Australian Family Association

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Re: Inquiry Into the *Evidence Amendment Bill 2008*

Dear Committee,

I am writing on behalf of the Australian Family Association. We thank you for the opportunity to make a submission to this inquiry.

The AFA acknowledges that the establishment of uniform evidence legislation may be to the benefit of all Australians. However we are concerned that several amendments proposed by the *Evidence Amendment Bill 2008* go well beyond the establishment of mere uniformity and pose a real threat to the status of marriage in Australian society, and to the traditional family unit.

I refer specifically to amendments in relation to the compellability of witnesses, which replace the term “de facto spouse” with “de facto partner” pursuant to clauses 5,6,7,8,84 and 85 of the bill, and insert a definition of “de facto relationship” pursuant to clause 94. The intention of these amendments is to grant to same-sex couples an entitlement which was originally intended only for married couples, namely, the right not to be compelled to give evidence against one’s spouse in a criminal proceeding. In doing so, these amendments implicitly place same-sex relationships on an equal footing with marriage, and thereby undermine the integrity and special status of marriage.

This is despite the fact that Prime Minister Kevin Rudd has, on behalf of his government, offered repeated assurances to the Australian people that he intends to preserve the institution of marriage as being a relationship between one man and one woman, to the exclusion of all others, voluntarily entered into for life.

We acknowledge that the law preserving persons from compulsorily giving evidence against their spouses has already been expanded to include *de facto* spouses. However we respectfully submit that, whereas the inclusion of *de facto* spouses was intended only to incorporate men and women living in marriage-like relationships (see for example the

definition of “de facto spouse” in the current Act), the definition of “de facto relationship” proposed by the bill opens the entitlement of non-compulsion to a far broader and more vague category of persons. The necessity that a relationship at least resemble marriage would be removed, and would be replaced with the meagre requirement that persons “have a relationship as a couple”.

This is problematic for several reasons. Firstly, it undermines the original intention of this part of the Act, which is to confer upon – and indeed *restrict to* – persons permanently and indissolubly united in marriage, a special privilege under the law. The privilege did not extend to persons in *any* couple relationship, in recognition of the value of the institution of marriage, and of the need to take extraordinary measures to preserve its integrity. Such evidentiary rules originally arose from the conviction that marital union was unique and that a married couple constituted one body, one flesh. Hence since no-one could be compelled to give evidence against oneself, neither could a spouse be compelled to give evidence against their spouse because this was tantamount to giving evidence against one's own body.

Watering down the entitlement such that it includes persons who merely “have a relationship as a couple” directly contradicts the Rudd government’s stated commitment to the preservation of the institution of marriage.

It also undermines the value of the right to non-compulsion itself, which, under the bill, could be invoked far more liberally, and by a far greater number of people. What’s more, by watering down the criteria by which access to this legal privilege is granted, the bill compromises the judicial process, granting a far greater number of persons immunity from testifying where their partner is subject to criminal proceedings.

Secondly, the proposed amendments impose upon the courts the onerous task of determining whether or not two persons do in fact “have a relationship as a couple” according to the very vague criteria established by the new definition of “de facto relationship”. The necessarily subjective nature of such an assessment will result in a significantly greater degree of uncertainty with regard to who may or may not lay claim to the right to non-compulsion, undermining public confidence in the law, and increasing the costs of judicial proceedings.

For these reasons we respectfully submit that clauses 5,6,7,8,84, 85 and 94 should be removed from the *Evidence Amendment Bill 2008.* Amending the bill in this way would enable the government to implement uniform evidence legislation without undermining the status of marriage.

Conversely, any legislative or policy initiative which calls into question the value and meaning of marriage in Australian society, for example by equating same-sex relationships with marriage (as the current bill does), demands a thorough and robust examination of *all* of the factors relevant to the issue, be they philosophical, sociological, political, theological, or otherwise. Adequately addressing these complex concerns would – and indeed *should* – take far more time than the present inquiry allows.

With respect, we submit that in its current form, the *Evidence Amendment Bill 2008* would significantly undermine the status and integrity of marriage in Australian society. Article16 (3) of the United Nations’ *Universal Declaration of Human Rights* states, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the

State.” Marriage is the bedrock of the family; in order to protect the family we therefore respectfully urge you to preserve and protect the integrity of marriage.

Sincerely,

Angela Conway
National Research Officer and Spokesperson
The Australian Family Association
25 July 2008