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Senator Trish Crossin
Chair
Senate Legal and Constitutional Affairs Committee
Department of the Senate
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Dear Senator Crossin:

**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**

Background

1. I was between 1998 until 2003 the National Editor of the CCH De Facto Relationship Service. Consequently, I have a great interest in reforms that involve same sex partners.

The Historical position of the States and Territories

2. It should be noted that powers to consider financial disputes involving de facto same sex relationships were introduced to the state and territory legislations in the Australian Capital Territory (1994), New South Wales (1999), Queensland (1999), Victoria (2001), Western

Australia (2002), Tasmania (2004), and Northern Territory (2004). To date, only South Australia's state de facto property legislation remain limited to financial disputes involving heterosexual couples.

3. Following these above statutory provisions, several of states and territories such as New South Wales, Victoria, Tasmania and the Australian Capital Territory have introduced laws that provide equal rights to same sex couples as that of the rights of heterosexual couples, being both married couples and de facto relationship partners.
4. Some of the most significant changes occurred in 1999, when the NSW Government introduced a number of changes to de facto relationships laws. The *Property (Relationships) Legislation Amendment Act 1999* (NSW) and the *Miscellaneous Acts Amendment (Relationships) Act 2002* (NSW) gave gay men and lesbians the same rights as heterosexual de facto couples in most areas of state law. Herein, amendments were made to a number of pieces of existing legislation to extend heterosexual de facto rights and obligations to people in same sex relationships, in areas such as inheritance and stamp duty. A smaller number of other Acts were also amended to apply to those in close personal relationships. As a result of these changes, lesbian and gay couples in NSW now have some of the best legal protections available anywhere in the world.
5. The City of Sydney provides a relationship register available to all residents of the state. The City of Sydney Relationships Declaration Program recognises both same-sex and opposite-sex relationships. Although registration does not confer legal rights in the way a marriage does, it allows couples to make a written declaration that they are mutually committed to sharing their lives together. Couples have the option of holding a ceremony to celebrate their declaration.

6. Tasmania was the first state to pass the most liberal Australian gay rights laws to date when in 2003 its parliament provided a registration scheme for same-sex couples. Registration of a Deed of Relationship allows immediate access to relationship entitlements as well as a means of proving the existence of a relationship if challenged.
7. The passing of the *Statutes Amendment (Domestic Partners) Act 2006* (SA) means that South Australia is the last state in Australia to recognise same sex de facto relationships.
8. The *Relationships Act 2008* (Vic) came into effect on or before 1 December 2008. Couples are able to register their relationship with the Registrar of Births, Deaths and Marriages and have that relationship recognised under Victorian law.
9. In addition, two local councils, Melbourne and Yarra, have also introduced relationship registers. Although they do not confer legal rights in the way a marriage does, they allow couples to make a written declaration that they are mutually committed to sharing their lives together.
10. The A.C.T. *Civil Partnership Act 2008* commenced on 19 May 2008. This law recognizes civil unions in the Australian Capital Territory.

The recent rate of marriages and divorces

11. Critically, there is no evidence that the introduction of such rights to same sex couples has impacted upon the institution of the marriage. According to the Australian Bureau of Statistics, the number of registered marriages rose from 103,130 (or a rate of 5.3%) in 2001; to 114,222 (or a rate of 5.5%) in 2006. Further, the number of divorces has declined from 53,145 (or a rate of 2.7%) in 2003; to 47,963 (or a rate of 2.3%) in 2006. These figures coincide with the dramatic

increase in rights provided by the States, Territories as well as Local Governments in relation to same sex couples.

12. It is therefore submitted that the provision of equal rights for same sex couples via the proposed Commonwealth law will not impact the so called “sanctuary of marriage”. All the Bill does is to bring relevant Federal law in line with existing state and territory laws.

The Constitutional recognition of the laws of States by the Commonwealth

13. The Commonwealth’s recognition of state laws is provided pursuant to section 118 of the Commonwealth Constitution, which states:

“Section 118 - Recognition of laws, &c. of States

Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.”

13. It has been the intent of the States and Territories in the past decade or so to recognise the rights of same sex partners. There is no reason why such rights should not be endorsed by the Commonwealth by same sex partners who may come under Commonwealth law, such as those serving in the Armed Services and the Commonwealth Public Services; Federal MPs; and Commonwealth Judicial Officers.

The Rights of the Child

14. Finally, the Bill provides that the rights children of same sex relationships should be protected. Australia has ratified the United Nations Convention on the Rights of the Child (UNCROC), which was incorporated into domestic law by the Family Law Reform Act 1995. Consequently, section 67ZC of the *Family Law Act, 1975 (Cth)* applies to all children in Australia, including ex-nuptial children. Australia therefore has an obligation to ensure that all children of the

Commonwealth are treated equally in the eyes of the law. This obligation is derived from the Commonwealth's external affairs powers as founded upon section 51(xxix) of the Constitution.

Yours faithfully,

Neil Jackson

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