



**Australian
Family
Association**

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Peter Hallahan
Committee Secretary
Legal and Constitutional Committee
The Senate
Parliament House
Canberra ACT 2600

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

Dear Committee,

I am writing on behalf of the Australian Family Association. We thank you for the opportunity to make a submission to this inquiry.

The AFA acknowledges the good intentions of the Federal Government to address discrimination against homosexual members of the community and the children in their care. The AFA has also consistently encouraged and acknowledged the measures taken by both the ALP and the Coalition both during their times in Government, and in Opposition, to recognise and defend the special status of marriage as a natural institution uniting one man and one woman in a unique bond to provide the surest bedrock for healthy family life.

Our legal system has traditionally acknowledged the unique nature and importance of the marital union with special accommodations and rules. Until recently, public policy settings have generally also sought to accommodate the special nature and importance of marriage. To make such accommodation or recognition, discrimination has been essential. Discernment and discrimination about the social, legal and political significance of various relationship or family structures, or even about certain lifestyle choices has been a necessary part of responsible policy and law making.

When federal laws began to accommodate defacto spouses such accommodation was made because it was recognised that these relationships were marriages from the facts of their lives. It was recognised that many such women had cohabitated with the same man for a long time, and that the cohabitation's domestic arrangements looked the same as those typical of many married couples. These couples often had children. One

discriminating and discerning approach to these couples and their children was to recognise them as in reality defacto married spouses. Others warned that such concessions, whilst apparently just, would lead to a gradual weakening of society's understanding of the importance of marriage de jure. Some predicted that it would not be long before the concept of the committed defacto married spouse, would be merged or confused with partners merely cohabitating often in quite contingent, conditional and uncommitted arrangements.

Social Science research is increasingly showing the importance of marriage between a child's natural mother and father for the wellbeing, long-term and immediate, of that child. Other social science research is increasingly revealing the advantages of marriage to the spouses and marriage's superiority over mere cohabitation for both spouse and children's wellbeing.

It has always been understood by rational societies that discrimination and discernment can be reasonable and rational or unreasonable and irrational depending on intent and purpose. Government and the Law traditionally discriminated in favour of marriage as the favoured way of founding a family. In the latter half on the 20th century, many began to reject such discrimination as irrational. However, the contention that such pro-marriage discrimination is always irrational is no longer tenable given the weight of social science research discussed above. (Some of this research is summarised in The Marriage Manifesto which will also be attached to this submission)

Government, if it is serious about defending the status of marriage, must recognise and accept the necessity for discrimination and the need to discriminate between genuine cases of defacto marriage and other forms of contingent cohabitation. Government will also need to discriminate between marriage, de jure or genuinely defacto, and other non marital relationships such as those between close friends or siblings or same sex couples, for example in which there is such an unusual degree of shared life socially, emotionally, economically, domestically, that special legal and policy recognition is justified.

However we are of the opinion that the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008* does not reflect an appropriate, reasonable and careful discrimination in favour of marriage. The bill poses a real threat to the status of marriage in Australian society, and to the traditional family unit. It does so by extending reversionary superannuation entitlements which were originally intended only for married couples to the much broader category of “domestic relationships” with no marital characteristics required (i.e. non-marital couple relationships of a sexual nature, but with no attempt to discriminate against contingent, conditional, uncommitted cohabitations), implicitly placing such relationships on par with marriage.

On behalf of his government, Prime Minister Kevin Rudd has offered repeated assurances to the Australian people that he intends to preserve the institution of marriage as being a relationship between one man and one woman, to the exclusion of all others, voluntarily entered into for life.

We respectfully suggest that the federal government can remedy any unreasonable or unjust financial detriment arising from the exclusion of same-sex couples and their children from reversionary superannuation entitlements *without* breaking its promise to uphold the integrity of marriage. This can be achieved by implementing a system whereby, in addition to arising in marital relationships, reversionary superannuation entitlements arise on the basis of the existence of a long-term relationships in which a shared domestic life including financial interdependence is a feature. The existence of a sexual relationship between the partners would not be relevant to establishing eligibility. Making sexual relations a relevant feature would act to confuse the necessary distinction between marital and non-marital relationships. In addition there is growing social science evidence that that some cohabiters have virtually no shared life beyond their sexual relationship.

Same-sex couples in long-term inter-dependent relationships could thereby access reversionary superannuation benefits. Moreover, other Australians in long-term inter-dependent relationships, including siblings who have lived together inter-dependently for many years, could also gain access to reversionary superannuation benefits.

Approaching reform of the law in this way would enable the government to quickly address a pressing concern – the financial detriment suffered by committed mutually interdependent same-sex couples who can demonstrate financial inter-dependence and shared domestic life – without undermining the status of marriage.

Conversely, any legislative or policy initiative which calls into question the value and meaning of marriage in Australian society, for example by equating same-sex relationships with marriage (as the current bill does), demands a thorough and robust examination of *all* of the factors relevant to the issue, be they philosophical, sociological, political, theological, or otherwise. Adequately addressing these complex concerns would – and indeed *should* – take far more time than the present inquiry allows.

For these reasons, we strongly recommend that you reject the current bill, which would significantly undermine the status and integrity of marriage in Australian society. Article 16 (3) of the United Nations' *Universal Declaration of Human Rights* states, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Marriage is the bedrock of the family; in order to protect the family we therefore respectfully urge you to preserve and protect the integrity of marriage.

Sincerely,

Angela Conway
National Research Officer and Spokesperson
The Australian Family Association
25 July 2008