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25 July 2008

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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

Dear Mr Hallahan,

SCOA (Superannuated Commonwealth Officers' Association) advocates for retired Australian and Territory government employees, government business enterprise employees, and public servants who will receive a Commonwealth superannuation benefit (or lump sum) on retirement.

We are grateful for this opportunity to address the current Senate Inquiry into the Same-Sex Relationship (*Equal Treatment in Commonwealth Laws-Superannuation*) Bill 2008, and our submission, which has been approved by our Federal President, Dr Annette Barbetti, is attached. Any inquiries in relation to this submission can be directed to Ms Marita Linkson, ph (02) 6286 7977, email: fedsec@scoa.asn.au.

A handwritten signature in blue ink, appearing to read 'Marita Linkson', is written in a cursive style. The signature is positioned above the typed name and title.

Marita Linkson
Federal Secretary



Submission to

THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

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

Table of Contents

About SCOA..... 4

Background 5

The Same Sex Relationship Bill 5

Specific Aspects of the Bill 5

 The Question of Marriage 5

 De Facto rather than Carer Relationships..... 5

 Urgency in relation to Aged Recipients 6

 Backdating of Death Benefit..... 6

Recommendation 6

Attachment A: SCOA Submission to HREOC Inquiry 7

Attachment B: SCOA Letter to Prime Minister Howard of August 2007 9

Attachment C: Copy of SCOA Fax to Dr Brendan Nelson of June 2008 11

About SCOA

The Superannuated Commonwealth Officers' Association (SCOA) is a not-for-profit member organisation which represents more than 400,000 people nationwide.

For more than 80 years, SCOA has been representing the interests of:

- Retired Australian and Territory Government employees and Government business enterprise employees;
- People in the public service who will receive a Commonwealth superannuation benefit or lump sum on retirement;
- Former employees who have deferred (preserved) their pension entitlement; and
- The families of all of the above.

SCOA works to:

- Improve and safeguard superannuation and other retirement benefits and conditions;
- Protect the value of members' superannuation entitlements and related benefits; and
- Provide information to members on retirement issues.

SCOA has branches in each Australian State and the Australian Capital Territory and is managed nationally by a Federal Council with representation from each branch. Secretariat and operational support is provided by a Federal Office in Canberra, ACT.

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Background

The Superannuated Commonwealth Officers' Association (SCOA) has been concerned for some time about delays in the removal of discrimination against same sex couples in the Commonwealth's Defined Benefit Superannuation Funds. Many elderly and fragile recipients of Commonwealth pensions are affected, and are concerned that their same-sex partners will not be entitled to the 2/3 reversionary pension if they die before this long promised reform is enacted.

In support of affected members, SCOA made a submission to the Human Rights and Equal Opportunity Commission's (HREOC) inquiry into discrimination against same-sex couples in Commonwealth laws (Attachment A), and fully supported the recommendations, especially in relation to superannuation, of the resulting "Same-Sex: Same Entitlements" report of June 2007.

In August 2007, following press reports that the Coalition Cabinet had been unable to reach a decision on implementing the HREOC reforms, SCOA wrote to the then Prime Minister, John Howard, urging him to speedily grant recognition to same-sex couples for superannuation death benefits, as his Government had promised this reform in June 2004 (Attachment B).

Through its "SuperTime" quarterly national newsletter " SCOA has kept its members informed of progress on these reforms. Affected members were elated at the announcement that the Rudd Government would give priority to removing discrimination from superannuation laws by introducing legislation in the winter session of Parliament, with effect from 1 July 2008.

When the "Same-Sex Relationships (*Equal Treatment in Commonwealth Laws - Superannuation*) Bill" was introduced into Parliament on 28 May 2008, SCOA noted with pleasure that Dr Nelson initially gave "in principle support" to the Bill, declaring that, "*No Australian should pay a dollar more in tax or receive a dollar less in support by reason of his or her sexuality - this is the principle for which we stand*". However, SCOA was disappointed when Dr Nelson announced on 3 June 2008 that the Opposition would use its numbers in the Senate to refer the Bill to a Senate Inquiry, potentially delaying the Bill indefinitely. SCOA immediately faxed Dr Nelson (Attachment C), urging the Opposition to complete the Senate Inquiry as expeditiously as possible so that the Bill could be passed in time to become law on 1 July 2008. We understand that as a compromise, Coalition Senators agreed to a reporting date of 30 September 2008.

The Same Sex Relationship Bill

SCOA fully supports the Same Sex Relationship Bill in its present form because it gives full equality to same sex couples, as was recommended by the HREOC Report.

SCOA agrees fully with the terminology of the Bill which gives same sex couples the same standing and entitlements as heterosexual de facto couples.

Specific Aspects of the Bill

The Question of Marriage

Dr Nelson contends that "*the centrality of marriage was devalued by the Bill*". SCOA does not believe that this is a reason to deny same sex couples the same standing and entitlements as heterosexual de facto couples. We note that Shadow Ministers Malcolm Turnbull and Christopher Pyne gave unqualified support to the Bill in Parliament, and Liberal MP Petro Georgiou told Parliament: "*With respect to any concerns that this Bill devalues marriage, I have to say frankly that these concerns are unfounded*".

De Facto rather than Carer Relationships

SCOA agrees with the findings of the HREOC Report that recognising same sex couples as interdependent relationships, rather than de facto relationships, does not give same sex couples full equality with heterosexual de facto couples. SCOA believes that the Opposition's proposal to group same sex couples with interdependent relationships, such as "two unmarried sisters living



together as a household” or a “woman who gives up marriage and children to care for an invalid brother for life”, wrongly characterises same-sex relationships as carer relationships and lowers their standing.

SCOA supports social security provisions being extended to such interdependent, carer-type relationships, but it is not a part of the agenda of removing discrimination against same sex couples. SCOA supports the Attorney General’s proposal that making provision for such relationships should be a matter for consideration by the House of Representatives investigation into the needs of carers.

Urgency in relation to Aged Recipients

SCOA urges the Committee to take into account the anxiety which many elderly and frail recipients of Commonwealth superannuation pensions are experiencing, and recommend to the Senate that the Same Sex Relationship (*Equal Treatment in Commonwealth Laws -Superannuation*) Bill be passed into law as soon as Parliament resumes.

Backdating of Death Benefit

SCOA supports the proposal put to Parliament by Shadow Treasurer, Malcolm Turnbull, that the commencement of the death benefit in the Bill should be backdated at least to 1 July 2008. We note that Mr Turnbull challenged the Government to backdate the death benefit to 7 Nov 2007, the date on which he announced the Coalition election policy promising this reform. SCOA submits that a more appropriate date would have been 22 June 2004, the date when the Howard Government first announced its commitment to reform laws to recognise same sex couples for Commonwealth superannuation death benefits.

Recommendation

SCOA recommends that:

1. The Same Sex Relationship Bill be adopted in its present form and, in consideration of many elderly and frail recipients, be passed into law as soon as Parliament resumes; and that
2. The commencement of the death benefit in the Same Sex Relationship Bill is backdated to at least 1 July 2008, and preferably to 22 June 2004.



Attachment A: SCOA Submission to HREOC Inquiry

24 May 2006

The Commissioner
Human Rights Commission
Level 8 Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000

Dear Commissioner,

SUPERANNUATION REVERSIONARY BENEFIT ENTITLEMENTS FOR SAME SEX COUPLES

I am writing to you in relation to your Inquiry into entitlements for same sex couples, in particular superannuation reversionary benefits.

Our association, SCOA, represents the retirement interests of former Commonwealth and Territory superannuants. It represents approximately 700,000 Australians including the spouses/partners of superannuation contributors and those receiving a Commonwealth superannuation pension.

The superannuation entitlements of those we represent are a key priority for SCOA. Members of same sex couples have approached SCOA expressing understandable concern regarding their current non-eligibility for reversionary superannuation benefits.

SCOA's Federal Council, its peak policy making body, has endorsed the claims of same sex couples for reversionary superannuation benefits.

I have raised this matter with the Federal Government through correspondence with the Minister for Finance and Administration, Senator Nick Minchin. Unfortunately, his responses have been less than encouraging.

It is SCOA's understanding that the Government indicated support for superannuation reversionary benefits for members of same sex couples when it introduced legislation, the Superannuation (Entitlements of same sex couples) Bill 1998, in 2003. You will note in the attached letter from the CSS Board dated 9 December 2004, to one of our members, that the legislation introduced in 2003 excluded the Commonwealth superannuation schemes.

However, information received from the Department of Finance and Administration suggests that while the legislation makes it permissible for the trustees of superannuation funds to pay reversionary benefits to members of same sex couples, it is not mandatory, instead being at the discretion of the trustees.

This is, in SCOA's view, a most unfair and discriminatory arrangement – one which allows moral judgments to be made regarding the retirement income security of some Australians on the grounds purely of their sexuality.

The latest advice from Senator Minchin is that before same sex Commonwealth



Senate Inquiry into the Same-Sex Relationship (*Equal Treatment In Commonwealth Laws – Superannuation*) Bill 2008. - July 2008

superannuant couples can receive reversionary benefits, amendments will be necessary to the relevant Acts which govern the several Commonwealth superannuation schemes and that there are complexities in making those changes. You will note that Senator Minchin also says that there are budgetary considerations, which of course is indisputable. However, they should surely be less significant in a budget context when such an important natural justice issue is involved. Please refer to the attached correspondence between SCOA and Senator Minchin.

A matter of considerable concern to SCOA is that, even if the relevant legislation covering Commonwealth superannuation schemes were amended, we are advised as mentioned above that the payment of reversionary benefits will be at the discretion of the trustees of the Commonwealth funds, as it is for the trustees of private sector superannuation funds. For the reasons outlined earlier in this submission, SCOA objects strongly to this discretionary power being held by the funds' trustees.

SCOA asks that your Inquiry consider reversionary superannuation benefits being paid compulsorily to members of same sex couples, so putting to an end the outdated and unfair discriminatory rules covering Commonwealth superannuants. In what is regarded as a fair society, it is most unjust that some Australian same sex couples receive superannuation reversionary benefits while others are denied.

I have also attached a newspaper clipping from the *Melbourne Star* which discusses the issue of superannuation reversionary benefits for same sex couples.

Thank you for the opportunity for SCOA to submit this important matter for consideration by your Inquiry.

Yours sincerely,

John Coleman
Federal Secretary



Attachment B: SCOA Letter to Prime Minister Howard of August 2007

The Hon John Howard MP
Parliament House
CANBERRA ACT 2600

Re: HREOC Report: "Same Sex: Same Entitlements"

Dear Prime Minister,

The Superannuated Commonwealth Officers' Association (SCOA) understands from press reports that, at its meeting on August 21st., Cabinet was unable to make a decision on the Government's response to the HREOC REPORT on the removal of discrimination against same-sex couples, and deferred the matter.

The Federal Executive of SCOA was pleased to be able to make a submission to the HREOC Enquiry and supports the recommendations of the Report, particularly, the recommendations of Chapter 13 regarding the removal of discrimination against same-sex couples from all Commonwealth superannuation funds.

SCOA respectfully reminds you that your Government gave an undertaking in the Senate on June 22nd.2004 to recognize, as quickly as possible, interdependent relationships, including same-sex couples, for reversionary death benefits in all public sector superannuation funds. In view of this public commitment, SCOA urges you to implement the recommendations of the "Same-Sex: Same Entitlements" Report without further delay, giving priority to the removal of same-sex discrimination from all Commonwealth superannuation funds, as the continuation of this discrimination is causing considerable anxiety to a significant number of elderly recipients of Commonwealth pensions.

At the May 2007 Senate Estimates hearings it was revealed that the annual cash cost of extending the entitlement to reversionary death benefits in all Commonwealth superannuation funds to those in interdependent relationships, including same- sex couples, was \$10,000,000 per year. Given the Government's yearly budget surpluses in excess of \$10 billion, SCOA suggests that this is not an unreasonable amount for you to spend to remove the discrimination against those in interdependent relationships, including same-sex couples. Discrimination which your Government itself so eloquently condemns:

"The Australian Government is committed to the elimination of discrimination and condemns discrimination in all its forms..... the Government's commitment to the elimination of discrimination includes discrimination on the basis of an interdependent relationship .. and would include a same-sex relationship" (letter from Attorney-General to the Member for Bennelong 4/5/07).



SCOA's Federal Executive would be grateful if you would keep us informed of the Government's timetable for implementing the "Same-Sex: Same Entitlements" Report so that we can pass this information on to our members. Also we look forward to your Government's progress on eliminating discrimination on all other forms of interdependent relationships.

Thanking you for your sympathetic consideration of our views,

Yours Sincerely,

Ewan Hazell,
Federal President

27 August 2007



Attachment C: Copy of SCOA Fax to Dr Brendan Nelson of June 2008

16 June 2008

The Hon Dr Brendan Nelson, MP
Leader of the Opposition
Parliament House
CANBERRA ACT 2600

Dear Dr Nelson,

SAME SEX ENTITLEMENTS BILL

THE FEDERAL EXECUTIVE OF SCOA REQUESTS THE OPPOSITION TO TAKE INTO ACCOUNT THE ANXIETY OF MANY ELDERLY AND FRAIL RECIPIENTS OF COMMONWEALTH SUPERANNUATION PENSIONS, WHO ARE CONCERNED THAT THEIR SAME SEX PARTNERS MIGHT BE DEPRIVED OF THE REVERSIONARY PENSION IF THEY DIE BEFORE THE SAME SEX ENTITLEMENTS BILL BECOMES LAW, AND ARRANGE FOR AN EXPEDITIOUS INQUIRY BY THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE, SO THAT THE BILL CAN BECOME LAW ON JULY 1ST, 2008.

Yours sincerely

Annette Barbetti
Federal President

