

ADDITIONAL COMMENTS BY LIBERAL SENATORS

1.1 Liberal Senators wish to make the following additional comments in relation to the Evidence Amendment Bill.

Conflicting definitions

1.2 Liberal Senators note that the majority report acknowledges the confusion and undesirability of three bills – the Evidence Bill, the Same-Sex Superannuation Bill and the Family Law Bill – being introduced with three different definitions of 'de facto relationship'. The majority report states that, in a broad sense, the committee expresses its preference for consistency and uniformity across federal legislation, and opposes the existence of inconsistent terminology and definitions in different federal statutes to describe identical or similar concepts.

1.3 However, Liberal Senators believe that the majority report fails to acknowledge the seriousness of this issue.

1.4 The Federal Government's ineptitude in introducing three different definitions of the same term in three related bills, introduced within weeks of each other, is staggering.

1.5 It is disconcerting that the Federal Government has introduced in the same Parliament three bills on closely related matters which each contain significantly differing definitions of important and contentious terms, such as 'de facto partner' and 'de facto relationship'. Liberal Senators hold the strong view that there is no obvious purpose to be served by this confused approach to legislative reform. Despite government rhetoric about simplicity and certainty, it reflects a reckless indifference by the government to the importance of consistency in the law.

1.6 Consistent with the committee's approach in relation to the Family Law Bill,¹ Liberal Senators are of the view that the Federal Government should review the definitions of 'de facto partner', 'de facto relationship', 'couple relationship' and any related definitions, across all relevant federal legislation, with a view to ensuring a consistent approach.

Recommendation 1

1.7 While maintaining the independent and privileged status of marriage, the committee recommends that the Federal Government undertake a review of all federal legislation containing definitions of 'de facto' and 'couple' relationship

¹ See Senate Legal and Constitutional Affairs Committee, *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*, August 2008.

and 'de facto partner', and any related definitions, with a view to ensuring consistent concepts and terminology are used wherever appropriate.

Multiple relationships

1.8 Liberal Senators note that proposed paragraph 11(5)(b) of Part 2 of the Dictionary currently provides that 'a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship'.

1.9 Liberal Senators are of the view that this provision is unsatisfactory insofar as it:

- may undermine and devalue marriage as a union between a man and a woman to the exclusion of all others; and
- may be viewed by some to approve a form of polygamy.

1.10 Liberal Senators conclude that proposed paragraph 11(5)(b) of Part 2 of the Dictionary should be deleted from the Evidence Amendment Bill, and that any assessment of these matters should be left at the discretion of the courts.

Recommendation 2

1.11 Liberal Senators recommend that paragraph 11(5)(b) of Part 2 of the Dictionary in the Evidence Amendment Bill should be removed.

Senator Guy Barnett

Senator Mary Jo Fisher

Deputy Chair

Senator Russell Trood