

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
SAME SEX
SAME ENTITLEMENTS

SUBMISSION FOR THIS INQUIRY

From: Edward Young

It has been stated that a Civil Partnership Bill is being brought into fruition in the A.C.T. here in Australia which supposedly will give the same rights and benefits to Homosexual and Lesbian Couples in same sex relationships.

This Bill it has been stated will give Homosexual and Lesbian Couples the same rights and obligations as Heterosexual Sexual Couples in the A.C.T.

NOT SO.

Taxation, Social Security, Superannuation, Immigration etc which exist under Federal Laws will not change. It has been stated that Homosexuals and Lesbians in the same relationships who register their Relationship/Partnership in the A.C.T. and they do not even reside in the A.C.T. will be given a certificate stating their Sexuality and Relationship. But this will change nothing in most states of Australia. It has also been suggested that Homosexuals and Lesbians should take this certificate with them if they travel to other countries where same sex unions also exist, to show that in some states in Australia this Registration exists sounds like you are some sort of Prize Cow!

Until Federal Legalization is in place, that gives full equality to Homosexuals and Lesbians before the Law, a watered down Civil Partnership Bill only on a state level is the Claytons version of what you are offered if you cannot have the real thing!

Until we have here in Australia a Civil Partnership Bill the same as the British Partnership Bill, which gives full equality to everyone who wishes to register a same sex Partnership and that is full Equality before the Law, Homosexuals and Lesbians in Australia will still experience discrimination and the A.C.T. Bill can be overturned by a Federal Government.

I should also like to point out in Britain, one does not have to carry a piece of paper from one county or city in Britain to another to say you are a Homosexual or Lesbian and in a Partnership and registered in some Central Office, although that fact exists but only used if it was found necessary in a legal instance to acquaint a third party with your status, that is enough, not all Homosexuals and Lesbians in same sex relationships want that fact proclaimed before the world, there are still 'red necks' every where who use Homosexuals and Lesbians as objects of hate, because of their own frustrations.

.../2

After my late beloved partner Lawrence Cains died and we had been together for thirty eight years, in a loving, caring relationship, he was a War Veteran, I discovered by accident that the Partners of War Veterans receive a Bereavement Payment on the death of a War Veteran. I contacted the Department of Veterans' Affairs more out of curiosity than anything else to ask them why I had not received this benefit.

I was told I was not eligible because I was not of the opposite sex. This directive shocked me. Was I not a human? Would I not be grieving for my late Partner? There was no consideration. I felt I was being treated like some sub-human and my late Partner's service to his Country, Australia, when he went to fight in Borneo to give us freedom to live in peace. His service was not being honoured by the discrimination against me, his Partner. That was the day I consider the *Young v Australia* case began.

The *Young v Australia* case is well documents and easily accessed on the Internet. I direct the Human Rights and Equal Opportunity Commission to do just that as part of this my Personal Submission. I enclose a copy of pages 14, 15 and 16 of the International Covenant on Civil and Political Rights. The views given to my Lawyers by the Human Rights Committee in Geneva on 6 August 2003, this is the directive given to the Howard Federal Government to rectify his abuse of me by the breaking of the Covenant of the Human Rights Article 26, which Australia, as a signatory to the Covenant had vowed to uphold, he had violated any rights by denying me recognition as the same sex partner of a war veteran.

When this directive was given it was stated by Wayne Morgan, Senior Lecturer at Law at A.N.U. in Canberra, who was Legal Consultant to me and my Lawyers on the *Young v Australia* case, a brilliant lawyer, "This is the strongest statement ever made globally on the Rights of Same Sex Couples".

The Howard Government rejected the directive from The Human Rights Committee, stating "The Human Rights is not a Court of Law therefore I will do nothing" no matter what the *Young v Australia* case is set in concrete in Geneva with the United Nations, and is known Globally, and has shown the disregard of Human Rights, another example, here in Australia under the Howard Government which we are enduring.

The *Young v Australia* case was not about pensions, it was about equality before the Law, I knew if I won it could give in this case those people here in Australia, Homosexual and Lesbians determination to fight on for their rights.

During the long battle of six years I spent on the *Young v Australia* case, when I went to places such as the Gay and Lesbian Rights Lobby, for help in fighting this case, I was treated with hostility and abuse, it also happened from certain individuals who trot out whenever homosexual and lesbian rights are back on the agenda, then disappear until the next time, some are even receiving funding to flit around like butterflies.

We should all be working together. This will never happen until as one voice, homosexuals and lesbians speak out to demand full equality before the Law.

Do not allow individuals to speak in your name, without consultation. If we wish for full equality we have the power to get it. We have what every politician needs to keep in power our vote. We can vote out the Howard Government. The Howard Racist Government. The Howard Homophobic Government. We can put in place an alternative government, but not allow them to have the final say but give the balance of power to a minor party we can trust, we can then change everything for full equality before the Law.

Bob Brown is such a man. Leader of the Greens, he is a Gay man, so is very aware of the discrimination we all suffer as Homosexuals or Lesbians in Australia.

I would like to finish this submission with a plea from my heart.

Please "I may not be your ordinary common or garden fairy", I do not suffer fools gladly. I am short tempered, and I am a man of mature years, but please if someone comes to you, and;

I am now speaking to Gay and Lesbian Lobby Groups and individuals whose egos are so enormous and personal gain their prime directive, and hands you an enormous victory as the *Young v Australia* case, is the one which gives a clout we can use for the future. Please do not treat them as you treated me [details removed]

A handwritten signature in cursive script that reads "Edward R. Young". The signature is written in dark ink and is positioned above the printed name.

Edward R Young



PARLIAMENT OF AUSTRALIA • THE SENATE

SENATOR JOHN FAULKNER

Labor Senator for New South Wales

Leader of the Opposition in the Senate

Shadow Special Minister of State

Shadow Minister for Public Administration and Accountability

Mr Edward Young

[details removed]

Dear Mr Young

Thank you very much for forwarding me the recording of your interview on 2SER and the extract from the New Zealand *War Pensions Amendment Act 2001*.

As you well know, the recent debate over same-sex marriage has unfortunately been a re-run of the debate in America. Like so many of the Prime Minister's views, his proposed ban on same-sex marriages has been pinched from the United States Republican Party. From Day 1 it has been a pathetic attempt at wedge politics by the Prime Minister. The Prime Minister's legislation was more about rhetoric and political posturing than making a substantive change to the law.

A positive outcome of the debate is that the Labor Party has declared, if elected, to eliminate discrimination against Australians in same-sex relationships across a range of federal laws, including taxation, superannuation, immigration, family law, industrial relations and government benefits.

We will examine options to achieve more consistent national treatment of all de facto relationships, and will consider any recommendations made by the Senate Inquiry into the Marriage Amendment Legislation Bill.

Again, thanks for going to the trouble of providing with the recording and the NZ Act.

Much appreciated.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Faulkner', with a long, sweeping horizontal line extending to the right.

JOHN FAULKNER

August 2004

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[details removed]

Is the proposal supported?

More than the number of senators required by the standing orders having risen in their places—

Senator GREIG (Western Australia) (4.32 p.m.)—I move:

That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Australian Government to acknowledge that on 6 August 2003, in the case of *Young vs Australia*, the United Nations Human Rights Committee found that:

- (i) the Australian Government's refusal to grant Mr Young a pension on the ground that he does not come within the definition of "dependant", for having been in a same-sex relationship, violates his rights under article 26 of the International Covenant on Civil and Political Rights on the basis of his sexual orientation;
- (ii) the Australian Government provided no argument on how the distinction between same-sex partners and unmarried heterosexual partners is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction was advanced;
- (iii) as a victim of a violation of article 26, Mr Young is entitled to an effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law;
- (iv) the Australian Government is under an obligation, as a signatory to the First Optional Protocol to the International Covenant on Civil and Political Rights, to ensure that similar violations of the Covenant do not occur in the future; and

the need for the Australian Government to legislate for partnership recognition of same-sex couples under Commonwealth law.

I guess in some ways the Senate had this debate in a reasonably comprehensive way approximately two years ago. It is not my intention to go over in any great way a discussion in which we have already been involved. The Senate has already expressed an intention in this regard in passing a similarly worded motion. However, the recent decision by the United Nations gives us an opportunity to refresh the debate and to look at where it is at now in the context of many states and territories having seriously reformed their laws in this regard since we last debated this issue in the Senate.

On 6 August the United Nations Human Rights Committee made its second major ruling in relation to gay and lesbian human rights breaches in Australia in less than a decade. For the second time the Australian government has been found to be in serious breach of its obligations under article 26 of the International Covenant on Civil and Political Rights for failing to recognise rights on the basis of sexual orientation. In 1999 Sydney man Edward Young took a case against the Australian government and the Department of Veterans' Affairs to the UN Human Rights Committee, claiming he had been discriminated against over entitlements provided to partners of deceased war veterans. Mr Young took this action because all attempts to utilise local remedies had failed him. Following the death of Mr Young's partner of 38 years, who was an Australian World War II veteran, Mr Young applied to the Department of Veterans' Affairs to claim entitlements provided to partners of deceased war veterans. The Department of Veterans' Affairs informed Mr Young that he did not qualify for a pension because he and his partner had not been a heterosexual couple. Mr Young appealed this decision to the Veterans Review Board, which also refused the pension because only married or heterosex-

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All we are asking for—all the community is asking for in a broader human rights context—is equality under the law in areas of relationship recognition. It has nothing to do with marriage and we are all children of the broader community.

Question put:

That the motion (Senator Greig's) be agreed to.

The Senate divided. [5.31 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	32
Noes.....	31
Majority.....	1

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.
Brown, B.J.	Buckland, G.
Campbell, G.	Carr, K.J.
Cherry, J.C.	Collins, J.M.A.
Cook, P.F.S.	Crossin, P.M. *
Denman, K.J.	Evans, C.V.
Forshaw, M.G.	Greig, B.
Hogg, J.J.	Hutchins, S.P.
Kirk, L.	Lees, M.H.
Lundy, K.A.	Marshall, G.
Moore, C.	Murray, A.J.M.
Nettle, K.	Ray, R.F.
Ridgeway, A.D.	Sherry, N.J.
Stephens, U.	Stott Despoja, N.
Webber, R.	Wong, P.

NOES

Abetz, E.	Barnett, G.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Campbell, I.G.
Chapman, H.G.P.	Colbeck, R.
Coonan, H.L.	Eggleston, A.
Ellison, C.M.	Ferguson, A.B.
Ferris, J.M. *	Harradine, B.
Harris, L.	Heffernan, W.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lightfoot, P.R.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Payne, M.A.	Santoro, S.

Scullion, N.G.
Tierney, J.W.
Watson, J.O.W.

Tchen, T.
Vanstone, A.E.

PAIRS

Conroy, S.M.	Macdonald, J.A.L.
Faulkner, J.P.	Patterson, K.C.
Ludwig, J.W.	Hill, R.M.
Mackay, S.M.	Alston, R.K.R.
McLucas, J.E.	Troeth, J.M.
O'Brien, K.W.K.	Knowles, S.C.

* denotes teller

Question agreed to.

COMMITTEES

Scrutiny of Bills Committee

Report

Senator CROSSIN (Northern Territory) (5.35 p.m.)—I present the 9th report of 2003 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table the Scrutiny of Bills *Alert Digest* No. 10 of 2003, dated 10 September 2003.

Ordered that the report be printed.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator FERRIS (South Australia) (5.35 p.m.)—On behalf of the respective chairs, I present three volumes of additional information received by the Economics Legislation Committee relating to hearings on the additional estimates for 2002-03 and additional information received by the Foreign Affairs, Defence and Trade Legislation Committee relating to hearings on the budget estimates for 2003-04.

Senator Mark Bishop
Shadow Minister for Veterans' Affairs

Digest
for April/May/June 2004

Media Releases, Speeches &
Questions without Notice

✓ Labor have made it perfectly plain in the past and it will be reconfirmed today that we are committed to the elimination of all discrimination on the grounds of race, colour, sex, religion, sexuality, gender identity, disability, genetic make-up, political or other opinion, national or social origin, property, birth or other status. We have committed ourselves to the enactment of legislation prohibiting discrimination on the grounds of a person's sexual or gender identity, and we will audit Commonwealth legislation to amend provisions which offend those principles. This will be done on election to government.

It should be noted that this is a very complex task, involving a wide range of legislation covering not just veterans but also social security, workplace relations, taxation, superannuation, immigration, health and aged care. This package of benefits to veterans has been under consideration by



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

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HUMAN RIGHTS COMMITTEE
Seventy-eighth session
14 July - 8 August 2003

VIEWS

Communication No. 941/2000

<u>Submitted by:</u>	Mr. Edward Young (represented by counsel Ms. Michelle Hannon and Ms. Monique Hitter)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Australia
<u>Date of communication:</u>	29 June 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 29 August 2000 (not issued in document form)
<u>Date of adoption of Views:</u>	6 August 2003

On 6 August 2003, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 941/2000. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

highest domestic tribunals would preclude a positive result.¹⁹ Taking into account the clear wording of the sections of the VEA in question, and noting that the State party itself admits that an appeal to the AAT would not have been successful, the Committee concludes that there were no effective remedies that the author might have pursued. As the Committee can find no other reason to consider the communication inadmissible it proceeds to a consideration of the merits.

Consideration of the merits

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 The author's claim is that the State party's refusal to grant him a pension on the ground that he does not meet with the definition of "dependant", for having been in a same-sex relationship with Mr. C, violates his rights under article 26 of the Covenant, on the basis of his sexual orientation. The Committee notes the State party's argument that had the domestic authorities applied all the facts of the author's case to the VEA it would have found other reasons to dispose of the author's claim, reasons that apply to every applicant regardless of sexual orientation. The Committee also notes that the author contests this view that he did not have a prima facie right to a pension. On the arguments provided, the Committee observes that it is not clear whether the author would in fact have fulfilled the other criteria under the VEA, and it recalls that it is not for the Committee to examine the facts and evidence in this regard. However, the Committee notes that the only reason provided by the domestic authorities in disposing of the author's case was based on the finding that the author did not satisfy the condition of "living with a person of the opposite sex". For the purposes of deciding on the author's claim, this is the only aspect of the VEA at issue before the Committee.

10.3 The Committee notes that the State party fails specifically to refer to the impugned sections of the Act (sections 5(E), 5(E) 2 and 11) on the basis of which the author was refused a pension because he did not meet with the definition of a "member of a couple" by not "living with a member of the opposite sex". The Committee observes that the State party does not deny that the refusal of a pension on this basis is a correct interpretation of the VEA but merely refers to other grounds in the Act on which the author's application could have been rejected. The Committee considers, that a plain reading of the definition "member of a couple" under the Act suggests that the author would never have been in a position to draw a pension, regardless of whether he could meet all the other criteria under the VEA, as he was not living with a member of the opposite sex. The State party does not contest this. Consequently, it remains for the Committee to decide whether, by denying a pension under the VEA to the author, on the ground that he was of the same sex as the deceased Mr. C, the State party has violated article 26 of the Covenant.

¹⁹ Barzhig v. France, supra.

10.4 The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.²⁰ It recalls that in previous communications the Committee found that differences in the receipt of benefits between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry with all the entailing consequences.²¹ It transpires from the contested sections of the VEA that individuals who are part of a married couple or of a heterosexual cohabiting couple (who can prove that they are in a "marriage-like" relationship) fulfill the definition of "member of a couple" and therefore of a "dependant", for the purpose of receiving pension benefits. In the instant case, it is clear that the author, as a same sex partner, did not have the possibility of entering into marriage. Neither was he recognized as a cohabiting partner of Mr. C, for the purpose of receiving pension benefits, because of his sex or sexual orientation. The Committee recalls its constant jurisprudence that not every distinction amounts to prohibited discrimination under the Covenant, as long as it is based on reasonable and objective criteria. The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced. In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal a violation by Australia of article 26 of the Covenant.

12 Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee concludes that the author, as a victim of a violation of article 26 is entitled to an effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment of the law. The State party is under an obligation to ensure that similar violations of the Covenant do not occur in the future.

13 Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The Committee is also requested to publish the Committee's Views.

²⁰ Toonen v. Australia, *supra*.

²¹ Danning v. the Netherlands, *supra*.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

DIGNITY in life and death

Interview with Edward Young

Edward Young and Larry Cairns are two names that will be penned into gay histories. Dedicated to each other for 38 years, their names would have faded if it were not for Edward's determination for equality following Larry's death—a determination that led all the way to the United Nations. For the human story behind the recent UN ruling that Australia is in breach of its obligations by discriminating against same-sex couples, Qnews spoke to Edward Young.

On Larry? He was a great bushwalker. He was also a champion basketball player, at one stage playing for the Canadian air force 'Champions of Europe' basketball team. He was a very private man who was interested in fair play. And I always felt that no matter what he was going to be there.

Larry served in WWII? He did. He went to Borneo to fight the japs. He was only 17—he put his age up. He never spoke about it. After the war he worked with his brother as a photographer before going to Norway to work in a government photographic unit, then Lille in France for the Canadian government, then Paris where he set up as photographer, and eventually London where I met him in the late 50s.

His photographic career? Virtually all of his work was in fashion and advertising. He did things like Max Factor, all major accounts. All the things I kept over the years, magazine covers and so on, I eventually decided it was another life and burnt them all. The only things that survived were some photos he took of me.

Following his death? I wanted to end my life. I just thought look 38 years, I've lost half of me, what have I got to look forward to, but someone gave me a good talking, then the discrimination was flung at me and that made me decide.

How did the UN Human Rights Committee get involved? After he died, I told Veteran's Affairs and they asked who's looking after his funeral. I said I am, I'm his partner. They then told me I was eligible for \$500. "We give that to anyone who looks after a war veteran's funeral," they said. Later, still in trauma, a war widow told me she'd received a bereavement payment. I didn't know anything about this. So I went back and said listen, I was a partner of a war veteran for 38 years, so why didn't you offer it to me? They said but you're not eligible. So I said I won't accept it, it's discrimination before the law.

What happened then? I wandered around not knowing what to do before wandering into Inner City Legal and meeting Laureen Finestone. We talked and she agreed to take it on. But first we had to go through all the domestic remedies, so I met with the Veteran's Review Board in a room with a table about 14 feet long—how about this psychological nonsense, three people sitting at one end and me at the other. Mussolini tactics! Eventually, they said "Well unfortunately..." That's the thing, they even put it on paper that they sympathised with my loss but they couldn't do anything because of the legislation.

clear where all the minor parties stand and bodes well for future reform under either a Labor or perhaps even a Costello government.

Have the ramifications been understood? No. It's not about the bloody pension. The pension's equivalent to the old age pension. It's the discrimination before the law that I want changed. The implications are profound because federal law defines 'couples' in terms of heterosexual couples and that's exactly the sort of definition the committee has ruled in breach of Australia's human rights obligations. It should have effects on superannuation, tax, social security laws and the armed services.

On recent support in the Senate? Everyone's jumped on the bandwagon. I've been trying to get the major parties to do something for four years and everybody's ignored me. I lobbied many MPs and they all ignored it.

Modern gay culture? It is very difficult for me because sometimes I'm appalled by the things I see in the gay press and I think why was it necessary to be photographed like that or to say that. It sort of makes it sound sordid and of course it's not like that or shouldn't be.

On sex? I know that if you're a male homosexual and you want to have sex, you can go to places where you can meet someone, and a lot of people think that that's the beginning and end of it. But I don't agree. I believe there's someone for everyone and that ground rules in a relationship give you stability in your life.

On being gay? I don't think we have to be extraordinary creatures. If someone wants to be an extraordinary creature, good on them, I don't care, but I don't think people should feel it is necessary.

Last words? Never give up and never forget. If you think you're marginalised and alone, then don't because there is always somebody else. And if you're having a nervous breakdown and don't know how to handle it, get a bus ticket and leave.

