



UniSuper

31 July 2008

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

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

Dear Sir

**Same-Sex Relationships (Equal Treatment in Commonwealth Laws—
Superannuation) Bill 2008**

We applaud the Federal Government for its initiative in setting out to eliminate aspects of Commonwealth legislation that discriminate against same-sex partners, such as those which may still be found in some legislation relating to superannuation.

As you may be aware, UniSuper is the leading superannuation fund for employees in Australia's higher education and research sector. The fund has more than 435,000 members and \$24 billion in assets (at March 2008), making it one of Australia's largest superannuation funds.

We are therefore following the progress of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill particularly closely and we are aware that it has so far been passed in the House of Representatives.

Once the proposed legislation becomes law, the trustees of most superannuation funds will need to amend their governing rules to broaden the definitions of "spouse" and "child" in line with the new legislation before superannuation benefits can commence to be paid to same-sex partners and their children as contemplated by the legislation.

These changes would need to be considered carefully by trustees of superannuation funds that offer reversionary pensions so that the impact on the cost of funding those pensions, and the associated impact on measures such as a fund's vested benefit index and accrued benefit index, can be considered on an informed basis. While superannuation funds providing only accumulation-styled benefits may be relatively unaffected, defined benefit funds will potentially be impacted to the extent that benefits would become payable to a broader category of people than before and would have to be funded.

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While supportive of the principles and policy underpinning the proposed legislation, UniSuper believes that consideration ought to be given to the following:

1. a transitional period before the amendments take effect; and
2. clarifying that trustees will not contravene Commonwealth or State based anti-discrimination legislation during the period between the date on which the proposed legislation becomes law and the date on which the necessary changes to a fund's governing rules take effect (on account of the governing rules containing discriminatory definitions of "spouse" and "child" that would no longer be mandated by superannuation law),

so that trustees can respond to, and implement, the proposed legislation in a prudent and informed manner, commensurate with their fiduciary duties to members.

If you wish to discuss these comments, please contact me on (03) 9691 4100.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Luke W. Barrett', written in a cursive style.

Luke W. Barrett
Acting General Counsel
Head of Investment Law & Compliance