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**Submission to the  
Senate Legal and  
Constitutional Affairs Committee**

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

**Submission by**



**July 2008**

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## ▼ **About GALE**

Gay and Lesbian Equality (WA) Inc. is the peak human rights lobby group for people of diverse and minority sexualities in Western Australia.

Our organisation supports the basic principle that in a free and secular society, people should be afforded the same human and legal rights and responsibilities irrespective of that person's sexual orientation.

GALE seeks to encourage government, corporations and society to recognise that all people — irrespective of their sexual orientation — deserve nothing less than full equality.

Our objects of association include:

- ▶ to achieve equal rights for gay, lesbian and bisexual people in Western Australia and Australia within a legislative, regulatory and broad community context
- ▶ to encourage governments, institutions and other organisations to have positive policies towards gay, lesbian, bisexual, transgender, transsexual and intersex people
- ▶ to promote positive community attitudes towards gay, lesbian, bisexual, transgender, transsexual and intersex people
- ▶ to promote awareness of health, welfare and social issues affecting gay, lesbian, bisexual, transgender, transsexual and intersex people
- ▶ to recognise the diversity of gay, lesbian, bisexual, transgender, transsexual and intersex people in their beliefs, backgrounds, ages, cultures and relationships
- ▶ to recognise the diversity of gays and lesbians in their beliefs, backgrounds, ages, cultures and relationships

Within this scope, GALE seeks to make this submission to the Senate Legal and Constitutional Committee on behalf of its members and supporters. We thank the Senate for this opportunity for GALE make a representation to this inquiry into the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*.



Rod Swift  
Gay and Lesbian Equality (WA) Inc.

## ▼ **Submission**

### ▼ **Sexuality and gender discrimination in superannuation must end:**

People of diverse sexual orientations and gender identities, and their families, continue to experience widespread and systemic discrimination within Australian society.

Since the 1980s, wide-ranging inquiries and reports into the human rights of Australia's lesbian and gay population have been conducted in both the Federal and State spheres.

Gay and Lesbian Equality (WA) agrees with prior findings by the Australian Human Rights and Equal Opportunity Commission (HREOC)<sup>1, 2</sup> and the Senate Legal and Constitutional Committee<sup>3</sup> itself that Australia lags behind other contemporary, first-world nations in the equal protection of people of minority sexual or gender identities.

Indeed, the Liberal-National Coalition Government of John Howard reformed many aspects of private sector superannuation for same-sex couples and their dependents<sup>4</sup>. However, the previous government did not fix the problem of benefits for partners and/or children of those with defined-benefit Commonwealth public sector superannuation to which this Bill relates.

GALE strongly supports the granting of equal treatment to these couples and families under the law by extending coverage to these couples.

### ▼ **Terminology to describe relationships and families:**

GALE strongly agrees that same-sex couples in de facto relationships and their families, should be recognised in an identical way to that which heterosexual unmarried de facto couples and their families are recognised under the law.

Some religious proponents believe that the creation of a new umbrella term of 'couple relationship' to encompass married couples as well as non-married de facto couples (heterosexual or not) in some way 'devalues' the institution of marriage.

GALE notes that marriage is an exclusively heterosexual special institution as defined by law in 2004<sup>5</sup>, and this bill does not change that status one iota.

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<sup>1</sup> *Human Rights for Australia's Gays and Lesbians*, Occasional Papers Series, Human Rights and Equal Opportunity Commission, Sydney, February 1997.

<sup>2</sup> *Same-Sex: Same Entitlements – National Inquiry Into Discrimination Against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*, Human Rights and Equal Opportunity Commission, Sydney, April 2008.

<sup>3</sup> *Inquiry Into Sexuality Discrimination Report*, Senate Legal and Constitutional Committee, 1996.

<sup>4</sup> *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*.

<sup>5</sup> *Marriage Legislation Amendment Bill 2004*.

Indeed, we would argue that the term 'couple relationship' as used in the Bill does protect the unique status of marriage as there is no evidence that marriages are 'devalued' by the recognition of a multitude of relationships under one umbrella term.

GALE notes, however, that the spurious argument from religious groups that same-sex couples could 'devalue' marriage is neither demonstrated by them nor justified by them. Indeed, we have noticed inconsistency with their arguments over time as they frantically try to deny same-sex couples equality.

For example, the Australian Christian Lobby stated in an August 2007 press release prior to the last Federal election:

***ACL also does not wish to see the definition of de facto marriage extended to include same-sex couples or for 'parenthood' to be redefined in gender neutral terms.***

...

***However we reject HREOC's attempts to normalise same-sex relationships by extending the definition of de facto marriage and redefining parenthood.***<sup>6</sup>

This is an astounding claim, considering they now wish to see the definition of de facto extended to include same-sex couples. Indeed, they claim this in their submission to this very inquiry:

***Whilst we understand that, under the present superannuation law, the definition of marital relationships has been extended to include heterosexual de facto couples, it is our view that 'marital relationship' and the associated terminology of 'husband', 'wife' and 'spouse' should refer to legal marriage only. Non-marital relationships, whether heterosexual or homosexual, should be termed 'de facto relationships' with the related term 'partner' as the Government currently proposes in its Family Law Amendment De Facto Financial Matters and Other Measures) Bill 2008. The catch-all category of 'couple relationship' which implies that all types of relationship are the same, should be abandoned and replaced with references to 'married or de facto relationship' and the associated terminology of 'spouse or partner' throughout the bill.***<sup>7</sup>

It appears that something that 'devalues' marriage (the elevation of same-sex couples to de facto status) is now no longer considered to 'devalue' marriage, according to the Australian Christian Lobby. Indeed, they now believe that using an umbrella term to encompass all types of relationships somehow 'devalues' marriage.

We disagree. It is easily argued, for example, that using the ACL's alternate language of 'married or de facto relationship' actually elevates de facto couples to the same status as married couples – and therefore it 'devalues' marriage, as they have previously argued.

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<sup>6</sup> *ACL to seek pre-election commitments on abortion and same-sex issues*, ACL Media Release, 23 August 2007 – at [http://www.acl.org.au/pdfs/load\\_pdf\\_public.pdf?pdf\\_id=923](http://www.acl.org.au/pdfs/load_pdf_public.pdf?pdf_id=923)

<sup>7</sup> Submission 11, Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008, authored by the Australian Christian Lobby.

We assert that the true reason behind such religious groups pushing the idea of 'marriage sanctity' and 'devaluing marriage' is to deliberately try to exclude same-sex couples from equal treatment for their relationships and to perpetuate the discrimination faced by same-sex couples.

In summary, GALE has no position as to the wording of the Bill in relation to 'couple relationships' or any other alternate terminology, merely that the Bill in its final form have the clear intention that all couples and families are treated fairly, equitably and equally, and that all de facto couples are treated equally under the law and irrespective of their treatment in comparison to married couples.

We also assert that all arguments about 'devaluing' marriage, based on the words in a Bill, are nonsense and unfounded. Marriage will continue to endure as the paramount form of relationship structure in Australia. Indeed, it may even one day be bolstered by having countless same-sex couples able to join the institution of marriage and strengthen it.

GALE also strongly supports the concept of family to be extended to the children of same-sex couples so that these children are fairly treated under law. We propose that the Bill contain language to recognise the interests of these children, irrespective of the gender of their parents.

### ▼ **Same-sex couples are not 'interdependent', they're de facto:**

GALE notes that previous legislation recognising same-sex couples has crudely described such relationships as 'interdependent'<sup>8</sup>. GALE strongly disagrees with the notion that same-sex couples should be accommodated in legislation by defining them within this concept.

Indeed, no State or Territory recognises same-sex couples under any 'interdependent' categorisation. They all place such relationships within the definition of 'de facto'. We strongly support the expansion of the concept of 'de facto' in Federal law to extend to same-sex couples, rather than the separate-and-unequal status afforded by 'interdependent' relationships.

GALE, however, does support interdependent, non-conjugal relationships being recognised on their own merit. This may include extending such 'interdependent' relationships to those between adults and dependents who are under long-term primary care of the adult: for example, an uncle or aunt caring for their orphaned nephew or niece, or a grandparent and grandchildren.

### ▼ **Including people of gender diversity:**

GALE suggests that the legislation leave no couple or family behind. It is imperative that whatever definition used to cover non-heterosexual relationships encompasses those couples and families where the couple relationship may have one or both people who have a diverse gender identity.

We note that in Western Australia, the definition of de facto couple states:

*(3) It does not matter whether –*

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<sup>8</sup> For example, *Migration Act 1958*

*(a) the persons are different sexes or the same sex<sup>9</sup>*

We would suggest that such definition does not preclude a couple where one person is of a diverse gender identity. However, a definition of 'opposite sex or same sex' or 'heterosexual or homosexual' would preclude people who have a biologically indeterminate sex or have no sex, or who identify as intersex, or have transgender status from being recognised in a relationship. Therefore we would encourage Senators to ensure that all couples are encompassed in the law reforms by including language that encompasses relationships with people of diverse gender identities.

▼ ***The challenge of multiple relationships at law:***

GALE wishes to bring to the committee's attention a provision in Western Australian law that may need to be considered in relation to this Bill, namely, that Western Australian law recognises a de facto relationship exists even if other relationships still exist.

For example, WA law rightly recognises a de facto relationship that may have commenced while one of the parties is still in an ending or existant relationship, namely:

*(3) It does not matter whether –*

...

*(b) either of the persons is legally married to someone else or in another de facto relationship<sup>10</sup>*

For example, a woman of strict Catholic faith may have not necessarily divorced her estranged husband, but is now living in a de facto relationship with another person. Under WA, both relationships would be considered as existant.

This raises questions as to how the Federal Government would treat such a situation. Indeed, it would be considerably unfair that the first relationship be given complete recognition while the second relationship is given no recognition whatsoever. This becomes even more complex an issue when there a person is in two or more simultaneous de facto relationships existant in parallel.

One potential solution would be for a person who is a member of a superannuation fund covered by this Bill to be made to nominate which dependant couple partner is the one they wish to have recognised for any reversionary pension. Equally, another solution would be for such reversionary pension to be split equally between any surviving spouse or partner.

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<sup>9</sup> *Interpretation Act (WA) 1984, section 13A(3)(a)*

<sup>10</sup> *Interpretation Act (WA) 1984, section 13A(3)(b)*