Same-Sex Law Reform and Pension Changes: the Case for Savings Provisions & Other Transitional Arrangements

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This briefing paper discusses the impact of changes to social security payments (including the Disability Support Pension) for people in same-sex relationships, which are planned to take effect from 1 July 2009.

Executive Summary

Our concerns about the impact of the changes

Elderly same-sex couples have been denied access to 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 significant financial burden. Also of concern is that Centrelink's process of assessing whether someone is a member of a couple will be unavoidably distressing for many older same-sex couples.

A fairer solution

1. Protect those currently on Age Pension from harm: All people in a same-sex relationship receiving the Age Pension at 1July 2009 should, for the purposes of the Age Pension, continue to be treated as if they are single for as long as they remain on that pension.
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 1July 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.
3. A grace period of 12 months for all people on pensions and allowances in same-sex relationships making an effective implementation start date of 1July 2010.
4. A two year extension on concession cards and the retention of the single income test for the low income card
5. Comprehensive education campaign delivered by community organisations.
6. Independent Advocacy to same-sex couples about the social security reforms.
7. Adequate training for Centrelink staff.

Possible mechanisms for implementation

We suggest the following options to redress these inequalities:

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: 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 Secretary of Centrelink: Section 24 of the Social Security Act gives the Secretary 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.

Precedent for savings provisions and transitional arrangements

The same-sex reforms represent major social reform, yet have minimal transitional or grandfathering provisions attached. In contrast, all previous major social security reforms have had extensive savings provisions and transitional provisions.

Conclusion

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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.

For more detailed information, please refer to the full version of this brief, which is accessible below.

Attachment	Size	Type
Executive Summary (PDF version) [1]	498.96 KB	PDF
Full version of this brief [2]	1.16 MB	PDF

- HIV and the law
- Disability Support Pension
- Other fact sheets
- work, employment and financial issues

Links:
[1] http://napwa.org.au/files/Same-Sex-Law-Reform-Exec-Summary_0.pdf
[2] http://napwa.org.au/files/Same-Sex-Law-Reform_1.pdf

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