



AUSTRALIAN COALITION FOR EQUALITY

Equality For Australia's Lesbian, Gay, Bisexual, Transgender & Intersex People

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Friday 15 August 2008

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Mr Hallahan

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

Thank you for the opportunity to present at the recent Senate Inquiry hearings. Following viewing of the hearings held in Sydney, Melbourne & Canberra into the specifics of the above bill, the Australian Coalition for Equality wishes to make a supplementary submission to highlight key points for the committee's consideration.

Terminology same sex and opposite sex can still discriminate

ACE would reiterate to the Committee that use of the terms "same-sex" and "opposite-sex" continues to discriminate against those who have an indeterminate sex or are asexual. It is suggested these terms be replaced with "regardless of gender" ensuring 100% of Australians are captured.

Definition of Couple Relationship

The committee heard from some witnesses concerned about the status of marriage in federal law. The Australian Coalition for Equality supports, in principle, the distinct recognition of marriage - along with the distinct recognition of registered relationships, separately to the distinct recognition of defacto relationships.

If the committee's objective is provide equal rights and responsibilities to all three forms of relationship (marital, registered and defacto) then the Australian Coalition for Equality would propose the model for legislative definitions attached in Appendix One. In this model, there is the capacity for each of the three relationship terms to be clearly defined at the front of each piece of legislation. Further, an "umbrella term" of "Couple Relationship" may refer to each of the individual terms below it. In doing so, minimal rework of the draft will be required if the term couple relationship is retained within legislation. We believe this approach will also ensure the courts do not treat married, registered or defacto couples differently, in that each will have unique criteria but be provided with equal "couple relationships" entitlements.

Introduction of Interdependent Relationships

An independent inquiry is required into the needs and wants of interdependent relationships. Were the current and recommended independent inquiry to find that the same rights and responsibilities should be afforded to interdependent couples, our proposed model above could readily be expanded to include interdependent relationships. We have outlined this example in Appendix Two.

We note financial detriment may be faced by many interdependent couples, should their government benefits depend on an interdependent partner's income. We recommend the independent inquiry be requested to investigate a referral of powers from the states to cover interdependent registered relationships, in order that

registered caring relationships can be recognised in Federal law. This will allow the Federal government to provide choice to interdependent couples wishing to “opt-in” to the rights and responsibilities provided. Whilst this referral of power is sought, we urge the committee to proceed with independent and expedient passage of same-sex legislation.

Definition of Child

We reconfirm our support for amendment of the term “product of the relationship”, and support Professor Jenny Milbank & the NSW GLRL submissions recommending adoption of existent common law definitions.

Private Superannuation – Mandated Equality

The committee was informed during the hearings that around 90% of Australia’s superannuation funds are held in private superannuation funds. It was identified that a large number of these funds would automatically pick up the inclusive changes to the legislation, provided the definition of defacto partner included both same-sex and opposite-sex couples. It was highlighted that, as a matter of policy, the government would generally not mandate private superannuation funds to take action one way or another when changes occur.

The principles of equality and provision of equal access to same-sex couples are strongly supported by the majority of witnesses and both major parties. With this principled support in mind, the Australian Coalition for Equality proposes amendments be made to the SIS Act mandating that, should an individual superannuation fund recognise opposite-sex defacto couples, they must also recognise same-sex defacto couples. In this way, the government would not be requiring action by the superannuation funds, but would be mandating that should the superannuation fund recognise defacto couples, they must apply the principles of equality and non-discrimination supported by 71% of Australians.

We refer the committee to the submission by Associate Professor Miranda Stewart, regarding the need for assurances that amendments to a trust deed will not result in a resettlement.

Introduction of Interdependent Relationships into Commonwealth Superannuation Schemes

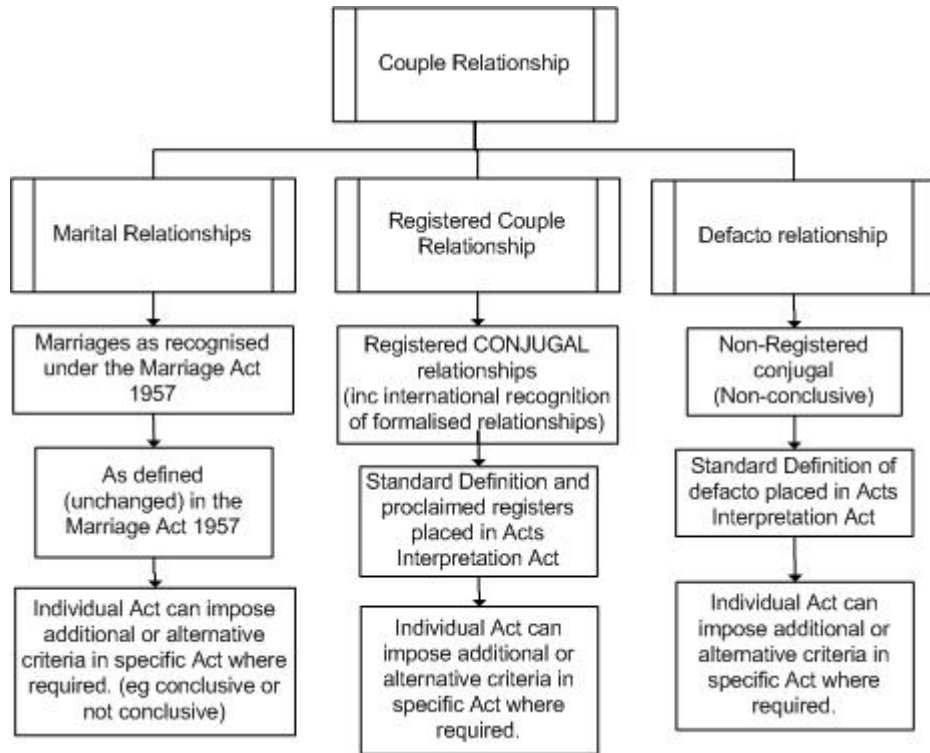
The Australian Coalition for Equality supports the introduction of interdependency (as a distinct category to same-sex defacto relationships) into Commonwealth Superannuation schemes. Through this inclusion, people in private and public superannuation schemes are provided with equal opportunity to access their superannuation in any way they so choose.

Should any further discussion be required in relation to this submission, please contact the Australian Coalition for Equality on the contacts provided. We are happy to make ourselves available to the inquiry as required.

Yours,

Corey Irlam
Committee Member
Australian Coalition for Equality

Appendix One: "Couple Relationship" Definition Model



Appendix Two: Couple relationship & Interdependency

