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Tabled paper:

Inquiry into the Provisions of the Family Law Amendment (Defacto Financial Matters and Other Measures Bill) 2008

Tabled by Attorney-General's Department, 7 August 2008



Attorney-General for Australia

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Transcript

30 April 2008

ATTORNEY-GENERAL PRESS CONFERENCE, BLUE ROOM, PARLIAMENT HOUSE, 945 am.

TOPICS: SAME-SEX DISCRIMINATION; CLARKE INQUIRY.

ROBERT MCCLELLAND: Thanks for coming along.

Today I'm announcing that the Rudd Government is delivering on its election commitment to introduce legislation to remove same sex discrimination from a wide range of Commonwealth laws.

This will be introduced in the winter sittings of parliament. It will deliver on our election

commitment. It's long overdue. And it will make a practical difference to the everyday lives of a group of our fellow Australians who have been discriminated against for far too long.

This long overdue reform follows from the landmark report of the Human Rights and Equal Opportunity Commission, titled Same Sex Same Entitlements, which focused on financial and work related legislation.

It identified some 58 Acts of Federal Parliament that required amendment; an audit of Commonwealth laws has identified some 100 laws that in fact require attention.

On coming to office, we commissioned that audit, and have progressed the reforms consistently with our election commitments.

The changes will provide for equality of treatment under a wide range of areas, including superannuation, taxation, social security, workers compensation, pharmaceutical benefits - again, these will make a practical difference to the lives of a group of fellow Australians who for far too long have suffered discrimination at a Commonwealth level.

It will also ensure that, from the point of view of Australia, we now complete the picture - discrimination on the basis of sexuality has long been removed from State and Territory laws, and this will complete the picture by introducing long overdue reforms to remove discrimination from Commonwealth laws.

QUESTION: Minister McClelland, what about the Medicare safety net? Will that be now available to same sex couples?

And, what is the cost of this, in terms of the budget?

ROBERT MCCLELLAND: In terms of the budgetary matters, as you'd appreciate, I won't be giving the detail of the budgetary implications of these measures. They will be announced in a couple of weeks time.

But, essentially what the reforms will do will be to ensure that a couple in a same sex relationship is regarded in equivalent terms to a couple in a heterosexual defacto relationship. So in terms of having regard to what the combined income is of that household, that will be the assessment for Medicare purposes and social security means tests generally.

QUESTION: So, same sex couples will be able to claim the Medicare safety net as a couple, because that's not in the, the press release?

ROBERT MCCLELLAND: Again, I haven't got each and - you'd appreciate that there's a hundred laws. I can't give you the details of each and every of those...

QUESTION: ...not sure if that applies to the Medicare safety net?

ROBERT MCCLELLAND: All I can give you the information on is the principle. That the principle will be that a same sex couple will be regarded as a unit for the purpose of both assessing their means tests and for, from the point of view of assessing their entitlements.

QUESTION: Will discrimination still exist for IVF, adoption, and a ceremony?

ROBERT MCCLELLAND: In terms of the recent meeting of the Standing Committee of Attorneys General, considered the issue of surrogacy, and that is an area where the Commonwealth is encouraging and working with States to introduce uniform measures in respect to surrogacy. They

are matters for State Parliaments.

In respect to adoption, the same situation applies. The issues of adoption is a State Government matter. These reforms won't impact upon State laws.

I should say, in respect to adoption, and appropriately so, the focus of State adoption laws is very much on the best interests of the children as opposed to the rights of adults. And that is a situation that we will not be intruding on in, in any way.

And I'm sorry, the third issue?

QUESTION: The ceremony...

ROBERT MCCLELLAND: The ceremony. No, these reforms won't change the Marriage Act. Consistently with Labor Party policy we made it clear before the election that the government regards marriage as being between a man and a woman; and we don't support any measures that seek to mimic that process.

QUESTION: Is this a warning, is this a warning to the ACT Government then?

ROBERT MCCLELLAND: I've had discussions, and, discussions in good faith with the ACT Attorney General. We have put that view to them. We have indicated that we strongly support, indeed think it would be a good thing if States and Territories would agree upon a uniform system of registration of same sex relationships; indeed close personal relationships, along the lines of the Tasmanian or Victorian models. It would actually be of tremendous assistance in the application of these federal reforms.

And we have made that position clear.

While we support a system of registration of same sex relationships, we don't support an arrangement that mimics marriage.

QUESTION: So you're removing some discrimination - you're happy to leave other aspects of discrimination...

ROBERT MCCLELLAND: We're focusing on substance over form. We are removing discrimination from Commonwealth laws that have a real and practical impact on people in same sex relationships.

QUESTION: Mr McClelland, we've heard during this - we've heard during this process that some people will be worse off.

So, for example, some same sex couples will now get less social security because they're classified as a couple, as heterosexuals would be in that arrangement.

Have you quantified the savings? Will there be some people who are now eligible for, for less social security as a result of these changes?

ROBERT MCCLELLAND: Unquestionably there will be winners and losers. But that's recognised by the community, and as very much part of the removal of discrimination.

There will be, for instance, in assessing the income of the household as a unit, the means test will have regard to the total earnings both couples, as opposed to the earnings of an individual, for the purpose of assessing whether that individual is entitled to some form of social security benefit.

On the other hand, there will be - to answer your question earlier - there will be instances in respect to pharmaceutical benefits where there will be more generous provisions.

Equally, in respect to Commonwealth superannuation, there will also be, there will also be areas where benefits flow.

The same for, for instance workers compensation, where children - children will be regarded as dependents of the primary breadwinner who may suffer a workplace injury for the purpose of assessing the child's entitlement to additional benefits.

QUESTION: Mr McClelland, [indistinct] previous government was tinkering with this as well. They were going to include the definition... couples, same sex couples. But those homosexual relationships, the broader definition that could be like, [indistinct] or something like that who have an interdependent relationship financially, and for all intents and purposes, but it was a non-sexual one.

Is what you are doing going to affect that, include those people?

ROBERT MCCLELLAND: These reforms focus on same-sex couples. However, we have indicated to the States and Territories we would think a system of registration of close personal relationships, same sex and otherwise, including that position of carers that you have mentioned would be a desirable thing.

It is included in the Tasmanian legislation. And we think that would be a desirable outcome for the states and territories to collectively work towards.

QUESTION: Can I just clarify that the ACT - if they go ahead and want to have a ceremony with their registration, would you, like the Howard Government, intend to override it?

ROBERT MCCLELLAND: Again, we are in discussions with the ACT Government. I don't want to pre-empt the outcome of those discussions.

QUESTION: On another issue, is it appropriate for Kevin Andrews to be undermining the AFP on the front page of the national newspaper on day one, of the Haneef inquiry?

ROBERT MCCLELLAND: It is day one of the Haneef inquiry. Mr Clarke is entrusted with the responsibility of determining the process and procedure of that. I am not sure that he would appreciate my commentary from the sidelines.

I think we will leave the subject matter of the inquiry and...

QUESTION: What do you [indistinct] Kevin Andrews' commentary on the front page of *The Australian*?

ROBERT MCCLELLAND: Well, I will - again, I had better let Mr Clarke...

QUESTION: [Indistinct] no. You are not answering the question. You basically criticising Kevin Andrews for talking out on the day - on day one?

ROBERT MCCLELLAND: No. It's not appropriate for me to reflect on any person who will potentially give a statement to the Clarke inquiry. It is not appropriate that I do so. Kevin Andrews has indicated that he is prepared to cooperate with the inquiry. I think it would be inappropriate for me to reflect on his conduct in that context, but rather, to let Mr Clarke deliberate; and his record is such that he has indicated very clearly that once he is [indistinct] of an inquiry, he will not appreciate

side commentary.

QUESTION: On the subject of practice and procedure during the inquiry, it seems as though it could well be a pretend inquiry, without the powers to compel witnesses to - the power to compel the production of documents, and the cross examination of witnesses. I mean, how can we be assured that this is going to be a full judicial inquiry without those very basic elements of an inquiry?

ROBERT MCCLELLAND: You can be assured it is a full inquiry. Indeed, the powers were discussed. I discussed the powers with Mr Clarke. He is satisfied with the powers that he has been provided with. All agencies, all Commonwealth agencies, have specifically informed me that they will cooperate to the utmost with the inquiry, both in terms of providing statements, relevant documentation, and so forth.

I have advised Mr Clarke and, indeed, in announcing the inquiry, should at any stage he come to the government and indicate that the absence of cooperation of any witness, any agency, or any person, is impeding a full and proper inquiry, and ultimately report, then we will certainly have regard to any request, should it be made to provide powers of compellability in terms of documents and witnesses.

I should emphasise in saying that I sincerely don't believe that will occur. I sincerely believe the inquiry will proceed in a full proper and comprehensive manner. And I have every confidence that that outcome will be achieved by Mr Clarke.

QUESTION: [Inaudible question]

ROBERT MCCLELLAND: Evidence won't be under oath. Mr Clarke will determine the processes and procedures, and again, in the context of the undertakings that have been provided to me by all agencies, they will fully cooperate. That cooperation implicitly means that they will give honest and detailed responses to the inquiry.

The processes and procedures that will be followed by Mr Clarke will ultimately be a matter for him. He will, in the course of these events, obviously, have the ability to comment on the weight or otherwise of material submitted to him.

QUESTION: How, then, will witnesses to the inquiry - if you can call them that, if they're not going to be cross-examined - be protected from self-incrimination?

ROBERT MCCLELLAND: Again, the - Mr Clarke will be conducting the inquiry having regard to a range of matters, including the potential for incrimination, including the need - and a very important need - to protect sensitive national security information and the important need to ensure that ongoing investigations aren't prejudiced. And the important need that I discussed recently, on a visit to the United Kingdom, to ensure that a criminal trials that are occurring in the United Kingdom, aren't prejudiced.

He will exercise his experience and his deliberations with regard to those demands. And he has extensive experience in dealing with those matters. And we have every confidence that the practices and procedures that he adopts will be on that basis.

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