HREOC Inquiry.

EMPLOYMENT ARRANGEMENTS AND EMPLOYMENT STATUS COULD ALLOW FOR DISCRIMINATION

5. The form of the employment framework can have an impact on employees financial and work-related entitlements.

6. In the Australian Public Service, and federal public sector some employment rights and entitlements can also be found the *Public Service Act 1999* or other Acts of Parliament, eg maternity and long service leave.

7. An employee can be engaged on an ongoing (permanent), non-ongoing (temporary), casual or as an independent contractor. The status of employment can also determine their rights in regard to financial and work-related entitlements.

8. The *Public Service Act 1999* and associated regulations covers amongst other things the rights and obligations of Australian Public Service (APS) employees, the Act includes a Code of Conduct for APS employees and APS Values. These Values include:

“10...(c) the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian Community it serves;”

9. The CPSU does not believe that this APS value provides sufficient details to ensure that discrimination does not in fact arise.

10. **The CPSU therefore recommends that the above Value be amended to identify the full range of employees that may suffer from discrimination. This would be achieved by expanding the Value to include discrimination;**

“on the basis of race, colour, gender, sexual preference, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, membership or non membership of a trade union or social origin.”

11. A majority of CPSU members have conditions determined by collective agreements which displace the underlying award. These agreements have generally provided extensive details of employee rights and entitlements and these entitlements are protected for the life of the agreement.

12. Under WorkChoices the Coalition Government required public sector employers further reduce the contents of collective agreements in a number of areas, including in regard to leave entitlements and eligibility for work related allowances. As a result entitlements were transferred out of agreements and into human resource policy manuals, therefore the knowledge of an entitlement is no longer in the public domain, and secondly the employer generally can unilaterally change the entitlement.

13. The CPSU also notes that AWAs altered, reduced or abolished leave entitlements from the level or standard of entitlement that existed in the relevant award or collective agreement.

14. **The CPSU recommends that the new Labor Government *Australian Government Employment Bargaining Framework* be amended to provide a clear and unequivocal statement that public sector employers, regardless of the employment instrument, must not allow for any form of financial or employment-related discrimination on the basis of race, colour, gender, sexual preference, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, membership or non membership of a trade union or social origin.**

15. There are also a significant number of CPSU members who work in the private sector who are employed solely on the basis of an award. For example, CPSU members employed in call-centres contracted to provide switchboard services to major corporations such as Telstra are generally employed under the *Telecommunications Service Industry Award* or the *Contract Call Centre Award*.

16. These employees are almost always employed on a casual basis; so they are entitled to only one hours notice, they receive no annual leave, no sick leave, no public holidays and no redundancy payment.

17. Although the CPSU has no specific examples of discrimination on the basis of people being in a same-sex relationship, entitlements to leave or allowances would for casual employees generally be at the statutory minima and entitlements to any form of leave may be non existent.

18. **In regard to private sector employers the CPSU recommends that the Government provide adequate resources to HREOC and other relevant organisations to ensure that employers are aware of, and comply with Government policy in regard to prevention of any form of discrimination in financial or work related benefits and entitlements.**

DO AWARDS OR AGREEMENT WITHIN CPSU COVERAGE AREAS CONTAIN PROVISIONS THAT DISCRIMINATE AGAINST SAME-SEX PARTNERS?

A) GENERAL OBSERVATIONS

19. The CPSU has assessed a sample number of current collective agreements and awards to determine whether they may contain provisions which directly or indirectly discriminate against employees who are in a same-sex relationship.

20. Collective agreements that were assessed as part of this sample generally contain prerequisite requirements for prior approval for employees seeking paid and unpaid leave. These requirements may also be linked to definitions that determine whether an employee is eligible to take the leave.

21. In addition, a range of allowances may be payable when an employee lives or transfers to another place of work or to a remote locality either

temporarily or permanently. As with leave entitlements, allowance payments are normally determined based on eligibility criteria.

22. The areas of leave and entitlement identified as potentially being prone to potential discrimination are:

- Carer's Leave
- Adoption Leave
- Parental Leave
- Maternity Leave
- Bereavement Leave
- Remote locality entitlements
- Level of Financial support where employee relocated, eg single or dependent rate

23. In conducting this sample audit, it became apparent that a number of public sector agencies have transferred entitlements out of collective / certified agreements and into agency policy documents. For example the Department of Foreign Affairs and Trade (DFAT) have transferred all relocation expense entitlements in the DFAT Human Resource Manual (HRM), and the definition of family member for personal / carer's leave is also within the HRM.

24. As reported above, this transfer out of the agreement does not allow for public access or scrutiny of these entitlements and could lead to changes in employee entitlements which could establish discriminatory provisions.

25. The CPSU believes that the recommendations contained in this submission, if supported, would provide a much more rigorous framework for employers to ensure that they do not have, or cannot introduce discriminatory arrangements.

B) SAMPLE OF SOME SPECIFIC AGREEMENTS

The Centrelink Certified Agreement

26. Centrelink is one of the largest federal public service agencies. Its most recent agreement was finalised in late 2005. The agreement describes a dependent as *"the partner of the employee (including same sex partner);..."*

27. The CPSU believes that the explicit inclusion of a same-sex relationship within the definition of partner will prevent potential inconsistency with the treatment of employees and ensures that employees with same-sex partners are not subject to direct or indirect discrimination.

Telstra Enterprise Agreement 2005 – 2008

28. The current Telstra certified agreement contains very limited information regarding eligibility for leave or allowances. The Telstra agreement is unusual as it needs to read in conjunction with the Telstra General Conditions of Service Award.

29. It should be noted that it has been Telstra policy up until recent legislative change was to employ all new employees on Australian Workplace Agreements. As stated previously, given the confidential nature of AWAs the CPSU is not able to determine whether any discriminatory provisions exist.

Ecowise Certified Agreement 2006 – 2009

30. Ecowise is a private sector organisation that is a business unit of ActewAGL. Attachment D in its agreement contains the Anti-Discrimination provisions which explicitly identify a range of categories which include sexual preference. These provisions specify that *“the parties must make every endeavour to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.”*

31. The CPSU believes that this provision provides an overriding framework which effectively prevents any provision being used to discriminate against an employee.

Northern Land Council Certified Agreement

32. The Northern Land Council agreement includes a specific reference of spouse.

Spouse	In relation to an employee means a person who lives with the employee as the husband or wife of that person regardless of sexual orientation on a bona fide domestic basis.
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33. The CPSU believes that the use of this definition assists in preventing explicit discrimination of same –sex partners.

The Australian Government Solicitors Certified Agreement

34. In the current Australian Government Solicitors agreement eligibility for personal leave, including carer’s leave and bereavement leave is available to people including:

“the employee’s partner; a member of the employee’s family; a member of the employee’s household; a close friend; or a person who is clearly dependent on the employee for care and support...”

35. CPSU members report that where Collective Agreements do not explicitly identifying partners in a same-sex relationship, the broadness of the above interpretation could lead to difference in interpretation and outcomes by different AGS supervisors and managers.

SAME-SEX DISCRIMINATION IN SOME FEDERAL PUBLIC SECTOR SUPERANNUATION SCHEMES

36. The CPSU can confirm that the Commonwealth Public Sector (CSS), which has over 41,000 current contributors or deferred contributors, and Public Sector Superannuation Scheme (PSS), which has close to 240,000 current contributors or preserved contributors, discriminate in regard to death

benefit entitlements for a same-sex partner of an employee covered by either of these schemes.

37. The general arrangements that cover superannuation entitlements and arrangements are established by federal legislation. One of the primary pieces of legislation is the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). Section 10A of this Act identifies categories of people who are deemed to have an interdependent relationship and the definition of dependent in Section 10 includes *any person with whom the person has an interdependency relationship*.

38. This discrimination in the CSS and PSS arises due to the absence of a comparable definition of “interdependency” in the *Superannuation Act 1976* (which covers the CSS) and the *Superannuation Act 1990* (which cover the PSS) and their associated rules and trust deeds. In the absence of this definition, the Trustees of the CSS and PSS Boards are required to rely on the definition of spouse as contained in Section 8B of the 1976 Superannuation Act, which links to the person being in a marital relationship. Section 8A specifies a marital relationship as a husband and wife relationship. A comparable provision applies in the *Superannuation Act 1990*.

39. The financial impact of this discrimination is significant for the individual same-sex partner of a CSS or PSS contributor or pensioner, but the savings to Government in retaining this discriminatory provision would be negligible.

40. The CPSU and concerned members have continued to raise this discriminatory provision for a number of years. Our concerns have been raised with the previous Government and the Department formally known as Department of Finance and Administration (DoFA). We are aware of CPSU members and retired members who have raised the issue direct with the Coalition Government Federal Attorney-General and the ALP leadership when in Opposition.

41. There are also a range of other areas in the CSS and PSS where employees are not able to access a range of arrangements that generally apply in private sector superannuation schemes. These include the ability to salary sacrifice the employee’s superannuation for themselves, their partner or their children, the ability to have investment choice options, and to have choice of superannuation funds. The CPSU does not view these areas as ones which discriminate against partners in same-sex relationships specifically.

42. **The CPSU strongly urges the Committee to recommend to the Attorney-General that the Federal Government immediately rectify the discrimination and provide the same interdependent relationship provisions in the CSS and PSS and any other relevant scheme that applies as part of the SIS Act.**

SPECIFIC COMMENTS FROM CPSU MEMBERS – from the CPSU submission to the HREOC Inquiry

43. As stated above, the CPSU sought information from members and potential members via electronic Bulletins and advices to encourage members who believe that they, or their partner had been, or could be, discriminated against to provide this information to the CPSU. The CPSU advice also provided a direct link to the HREOC Inquiry home page.

44. Feedback from members and potential members received primarily related to their knowledge of discrimination in regard to the superannuation entitlements for same-sex partners in the CSS and PSS which is identified previously in this submission.

45. A further matter was raised in regard to eligibility for payment of employment related allowances. In particular remote locality allowance was identified. The CPSU understands that the eligibility for payment in some federal public sector agencies is based on a ruling from the Australian Taxation Office. The CPSU has been advised that this ruling may in fact discriminate against people in a same sex relationship.

46. The CPSU recommends that the Committee request information from the Australian Taxation Office to determine whether Tax Rulings in regard to eligibility for allowances discriminate against the people in a same-sex relationship.

Examples

Contributor / Pensioner	Married or De Facto Partner	Sa
<p>A 45 year old CSS contributor with a partner dies after 20 years of employment. The Final Salary is \$60,000.</p> <p>Superannuation Standard Contributions \$90,000 Supplementary Contributions \$20,000 Productivity Contributions. \$10,000</p>	<p>The partner is entitled to 67% of the pension the Contributor would have received if the contributor had retired due to invalidity.</p> <p>This equals a Standard Indexed Pension of \$20,100. Additional Non-indexed Pension of \$8,040 or a lump-sum of the Standard Contributions of \$90,000 is also payable. Finally, a lump-sum of Supplementary and Productivity Contributions of \$30,000 is payable.</p>	<p>Th lun Co Th eq leg A the est</p>
<p>A PSS contributor with a partner and dependant child dies at 45 years of age after 20 years of employment. At the time of death the Final Average Salary was \$60,000 and the Accrued Benefits Multiple was 4.2. The prospective Benefit Multiple to age 60 is 3.15. The Benefit Multiple for calculating pension entitlements is 7.35.</p>	<p>The partner and dependant child are entitled to 78% of the pension the Contributor would have received if the contributor had retired due to invalidity.</p> <p>The pension payable to the partner and dependant child is 78% of the Final Average Salary of \$60,000 times the Benefit Multiple of 7.35 divided by the Pension Factor of 11 which equals an indexed pension of \$31,271 PA. Some or all of this pension can be commuted to a lump-sum.</p>	<p>Th pe wo du Th 45 tin Pe pe be Sa</p>
<p>A PSS or CSS Pensioner and partner receiving an indexed pension of \$30,000 PA.</p>	<p>The partner is entitled to an indexed reversionary pension of 67% of the pension previously paid, \$20,100 PA.</p>	<p>Th rev pa</p>
<p>A PSS or CSS Pensioner, partner and dependant child receiving an indexed pension of \$30,000 PA.</p>	<p>The partner and dependant child are entitled to an indexed reversionary pension of 78%, of the pension previously paid, \$23,400 PA.</p>	<p>Th an pe to Pa</p>

This document produced by CPSU Superannuation Advisor John Flitcroft
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