



Submission to the Senate Standing Committee on Legal and
Constitutional Affairs

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

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Introduction

UnitingJustice Australia, the justice and advocacy agency of the Uniting Church in Australia National Assembly, welcomes the opportunity to comment on the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws - Superannuation) Bill 2008*.

The Uniting Church supports the amendments to several Commonwealth superannuation and pension schemes proposed in this Bill. A recognition of committed same-sex relationships as having a legal status corresponding to that of committed heterosexual relationships is essential in rectifying the current imbalance in access to entitlements for same-sex couples and their children.

The Uniting Church and human rights

The Uniting Church in Australia has a strong tradition of working against disadvantage and discrimination in all its forms. In the past, the National Assembly of the Church has made important statements on the equality of men and women, multiculturalism and our solidarity with Indigenous people. We are committed to building and maintaining good ecumenical and inter-faith relationships and are active in living out our Christian faith through national and international initiatives in support of human rights, reconciliation and peacemaking. We are engaged with the Government and the wider community in a variety of contexts in work for an end to the marginalisation of vulnerable people and the recognition of the basic humanity of each person.

The Uniting Church's statements on the primacy and inherent nature of human rights are based in the Christian belief that all people are created in the image of God: human beings are precious and humanity is bound to protect and preserve the ability of human beings to live with dignity. At its most recent triennial gathering, the Eleventh National Assembly of the Uniting Church in Australia adopted a statement *Dignity in Humanity: Recognising Christ in Every Person*, which commits the Uniting Church to respect and promote the standards outlined in the international human rights instruments, and states the Church's understanding of human rights as "indivisible, universal and inalienable".¹ Further, the Assembly pledged:

to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.²

Equality before the law for same-sex couples

In addressing the question of equality before the law for same-sex couples, the Uniting Church, by virtue of the resolutions noted above, is committed to evaluating Government policy against the United Nations' human rights treaties to which Australia is party. UnitingJustice believes that the current arrangements for superannuation death benefits

¹ Uniting Church in Australia (2006), *Dignity in Humanity: Recognising Christ in Every Person*, Eleventh Assembly, Resolution 06.20.01

² *ibid.*

and taxation treatment in the Acts proposed for amendment in the *Same Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008* do not meet Australia's international commitments in this area.

In particular, the *International Covenant on Civil and Political Rights (ICCPR)* indicates that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³

This strengthens Australia's earlier undertaking, outlined under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, to guarantee that the economic, social and cultural rights enunciated in the treaty were to be exercised:

without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴

Further, it is the State's responsibility to protect its population in line with the commitments outlined in the *Conventions*. The *ICCPR* states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵

Discrimination on the basis of sexuality is potentially forbidden in both the *ICCPR* and the *ICESCR* on two grounds: discrimination on the basis of 'sex' and on the basis of 'other status', as discussed in detail in the HREOC *Same-Sex: Same Entitlements Report*.⁶ While the two Conventions do not explicitly outlaw 'sexual orientation' or 'involvement in a same-sex relationship' as a basis for discrimination in law, UN treaty bodies interpreting these provisions have agreed that the right to non-discrimination includes protection from discrimination on the grounds of sexual orientation.

Accordingly, any superannuation or tax laws which exclude same-sex couples from entitlements and concessions available to heterosexual couples breach the right to equal protection of the law under the *Conventions*.⁷ The amendments to several Commonwealth superannuation and pension Acts proposed in the Bill will remove the discriminatory aspects of these Acts and ensure equal treatment for same-sex and

³ Article 26

⁴ Article 2(2)

⁵ op. cit., Article 2(1)

⁶ HREOC (2007), *Same-Sex: Same Entitlements Report*, available:

http://www.hreoc.gov.au/human_rights/samesex/report/pdf/SSSE_Report.pdf, p.40

⁷ *Ibid.*, p.305

heterosexual couples in the areas of reversionary death benefits and taxation benefits in superannuation.

The rights of children

Children of parents in same-sex relationships may also be disadvantaged by laws which discriminate against their primary caregivers in comparison with parents in heterosexual relationships. The Convention on the Rights of the Child requires that children not suffer any discrimination on the basis of the status of their parents or legal guardians:

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.⁸

The Committee on the Rights of the Child has expressly stated that discrimination on the basis sexual orientation constitutes discrimination for the purpose of Article 2 (outlined above).⁹ There is therefore a clear obligation on the Australian Government to comply with this area of international law, and to ensure that all children, including those of same-sex parents, are treated equally in law.

Currently, the child of a same-sex couple may not be entitled to the same superannuation benefits as a child of a heterosexual couple. This is due to the definition of a 'child' in the relevant legislation.¹⁰ Because of this definition, a child born to a same-sex couple will generally only qualify for death benefits if the child's birth mother or birth father dies.¹¹ This Bill defines children of same-sex and opposite-sex couples in the same way and treats them equally for the purposes of superannuation benefits. This Bill will eliminate discrimination against the children of same-sex parents in the Acts proposed for amendment.

The institution of marriage

We note that many of the second reading speeches of the Bill have raised concerns over the impact of the legislation on the institution of marriage in Australian society. While the Uniting Church does not support expanding the legal definition of 'marriage' to encompass same-sex unions, UnitingJustice believes that ensuring the equal treatment of same-sex couples in the areas of law covered by this Bill will do nothing to undermine the institution of marriage.

The understanding of marriage as a heterosexual religious and social institution should not be used as a platform from which to discriminate against same-sex couples in areas where unmarried heterosexual couples, legally recognised by the State as having a relationship equivalent to that of a marriage, are able to access financial entitlements, and superannuation benefits.

⁸ Article 2(2)

⁹ Committee on the Rights of the Child (2003), General Comment 3 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.8

¹⁰ HREOC, *op. cit.*, p.285

¹¹ *ibid.*, p.286

It is clear that in many areas of Government legislation relating to financial benefits, same-sex partnerships are discriminated against in comparison to heterosexual partnerships. We believe the Government has a responsibility to rectify this situation and to provide equality to all its citizens under law.

Conclusion

The Uniting Church in Australia is committed to the principles of social justice and peacemaking, and the realisation of the inalienable human rights of all people. Underlying this commitment is the principle that all people must be equal before the law, and we recognise that this is not the current state of affairs in Australia for people in committed same-sex relationships.

No person in society should be denied the rights and benefits afforded by the State to others in equivalent situations, due to their sexuality or involvement in a committed same-sex partnership. This is also the case for children whose primary caregivers are systematically discriminated against by the State because they are in a same-sex relationship, and who suffer disadvantage as a result.

Unless these discriminatory Acts are amended, the partners and children of same-sex relationships will continue to be disentitled to the benefits available to partners and children of heterosexual relationships.

As such, UnitingJustice Australia recommends that this situation be amended to give those in committed same-sex relationships and their children the same legal status and benefits as those heterosexual couples (and their children) whose relationship is recognised by the State. We support this Bill and recommend it be passed through Parliament.