

Dear Senate Committee

I realise you pressed for time, so I will keep my submission short¹, highlighting only a few areas that I feel have been given less of an airing.

Respectfully, I ask the committee to consider:

Backdate the **eligibility** for pensions (but not the payments)

I appreciate that it may be difficult for the government, both financially and logistically, to backdate pension payments.

However, could the *eligibility* for pensions be backdated, but not the payments themselves?

For example, if a High Court Judge dies before the introduction of this legislation, then their same-sex surviving partner would still receive a pension from the date the bill is passed (but not from the date of her/his death).

If there is no provision to backdate eligibility, then the discrimination that these people suffer will continue into the future, even after this bill is passed.

Backdate eligibility for pensions (not payments) for those over 65

At the very least, could we please backdate pension eligibility for those who are aged over 65 years of age – that is, those people who have less opportunity to now make up for the shortfall by supporting themselves through obtaining paid work in the open labour market.

Given their age group, this would include the majority of the surviving partners of war veterans from World War I and II. Ensuring that their partner is provided for is perhaps the very least we can offer these heroes for their service and sacrifice.²

¹ I have expanded on some of these points in my previous submission (j55) to the Inquiry into *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008* – and where applicable, I have given the page reference of my previous submission in a footnote.

² Submission j55, Part C, p. 2-3 (sections 17 & 18)

That both partners in a male same-sex couple will also be recognised as parents of the child

I ask the committee to please confirm that this will be the case.

Example 3 of the Explanatory Memorandum possibly indicates that this will only be the case for opposite-sex partners involved in surrogacy arrangements, as it says that the ovum of the birth mother is fertilised through *intercourse* (EM, page 9).

As you would appreciate, a gay man is unlikely to be predisposed to having sexual intercourse with the surrogate birth mother. In fact, a heterosexual man would also probably not wish to have sexual intercourse with the surrogate birth mother, as he wishes to remain faithful to his wife or defacto partner.

Could you please ensure that whether the ovum is fertilised through intercourse, through application of the sperm (by the birth mother), or through assisted reproductive technologies, that both partners in a male same-sex couple who have a child through surrogacy will be recognised as parents.

Please provide a simple method to make clear that both same-sex partners are the parents of the surrogate child
(as only one will be biologically related to the child)

Without this, couples may have to undergo expensive legal proceedings in order to establish whether both same-sex parents decided to introduce a child into their relationship – that is, to determine whether the non-biological parent is in fact the parent of the child.³

A clause could be inserted into this legislation, that where both same-sex (or opposite-sex) partners are named on the birth certificate of a *surrogate* child, that it is clear that there was an element of joint endeavour by both partners in the procreation of the child, and consequently that both partners should be considered the legal parents of the child.

In addition, sometimes a birth certificate is amended later on, and there could be a further stipulation that a birth certificate will only impose parental responsibilities upon a person, if their name is added as a parent within 5 years of the surrogate child's birth.

³ This is similar to the costly legal proceedings that some defacto partners have to undergo now to prove their relationship exists or when it began – a situation now hopefully remedied by relationship registration certificates.

Hopefully, we will also be able to find a similar remedy or certificate to clearly evidence the parentage of children born through surrogacy arrangements.

Please allow full and satisfactory evidence of a **defacto relationship** to be provided by these methods⁴:

- **overseas civil union, overseas same-sex marriage and overseas relationship registration** certificates
- relationship registration certificates obtained at the **state and territory level**
- relationship registration certificates obtained through **local councils**
- relationship registration certificates obtained **inter-state**

A couple's relationship status does not change simply because they cross state borders. Each state and territory should legally recognise each other's relationship registration, even if that state or territory does not have relationship registration in place themselves.

- relationship registration certificates obtained through the **federal level**, should it become available at a future date
- **civil unions** obtained at the state, territory or federal level, should they become available at a future date

In 2006 the National Party in Western Australia adopted as its party's policy, civil unions for same-sex couples, which it said it would take to the next election (article attached).⁵ In addition, one of the ideas to emerge out of the 2020 Summit was civil unions for same-sex couples.⁶

It may therefore be advisable to *make allowance for potential future models of formal same-sex relationship recognition* within this omnibus bill, to save having to repeat this lengthy process of amending all of the relevant, numerous pieces of legislation.

- a **100 point system** – that is, the couple produces a collection of documents such as joint leases or joint utility bills, similar to the system used by Centrelink and financial institutions to prove identity

This would enable those couples who have not formalised their defacto relationship and who do not have a relationship certificate, to still have the opportunity to prove their relationship exists. It will give all defacto couples who do not wish to formalise their relationship (whether opposite-sex or same-sex), the prior knowledge to know which specific documents they need to start collecting and preparing now, before they required these documents to prove their defacto status.

⁴ Submission j55, Part B, p. 2-6 (sections 10-13) including attachments

⁵ Perth Now, 5 August 2006, "Nationals say OK to gays" (news article attached)

⁶ *Australia 2020 Summit Final Report: Strengthening Communities, Supporting Families & Social Inclusion* p. 173 http://www.australia2020.gov.au/docs/final_report/2020_summit_report_6_communities.doc

Brief points: (re-stated from my previous submission to the related inquiries)

- I support the defacto model for same-sex couples. Independency is not appropriate for same-sex couples, and is onerous and complex.⁷
- Interdependency for other types of relationships (eg. cohabitating siblings) will take a long time to work through and can be addressed separately.⁸
- I support cohabitation *not* being a necessary requirement in order for a de-facto relationship to exist.⁹
- If necessary, I would support joint terminology (eg “spouse and partner”, “marital relationship or couple relationship”) being used within this legislation.¹⁰
- Marriage is an institution bound not by legislation, but by love. These bills do not diminish the rights of others, but instead confer rights on others.¹¹
- I would like to reaffirm that whether or not one is married, we all have the capacity to contribute to our community and everyone should have equal access to the freedoms of society.¹²
- I support an education campaign to make clear these new rights to:
 - **government departments and agencies** (including schools, hospitals, coroner’s offices, state trustees, and registries of births, deaths and marriage),
 - **private industry** (including funeral houses, superannuation funds, private and religious schools, and solicitors especially those involved in preparing wills and family law),
 - **and same-sex couples and their families** (and in addition, where applicable, **opposite-sex defacto couples**, including opposite-sex couples considering surrogacy).¹³

⁷ Submission j55, Part A, p. 3-5 & 9-12 (sections 3 & 8-10)

⁸ Submission j55, Part A, p. 5-8 (sections 4-7)

⁹ Submission j55, Part B, p. 6 (section 14)

¹⁰ Submission j55, Part D, p. 2-3 (section 26)

¹¹ Submission j55, Part D, p. 1-2 (sections 24 & 25)

¹² Submission j55, Part D, p. 4 (section 28) including attachment

¹³ Submission j55, Part C, p. 6-7 (section 23) including attachments

Thank you to the Prime Minister and the Rudd Labor Government for your efforts to give every Australian an equal and fair go. Thank you for having the courage to address clear and prolonged discrimination, despite the variety of views in our community about whether it should be addressed or how it should be addressed.

Thank you also to those who have highlighted these inequities in Parliament in the past, such as the Hon. Anthony Albanese and the Hon. Warren Entsch.

I wholeheartedly thank the Attorney-General for initiating the equality process early within a new term of government, and for speaking and acting strongly in support of equality. Your decisive action has enabled this legislation to be introduced.

Moreover, your early action has allowed Australians to not have this discrimination on our shared conscience for a moment longer, and it has allowed these couples and their children to be provided for in the soonest possible time.

I understand that no less than nineteen government departments worked together on this legislation – can you believe that – 19! – what a mammoth, collective effort.

To all of you in these nineteen departments (including the Attorney-General's department), I unreservedly thank you for all the work and sweat you have put into shaping and creating these equality bills. From within its pages your thoroughness, dedication, long hours, care, and co-operation shine through. (And upcoming, you possibly still have another huge task ahead of you in communicating these new rights to the public and organisations.)

Most importantly, regardless of the new rights (and responsibilities) that this legislation bestows upon us: **thank you for telling me I belong.**

Yours sincerely

Walter Lee

15 September 2008