

SUBMISSION TO SENATE COMMITTEE ENQUIRY - The Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019

22nd January 2020

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary

Thank you for the opportunity to make submission to your enquiry.

Firstly, although I am not a member of any Western Australia community – I did have personal experience of living within a de facto relationship in Exmouth for a brief six month period and as such, I feel I have some valid things to say and comment upon – this latest piece of Family Law related legislation.

I will go directly to the point which is on page 8 of the Explanatory Memorandum ie the Conclusion – which reads, “the Bill is compatible with human rights...” and I believe in the personal effects of this Bill will encourage the opposite to these effects And for the following reasons which I will try to explain in more detail.

However one further minor criticism is that the author of these Explanatory notes, seems to equate – and quite simplistically that the rights to women of equality will be not only addressed but enhanced by this Statutory Legislation and I believe this is such a simplistic interpretation of what will enhance Women’s Rights that it does not justice to the addressing this cause whatever. Nor does the Bill in question promote any forms of rights to freedom from interference or protection of the no longer intact family – for what it does is the extreme opposite to what it contests it does...?? (p8 items 27-28)

I will now go to the crux of this newer Family Law Legislation involving West Australian de Facto couple break ups. The gist of it is regards financial splits rather than any intention to address the hugely emotional context of any forms of separation, especially when kids are involved in same. An equal split is NOT necessarily the best and fairest way of going about things. For example, anyone with the crudest of immoral intent – like that which is so oft displayed in all Courts of Law across this country – can not easily, but possibly, circumvent any such legal splitting simply by avoiding the letter of the law, in minimising whatever financial restraints they might have eg by announcing a bankruptcy and then resuming

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business next day, in another context in a different setting and none the wiser. Just look at what happened to families connected to the Alan Bond saga of disreputable business affairs (in which so many underdogs from Australia – lost all or significant proportions of their life savings – merely by backing a form of criminally bent loser much publicised as he was, and without any form of revenge or redress – what most victims of immoral behaviours are crying out for – true justice when justice is seen to be done to the perpetrator – enabling his (nearly always him but then there’s also nearly always a woman standing directly behind that “him”) victims to feel some sense of justices served.

The Family Law Superannuation Splitting and Bankruptcy Amendment Bill will not do this. For it is obvious to most sane parties that there is always a woman pulling any man’s strings and how can you then attest to women being the most disadvantaged if they are manipulating behind the scenes to have another woman discriminated against? Surely both sexes rights need addressing and not exclusively or peculiarly those of females. Women too, although oft seen as the most significant nurturers and in need of protection for that particular role, can also be monstrously intent on harming others, just as much as their vilely abusive male counterparts can be. It is not always the norm that de Facto relationships are happy or were happy and end happily. In fact, nearly every relationship break up entails angst and a desire for justice to be seen to be done. And awarding women financial benefits they are not entitled to or have not earned in their own rights is as counter productive to a win win situation as disabling women from pursuing their productive and nurturing roles by discriminating actively in the financial stakes against them.

Despite acknowledging that early childhood can be terribly demanding for the female partner for approximately 5 years up to school age, and the female carer does need adequate compensation IF she seeks to stay out of the workforce and many women do in order to protect their younger children from voracious busy body neighbours or in laws etcetera. However a one rule fits all neatly does not resolve the alternative situation where the male of the de Facto partnership has become the sustainable nurturer for both partners kids and is necessarily equally in need of financial remuneration to continue in this role? How can you then say, that the rule of women’s unjust financial deprivation is replaced by a rule of equally unjust male financial deprivation is going to satisfy the human rights of all involved? For it wont and does not! Too often in Family Court situations, those sitting in judgement of others fall into this non-nurturing category and are over keen in promoting revenge agenda issues on behalf of the loser party – awarding custody of kids to non-nurturing parents, forcing the nurturing father to fund the upkeep of this other woman indefinitely, even though the kids involved are never happy being looked after by her. How does this address the enormous inequities involved in any inharmonious human relationship break up – especially of the de Facto kind?

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For in effect, the female in a male/female de Facto relationship is often seen as the illegality of the two, the male benefiting from her sex without legal obligations. So in terms of this income splitting may effectively address this sense of illegality including illegality of any offspring involved. Or superannuation splitting especially if the break up occurs while the children are young and the woman is out of the workforce and unskilled to re-enter on the break up of the partnership.

However I also feel that in any partnership, each person comes with strengths and deficits and to see those in terms of equal splits of income does not do either the justice it deserves (however difficult this might be to quantify)

For instance, a higher earning bread winner, may prove to be a bastard in the bedroom though a high money earner (like Alan Bond in fact came to be seen as?) Would the woman leaving the relationship really want a significant split of his income, for it would or could denote an enduring form of legacy pertaining to a crudely constructed "rights of passageway" whereby any person who takes helps themselves to or accepts larger sums of monetary gains for sex or other services rendered, could be obliged to justify this "take" for the rest of their lives, and may actually be hindered from adopting a secondary relationship with any other -because of this factor (which is all too prevalent in common day parlance?)???

Where as when a couple fall into the so-called (by the Explanatory Memorandums terminologies) "low-value property pool" then splitting any partners income in half is going to render the lives of both extremely dysfunctional for future employment and future relationship stakes, and may contribute to both of their descending into ill-health realms. That is not fair on the earning partner. Despite my acknowledging that a mother needs to be covered financially for being out of the workforce in order to raise younger families, I feel this should be addressed by government payments and not deprivation of the poor or low paid bread winner – which contributes to a lose lose scenario in lieu of the opposite intended.

I reiterate again that when families break up, there is always somebody whose nose will be out of kilter. And nearly always it is the kindest most nurturing party who supplicates to the more domineering and actively discriminating opposite. The family Courts try to take this into account, but people who lie are often so devious and lie so convincingly it would take a scientific investigation to determine whose rights get addressed and who needs to address their own rights by alternative means more suitable to their strengths and qualities than raising children might or can be? Ie the Courts of Law – may not be the best or most intelligent parties to be off-loaded onto in this regard?

Further making monetary concerns the be-all and end-all of human relating is diminishing to human relationships as a whole. We must needs look for a better way of doing things, than resorting to Courts of Law to sort out issues of economic injustices – which nearly always involve secrecy and hidden assets spirited away so

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that devious minds are not able to filch on their partners earnings which the law allows them to but they are not due... in terms of equality of inputs into their de Facto relationship/partnership or whatever you like to pull it?

It is a truism that financial security further enhances an already existent emotional harmoniousness. However a hard and fast rule when parties are warring against each other sufficient to require legal interventions – suggests that either one or both are of a devious or badly behaved nature or character. And why should those with ill intent be rewarded with financial gains if – they have promoted disharmony and actively misbehaved or actively sabotaged their partners earning capacity. It gets back to the old “mental cruelty” line being relevant when Courts get involved. And mental cruelty can be quite subjective depending on who is saying it. Each party may feel aggrieved and to both it appears there is no clear delineation of who is right and wrong. Many of those in the dominant position who seek to control their other partner, fail to take responsibility for their own part in the destruction of the relationship. They obfuscate (words which are equally used by both, but usually apply more to one than the other). Criminal intent is likely involved and with criminal intent it is very hard to get around those devious words, to exact proof of it, or even, to eliminate future criminal harms from occurring – whenever whatever. There is an old saying “old dogs cannot learn new tricks” and this may pertain here too.

So in conclusion I suppose splitting equally may suit the purpose of initially addressing all these vexatious and tragedy promoting concerns, but I personally find the tone of the Explanation Memorandum to be a slightly off-handed and mediocre way of addressing very serious problems which mostly do not pertain to finances as much as they do to personal endeavour. And rewarding someone who has not earned those rewards is a sure fire way to ensuring ongoing future harms because it promotes the behaviour and beliefs that anything goes, and no matter what harm is caused or what lack of inputs are made, still the rewards will be there for any female who wants to take advantage of them, exploit them and thus ruin the viability of a decent man/father - involved. Both sets of needs should be taken into account, not exclusively the females rights above all others, when and if, those rights have not been sufficiently earned.

Thanks for reviewing this submission with a determination to use more user-friendly words and frameworks in your final outputs for this enquiry. It may appear to bring West Australian de Facto break ups in line with other states, but it could have been a modern trend setter in determining newer and better break up patterns. Instead it just mirrors all others including all others’ faults and weaknesses of initiative is called for in revising these terms, and not just a user face of one rule fits all mental approach.

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The law guides us all in what to do to achieve successful resolving of all interpersonal matters. Confuting marriage laws as a substitute for either employment laws, or industrial laws, where remuneration or inequity of finances for women is concerned is a confusing substitution for real gains that could be made in a much better way, using alternative legislation not marriage legislation that seeks to reward a potentially non deserving partner to the financial and career deprivation of the other partner. Where illegality of arrangements already exists, why reward it this way? Why not change the structure of marriage laws in Australia to be more comprehensive and instructive about who can marry whom, and registrations to have children (as they have done over the recent past in China) and clearly educating and defining what parameters are concerned and whom may participate in those roles – which are not appropriate for a great many of us, who are incapable of successfully raising or supporting children to adulthood, but the general rule of thumb is that “we all do it’ and ‘we all should have the freedom to choose to do it” even though many are such failures at it, they would be better off, never having kids in the first place?

Thank you for looking into this with a view to changes being implemented – within the realms of this legislation

And thus empowering a new generation of school leavers into a new world of harmony cf the violence that unwanted mismatched relationships cause and inflict on all others in their vicinity.

From M/ss L H Roberts of

Eclectic Consumers Collective

Address:

E: (no email address currently exists for this organisation) but c/o the following will suffice:

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(leave message only pls)