

# Briefing Paper

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

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### Issue

On 18 June 2008, the Senate referred the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008* to the Legal and Constitutional Affairs Committee for inquiry and report by 30 September 2008 or after the consideration of any related bill or bills that may be introduced to give effect to the recommendations of HREOC's report *Same Sex: Same Entitlements*, whichever is the sooner.

The Bill aims to eliminate discrimination against same-sex couples and the children of same-sex relationships in Commonwealth legislation that provide for reversionary superannuation benefits upon the death of a scheme member, and in related taxation treatment of superannuation benefits. The Committee invited written submissions by 25 July 2008; AFAO made a submission, as did other organisations such as the Gay and Lesbian Rights Lobby.

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### Background

HREOC's National Inquiry into Discrimination against People in Same-Sex Relationships (concluded 2007) identified 58 laws that discriminate against same-sex couples and their children in areas of financial and workplace benefits. The Government has announced that those laws, and 40 additional laws, will be repealed to remove discrimination against same-sex couples and their children in relation to taxation, superannuation, Medicare and pharmaceutical benefits, aged care, veteran's entitlements, workers compensation, and employment entitlements. The majority of those measures are contained in a corresponding (and large) bill - *Same Sex: Same Entitlements Bill 2007* (informally being referred to as 'the omnibus bill') which is likely to be debated later this year. This issue of Commonwealth employment related superannuation was singled out for a 'quick fix' by the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*. This bill would simply bring the Commonwealth into line with other state and territories.

Currently, the same-sex partner of a beneficiary in a Commonwealth (defined benefit) superannuation scheme (covering Commonwealth public servants) does not get any direct access to reversionary death benefits on the death of the beneficiary. The Bill amends definitions in numerous Acts governing the Commonwealth civilian and military (defined benefit) superannuation schemes as well as relevant regulatory Acts and will 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.

The Bill amends the Commonwealth civilian and military (defined benefit) superannuation schemes, the parliamentary, judicial and statutory legal officer pension schemes, and the pension scheme for the Governor-General, established under the following Acts:

- *Defence Force Retirement and Death Benefits Act 1973*
  - *Defence Forces Retirement Benefits Act 1948*
  - *Federal Magistrates Act 1999*
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- *Governor-General Act 1974*
  - *Judges' Pensions Act 1968*
  - *Law Officers Act 1964*
  - *Parliamentary Contributory Superannuation Act 1948*
  - *Superannuation Act 1922*
  - *Superannuation Act 1976*

The following regulatory superannuation Acts and relevant taxation Acts will also be amended by the Bill to provide equal treatment to same-sex couples and their children:

- *Retirement Savings Accounts Act 1997*
- *Small Superannuation Accounts Act 1995*
- *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*
- *Superannuation Industry (Supervision) Act 1993*
- *Income Tax (Transitional Provisions) Act 1997*

## Current Issues

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- It is understood the singling out of this issue was the result of a desire to have this area of discrimination removed quickly by ensuring it did not get bogged down in the significant debate expected when the omnibus bill is put before Parliament. It is important this gets through before the omnibus bill or it may be delayed.
- The matter should have been relatively straightforward as it involved nothing particularly 'new': merely bringing Commonwealth public servants and appointments into line with those governed by state and territories.
- The Bill was passed by the House of Representatives, but stalled in the Senate with its referral to the Legal and Constitutional Affairs Committee.
- Opposition to the Bill, principally by members of the Opposition, was focussed on replacement of the term 'marital relationship' with 'couple relationship', and 'husband or wife' with 'partner', and whether this was an attack on the institution of marriage or a sneaky attempt by the gay and lesbian lobby (whoever they are) to wrangle gay marriage laws: two mutually exclusive, non-existent aims – given the Government's public policy against gay marriage. In fact, the existing terms generally already apply to unmarried, de facto heterosexual couples, so the whole argument is illogical.
- Numerous senators raised the objectionable argument that same-sex couples be considered 'interdependent' instead of being in a 'couple relationship', with the example of elderly, cohabiting, caring siblings frequently being trotted out as somehow similar. There was also some argument that describing a child as the 'product' of a relationship was objectifying and anti-child.

## For more information:

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008* at [http://parlinfoweb.aph.gov.au/piweb/error\\_browse\\_session\\_timeout.aspx?aspxerrorpath=/piweb/browse.aspx](http://parlinfoweb.aph.gov.au/piweb/error_browse_session_timeout.aspx?aspxerrorpath=/piweb/browse.aspx)

*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 – Explanatory Memoranda* at <http://parlinfoweb.aph.gov.au/piweb/browse.aspx?NodeID=183>

ACON, "Submission to HREOC's National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Benefits", June 2006.

ACON, "Supplementary Submission to: Same-Sex: Same Entitlements National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Benefits", July 2006.

Attorney General's Department of NSW, *You Shouldn't Have to Hide to Be Safe: A Report on Homophobic Hostilities and Violence Against Gay Men and Lesbians in NSW*, 2003.

Australian Bureau of Statistics, "4442.0 - Family Characteristics and Transitions, Australia, 2006-07" at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4442.0>