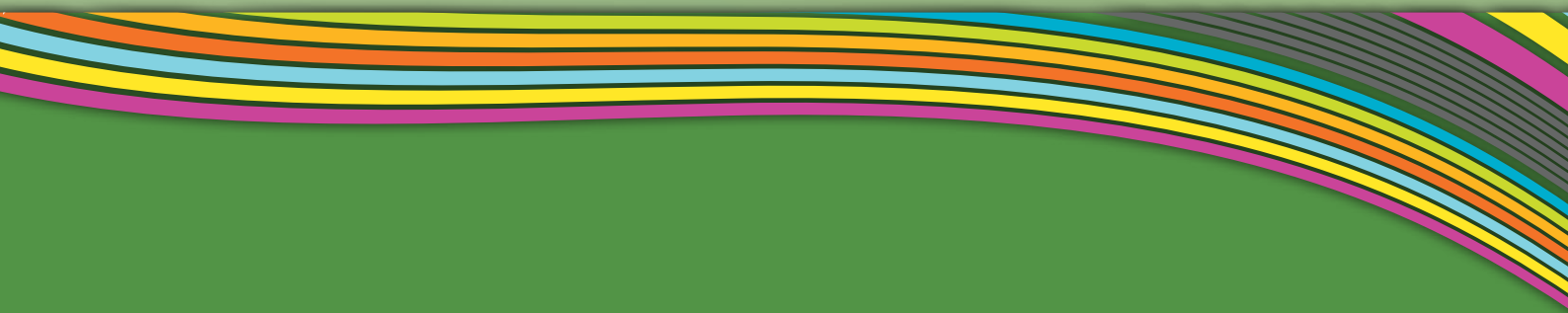


Same-Sex Law Reform and Pension Changes

**The Case for Savings Provisions
& Other Transitional Arrangements**





BACKGROUND

In 2008 changes to Federal laws to recognise same-sex relationships were of great significance to gay, lesbian, bisexual and transgender (GLBT) Australians because these changes promise a fairer and more equal future for same-sex couples. For the first time in our nation's history GLBT people in relationships are to be treated the same way as everyone else in most (although still not all) areas of the law. As those directly affected begin to understand the benefits of these changes, what is perhaps less well understood at a broader level is that this change cannot by itself wipe away the effects of 200 years of GLBT Australians being treated as criminals or the long term impact of experiencing significant disadvantage over many years.

It has been long accepted that for individuals there would be some gains and some losses; new rights and new responsibilities. It is simply unjust, however, to heap all of the negative consequences of reform onto one group who are the most vulnerable and disadvantaged. This is particularly a concern in relation to elderly people, people with disability and those experiencing chronic illness, groups which will reap less benefits and more costs.

This paper outlines our concerns with the Social Security measures proposed, including changes to pensions and allowances as they are currently to be implemented; suggests a better and fairer way forward; and seeks your support in achieving that end.

OUR CONCERNS ABOUT THE IMPACT OF THE CHANGES



"Outing" of older same-sex couples

The Centrelink process of assessing whether someone is a member of a couple will be unavoidably distressing and stressful for older same-sex couples, whose life experiences of social and institutional prejudice, discrimination have taught them to be wary of government interest in their personal relationships. In many instances individuals have never come out to their friends and family, so deep are their fears of rejection and prejudice. Particularly in the older age group people have been criminally prosecuted and jailed for their sexuality, while others have spent time committed to mental institutions, or been subjected to electro-shock treatment. Many have lost jobs and families.

The prospect of facing any questioning about their relationships, which are often conceived of by them as 'special intimate friendships' or 'long time companionships' is in itself already causing anxiety, illness and distress. Older same-sex couples have lived through an era when survival was a priority, and for many, labels such as 'gay' or 'same-sex couple' are not applicable. Any attempt to 'out' such people should be prevented.

OUR CONCERNS ABOUT THE IMPACT OF THE CHANGES CONTINUED...



Financial disadvantage and hardship

Same-sex couples are likely to lose significant fortnightly income or their eligibility for payments altogether. The age and employment prospects of elderly same-sex couples and people with disability mean that some same-sex couples will have little hope of successfully adjusting their finances. The immediate response of many is simply to say that they will just be treated like other couples but that is not an accurate representation. People plan for retirement over decades. In this case the rules are being changed **after** it is too late for them to do anything about it. For example, an 80 year old in a same-sex relationship, is not realistically able to go back to work to top up their superannuation now that he or she knows the pension will be calculated differently. This is especially important given that in the years leading up to the changes, that person would not have received any of the Medicare, tax, employment or aged care entitlements that heterosexual couples received.



High health-care costs

Older people and people with a disability, including disability support pensioners with HIV, face lifelong, high health-care costs. Many Australians living long-term with HIV and significantly unwell, are over 55 and reliant on the Disability Support Pension. They are also living below the poverty-line as a result of having to meet the costs of additional medications. They now have additional stress in their lives at the prospect of a review from Centrelink.

For some the fear of having their relationship exposed will impact negatively on their health and thus increase the cost of treatment, adding further stress which will impact on their health and so the spiral continues. The pensioner concession card plays a significant part in easing these costs and also the costs of utilities, rates, food and transport through State and other concessions. The loss of the card will add significantly to household health care spending, only part of which would be offset by the Medicare and PBS safety net.



Unfair impact of the changes

Elderly same-sex couples have been denied access to financial and employment-related entitlements during the course of their working life, and therefore have planned for retirement from a disadvantaged financial position. Now retired, they will receive none or little of the benefits of these reforms, while experiencing new and significant financial burden. Since equal opportunity concepts were first adopted in Australia it has been understood that treating everyone exactly the same does not always achieve equality. When a group has been subjected to substantial disadvantage over many years, suddenly applying the same rules without properly considering savings provisions is harsh and unfair treatment. This approach simply compounds the injustice of the past.

For example, until recently a member of a same-sex couple was denied the right to receive their partner's superannuation on the partner's death. In the case of Commonwealth superannuation the money went back to the Crown and the surviving partner was left much worse off on retirement. Should they now have formed a new relationship and claimed a pension, it is likely that the Commonwealth will penalise them a second time.



Lack of knowledge and education

The Centrelink education campaign will begin three months before the commencement of the reforms, giving couples little if any time to become aware of the change, adjust their finances and advise and consult Centrelink. Some couples may incur overpayments or be subject to prosecution as a result because the information campaign is inadequate and fails to appreciate the depth of cultural change which is required by the reforms. Changes to State laws to recognise same-sex relationships have occurred progressively in different States since 1999 and yet these rights remain inaccessible for many same sex couples. Those who are responsible for administering the laws do not always understand the significance or the content of the changes, or apply them in a manner that does not reflect the spirit of the legislation.

This is compounded by the fact that many people within the LGBT community still do not appreciate what rights they have so they cannot assert them effectively. In addition to this, many of the people who will be affected by these changes have lived most of their lives in a legal system which criminalised their behaviour and made their relationships invisible. Acceptance of this change will require a major cultural shift not just the passing on of information and this is best delivered by a community based education campaign rather than a short term government advertising campaign.

A FAIRER SOLUTION

Throughout the history of the Australian social welfare system, when a major change has been implemented savings provisions and transition arrangements have been put in place. This should be no exception. Below are some suggestions as to how we believe the changes to social security law could be implemented more fairly, and with the least disruption to vulnerable members of our community.

1. **Protect those currently on Age Pension from harm**

All people receiving the Age Pension at 1 July 2009 should continue for the purposes of the Age Pension to be treated as if they are not a member of a same-sex couple for as long as they remain on that pension.

The actual number of GLBT people on an Age Pension is very small at something less than 2% of the general population and due to a range of health and social factors this sub-population group will decline at a rate faster than the general population.

2. **Protect people aged over 55 on other types of pensions**

People in a same-sex relationship over the age of 55 receiving other pensions at 1 July 2009 should continue for the purposes of those pensions to be treated as if they are not a member of a couple for as long as they remain on those pensions.

The numbers here are also very small and this group has a similar natural attrition rate as those on the Age pension. People will eventually either leave these pension types for reasons other than their same-sex relationship. For example, older same sex attracted men are more likely to be living with HIV and experience the attendant health complications and life expectancy of this group.

3. **A grace period of 12 months**

Allow all people on pensions and allowances in same-sex relationships a period of 12 months from when they are currently formally required to notify Centrelink before overpayments accrue or prosecution is contemplated making an effective implementation start date of 1 July 2010.

4. **A two year extension on concession cards and the retention of the single income test for the low income card**

Any person in a same-sex relationship who loses their entitlement to a Pensioner Concession Care or Health Care Card at 1 July 2009 should be allowed to retain that card for two years. Those with severe disabilities or chronic illnesses should continue to have their eligibility for the Low Income Health Care Card based on their income alone, with no regard to their same-sex partner's income.

5. **Comprehensive grassroots education campaign**

To ensure that same-sex couples are fully aware of the rights and responsibilities of the new reforms, the government should expand their current education campaign, through funding grass roots organisations to engage with their client and community base.

Ideally, this campaign should to be developed by the National LGBT Health Alliance and its membership, the Gay & Lesbian Rights Lobby, other GLBT community groups and relevant disability and aged care organisations. These organisations have a proven track record engaging and educating this vulnerable demographic. This will help protect same sex couples from stressful and unintended consequences of the reforms, such as Centrelink investigations for mistakes in payment.

6. **Independent Advocacy**

We support the funding of Welfare Rights Centres and/or Community Legal Centres across Australia in order that independent specialist advice and advocacy may be provided to same-sex couples about the social security reforms.

7. **Staff training**

Centrelink staff should be provided with adequate and specific training to further enhance their capability to respond to clients' disclosure and concerns in a culturally competent and appropriate manner. The development of this training should occur in consultation with relevant GLBT community organisations.

POSSIBLE MECHANISMS FOR IMPLEMENTATION

While it is up to the government to decide the appropriate mechanism for implementing any change options to redress the current inequity include:

a) Legislation

The *Social Security Act* could be amended to provide for savings provisions for those currently receiving age pension and for those over 55 on other pensions and to create transitional arrangements which delay implementation for all others until 1 July 2010.

b) Regulation

It is common practice for a Minister or for the Governor General to be given the power to enact an administrative regulation on the recommendation of the Executive in Council (Cabinet). For instance Section 86 of *Same-Sex Relationships (Equal Treatment in Commonwealth Laws--General Law Reform) Act* empowers the Governor General to make regulations pertaining to "matters of a transitional nature...including saving provisions".

c) Policy instruction from the General Manager of Centrelink

Section 24 of the *Social Security Act* gives the General Manager of Centrelink the power to determine that a person who is a member of a couple not be treated as a member of a couple for the purposes of the Act. Whilst this has in the past only been use in relation to specific named individuals, consideration should be given to the use of this section to exempt the class of people described above.

PRECEDENT FOR SAVINGS PROVISIONS AND TRANSITIONAL ARRANGEMENTS

The same-sex reforms represent major social reform, yet have had very limited transitional or grandfathering provisions attached. In contrast, **all previous major social security reforms have had extensive savings provisions and transitional provisions.** Table 1 below outlines some of the government precedents for introducing savings provisions and/or transitional arrangements, and the number of recipients affected in those cases, along with the estimated number of people who would be included under the proposal that we have outlined above.

Table 1: Social Security Saving Provisions and Transitional Arrangements and Number of Recipients Affected

Saving Provisions and Transitional Arrangements	Number of Recipients Affected	Length of Time
Wife Pension	14,045	Remained until Age Pension
Widow Pension B	732	Remained until Age Pension
Mature Age Allowance	5,032	Remained until Age Pension
Widow Allowance	40,247	Remained until Age Pension
Our proposal	2,318¹ - 3468²	Remain until Age Pension, leave the pension or death

CONCLUSION

The same-sex reforms represent major social reform, yet have had very limited transitional or grandfathering provisions attached. In contrast, **all previous major social security reforms have had extensive savings provisions and transitional provisions.** This is despite the fact that the number of people affected and the cost to government are both lower than similar changes in the past. Same-sex couples deserve not only the rights and responsibilities available to opposite sex couples, but also the time and resources available to other couples to adjust to major social welfare reform. This reduces the burden of the responsibilities for those who are not equipped to successfully negotiate the changes, and who have borne the weight of discrimination and financial hardship throughout their lives.

1 Based on ABS Census Data 2006 for people in same-sex relationship with one partner over 55.

2 According to Dept. Families, Housing, Community Services and Indigenous Affairs, *Pension Review: Background Paper*, Commonwealth of Australia, 2008, there are approx. 824,000 single age pensioners, with 26.3% or 216,712 of those pensioners living with another person. As approximately 2% of the population identifies as gay or lesbian (Source: Smith, M. A., Rissel et al., *Sex in Australia: Sexual Identity, sexual attraction and sexual experience among a representative sample of adults*, La Trobe University, 2003), it would be assumed that approximately 4335 current single recipients of the age pension would be living with another person but not all would be in a same-sex relationship. It is unlikely to be this high, but if we assume that 80% are living in same-sex relationships, that is still only 3468.

