

Committee Chair
Senate Legal and Constitutional Affairs Committee
Department of the Senate
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Australia

By email: legcon.sen@aph.gov.au

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Dear Senator Crossin,

Submission to the Same-Sex Relationship Bill 2008

Thank you for the opportunity to make a submission to the inquiry into the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008*.

I support the objectives of the Bill: to remove discrimination against same-sex couples and their children in relation to Commonwealth superannuation and related benefits and to enable death benefits to be conferred on de facto same-sex partners and children of a same-sex relationship where they currently would have no entitlement. I also support the related amendments to taxation legislation that would ensure that same-sex partners are taxed concessionally on any death benefits.

All Australians should be treated equally before the law. Arbitrary exclusion of same-sex families from financial benefits is not compatible with the fundamental human rights embodied in a number of international conventions, including the Convention on the Rights of the Child and the International Conventions on Civil and Political Rights and on Economic, Social and Cultural Rights. In particular, such exclusion is contrary to the State's responsibility to ensure all children and adults are treated as equal by the law and that special measures for the protection and assistance of children are taken on behalf of all children without discrimination of any kind.

The past ten years has seen significant progress granting equal rights to same-sex couples and removing discrimination against gay men and lesbians.

Recently in NSW, the *Miscellaneous Acts (Same Sex Relationships) Bill 2008* amended 57 pieces of legislation to remove discrimination against same-sex couples as well as granting legal recognition to both parents in a lesbian relationship.

While most States have moved forward in some way with law reform that recognises same sex couples, the issue of non recognition of (or willful discrimination against) same sex couples and their children in Commonwealth law requires immediate attention.

Non-recognition of same-sex relationships and children in same-sex families is leading to inconsistency and injustice in the way that same sex couples and their families are treated. This inconsistency and willful discrimination is having the effect of creating a new group of illegitimate children and leaves same sex couples with fewer options and less assistance than equivalent heterosexual counterparts.

This Bill is a welcome first step in the removal of legislation that discriminates against same-sex couples at a federal level and I look forward to supporting future legislation to implement the remaining recommendations contained in the Human Rights and Equal Opportunity Commission's *Same Sex: Same Entitlements* report.

In relation to the specific provisions of the Bill:

- **I support the definition of “couple relationship” under the bill as it provides a straightforward and inclusive definition which treats married, opposite-sex and same-sex couples in the same way.**

The narrow definition of ‘spouse’ under Superannuation legislation has excluded same-sex couples. The umbrella term ‘couple relationship’ under this Bill provides clear, equal and non-differential treatment to all couples, regardless of sexuality. To quote the Attorney from the debate on the Bill, this “*will place all persons who have an opposite-sex or same-sex relationship with a scheme member on an equal footing.*”¹

- **I disagree with the suggestion that same-sex couples should be included under the broad category of “interdependents”.** Interdependency does not recognise same-sex relationships as equal to heterosexual relationships. There is no reason that same-sex de facto couples should be treated differently to married, or heterosexual de facto couples.

The ‘interdependent’ category was specifically rejected by HREOC for a number of reasons, including that “*[t]he ‘interdependency relationship’ label for a same-sex relationship mischaracterizes a genuine same-sex couple as different or inferior to a genuine opposite-sex couple.*”² It can also be harder

¹ Australia, House of Representatives 2008, *Debates*, (The Hon Robert McClelland MP, Member for Barton, Attorney-General), <http://parlinfoweb.aph.gov.au>, 04 June 2008.

² HREOC, 2008, ‘Same-Sex: Same Entitlements Report’, p375.

and more onerous for a same-sex couple to prove that their relationship qualifies as an 'interdependent relationship' than it is for an opposite-sex couple to prove a de facto or marriage relationship. HREOC also points out that the interdependent definition used in some Commonwealth legislation has failed to provide full-equality.

The stated purpose of this Bill is to remove discrimination against same-sex couples. Categorising same-sex couples as 'interdependents' will not achieve this.

- **I strongly support the Bill's recognition of children of same-sex families.** It is essential that children of same-sex couples have the same access to superannuation death benefits as children of other relationships. In HREOC's final report it was noted that “[d]enying access to benefits *intended to help parents support their children leaves the children in a same-sex family worse off than other children.*”³

The definitions of children under the Bill recognises the reality that families in Australia are diverse. The new definitions of children in this legislation will also solve problems arising from some surrogacy arrangements, including in opposite-sex relationships. Children should not be the ones to suffer because legislation has failed to keep up with this reality. The legal recognition of families, coupled with equal access to entitlements, is in the best interests of children.

I look forward to further amendments to Commonwealth legislation that will fully recognise all children of same-sex families.

- **I also support the associated amendments to tax legislation which will similarly remove discrimination against same-sex couples.**

It is unfair and discriminatory that a same-sex partner would have to prove that they qualify as a 'dependent' or pay a marginal tax rate if they were to access their partner's superannuation on their partner's death, given that an opposite-sex partner in a heterosexual relationship would be entitled to concessional tax relief.

- **This Bill is a matter of urgency.**

Passing this Bill is a matter of urgency for same-sex families across Australia who are currently being denied financial benefits available to opposite-sex couples. In particular, the impending retirement of Justice Kirby makes the amendments to the *Federal Magistrates Act 1999* and *Judges' Pensions Act 1968* all the more urgent, to ensure that Justice Kirby's partner and any other same-sex partners of Federal Magistrate's are not denied financial entitlements available to opposite-sex couples.

It is discriminatory that same-sex couples and their children are denied access to a range of superannuation entitlements and tax concessions that are available to opposite sex couples. I urge the Committee to commend the Bill to Parliament in

³ *ibid.*, p106.

order to ensure that the discrimination faced by same-sex couples can be removed as soon as possible.

I commend the Federal Government for this important legal initiative.

Thank you again for the opportunity to make a submission to this inquiry.

Yours sincerely,

Penny Sharpe MLC