

University of NSW Council for Civil Liberties
PO Box 201
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NSW 2037

Honourable John Howard MP
Prime Minister
House of Representatives
Parliament House
Canberra ACT 2600

Tuesday, 28 October 2003

Dear Mr. Howard,

We take this opportunity to write to you concerning the recent determination of the United Nations Human Rights Committee (UNHRC) in *Young v Australia*.¹ As you will be aware, on 6 August 2003 the UNHRC found that Australia had violated its obligations under Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR). Mr. Young was found to have been discriminated against² on the basis of his sex or sexual orientation³ when his application for a pension was rejected because of the clear and unambiguous definition of 'member of a couple' in the *Veterans' Entitlements Act 1986* (Cth) ('the VEA') as a 'person of the opposite sex'.⁴ This meant that Mr. Young's thirty-eight year relationship with his war veteran partner was not recognised as a valid relationship under the Act.⁵

The Young decision presents a gateway opportunity for the government of Australia to demonstrate its endorsement of, and commitment to, international human rights standards. We support the Australian Senate's resolution to end discrimination against same-sex couples in federal law.⁶ We also note that the government is 'under an obligation to ensure that similar violations do not occur in the future'.⁷

Mr. Young's situation highlights the anachronistic reality of Commonwealth law in 2003. This discrimination directly and indirectly affects the daily lives of hundreds of thousands of Australians. We are living in a nation where the federal human rights watchdog, along with other Commonwealth agencies (specifically, the Australian Repatriation Commission, and the Veterans Review Board) are not able to consider the merits of an application under Commonwealth law because the legislation ***overtly discriminates on the basis of sexual orientation***.

We strongly urge you to do whatever you can as Prime Minister to remove such discrimination in federal law. We also request a statement from you detailing what action will be taken to ensure that this prohibited discrimination comes to an end.

Yours Sincerely,

Paula Novotna and Michael Walton
for
University of New South Wales Council for Civil Liberties

Endnotes

¹ *Young v Australia*, Human Rights Committee, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 12 August 2003.

² Article 26 includes a prohibition against discrimination based on sexual orientation: see *Toonen v. Australia*, Human Rights Committee, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 8 April 1994, [8.7]. Article 26 of ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status.

³ *Young v Australia*, above n 1, [10.4]. Because Australia could not specify any 'reasonable and objective' criteria to justify this unequal treatment of same-sex and opposite-sex couples, the UNHRC found that the definition of 'member of a couple' in the VEA amounted to prohibited discrimination under the ICCPR.

⁴ *Veterans' Entitlements Act 1986* (Cth) s 5E(2)(b)(i). See also *Young v Australia*, above n 1, [2.1]-[2.2], [5.1], [7.1], [10.2]. No appeal would have been relevant in light of the clear language of the statute: see *Young v Australia*, above n 1, [9.4].

⁵ *Young v Australia*, above n 1, [10.4]. Whether or not Mr. Cains' death was 'war-caused' (and therefore satisfies the requirements set out in Section 13 of *Veterans' Entitlements Act 1986* (Cth)) is not an element for consideration: see *Young v Australia*, above n 1, [10.2], [4.4]. What is material in these circumstances is that Mr. Young would *never* have qualified for an entitlement under the legislation as it is drafted to apply only when a "person is living with a person *of the opposite sex*": *Veterans' Entitlements Act 1986* (Cth) s 5E(2)(b)(i).

⁶ Commonwealth, *Parliamentary Debates*, Senate, 10 September 2003, 14855-14868.

⁷ *Young v Australia*, above n 1, [12].