

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS REFERENCE: FAMILY LAW AMENDMENT (DE FACTO
FINANCIAL MATTERS AND OTHER MEASURES) BILL 2008

Questions on Notice

Attorney-General's Department

**Question – Hansard (7 August 2008, page 14 of the Transcript for the Evidence
Amendment Bill 2008)**

**Senators Brandis and Barnett asked the following questions at the hearing on
7 August 2008:**

Mr Duggan— ... If I can just move to a slightly different point in relation to the development of our legislation, as a number of you would be aware, when the Commonwealth enacts legislation on the basis of a reference from the states there is a very significant amount of consideration given to ensuring that the Commonwealth legislation is, as far as we can make it, going only as far as the states give us power and no further. As you can probably appreciate, we have very extensive constitutional advice which I will not be able to table before the committee—

Senator BRANDIS—Why not, by the way? Unless the Attorney-General directs you not to, you can—

Mr Duggan—I do not have the powers behind me at the moment is what I am saying. If you ask me that question, I will refer it to the Attorney-General.

Senator BRANDIS—I am asking that question and if he decides to withhold it from the public that is a matter for him.

Mr Duggan—On the issue of just exactly how far we can go in relation to the legislation that we enact, our advice in that regard was that there was a need for caution in relation to the definition based upon the references of power that we have from the states that have so far referred—

Senator BARNETT—Who gave you that advice?

Mr Duggan—It is advice the government would have got from senior counsel.

Senator BARNETT—Within the department, or—

Mr Duggan—No, it would have been through the Australian Government Solicitor.

Senator BARNETT—Can you take on notice if we can have a copy of that?

Mr Duggan—I—

Senator BRANDIS—I do not know if the rules of waiver of privilege apply to parliamentary proceedings, but in stating substantially what the effect of the advice was, I suspect you might have waived the Attorney-General's right to withhold it now.

Mr Duggan—I will ask the Attorney-General what his views are about that. Upon that basis, our definition is drafted very carefully to, as I say, give it the best foundation in relation to the reference of power that we have.

The answer to the honourable senators' questions is as follows:

Legal advice was obtained on the definition of de facto relationship in new section 4A of the *Family Law Act 1975* proposed by Item 21 of Schedule 1 of the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 from the Chief General Counsel, Australian Government Solicitor. The Department has asked the Attorney-General about provision of a copy of the advice to the Committee. The Attorney-General has declined to agree to provide a copy to the Committee.

Question – Hansard (7 August 2008, pages 15 to 16 of the Transcript for the Evidence Amendment Bill 2008)

Senator Brandis asked the following question at the hearing on 7 August 2008:

Mr Duggan— ... Consideration (g) arises because of the Commonwealth’s desire to encourage the states to consider the development of relationship registers—

Senator BRANDIS—So, that is a substantive social policy decision made by the Rudd government to encourage the states to develop relationships registers?

Mr Duggan—That is right.

Senator BRANDIS—Has that substantive social policy decision by the Rudd government been the subject of an announcement by either the Attorney-General or, to the best of your knowledge, any other minister, or is it simply being slipped below the radar screen in this piece of legislation?

Mr Duggan—Not at all. I do not have that in front of me but the Commonwealth’s position is quite clear, and it has made announcements in a number of places and I will, again, attempt to find that out.

During the hearing on the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 on 7 August 2008, the following answer was provided to the honourable senator’s question (page 10 of the Transcript for the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008):

Mr Duggan— ... In relation to the question of when the government has made its position clear regarding encouragement of the states to enact relationship registers, I am advised that the Attorney wrote to his state counterparts in December of last year exhorting them in that regard, and I am also aware that on 30 April the Attorney made a number of press statements to that effect, that the government was encouraging states and territories to enact relationship register-type legislation.

Senator BARNETT—Can you give us some dates?

Mr Duggan—Yes, 30 April.

Senator BARNETT—If you have them there we would appreciate a copy.

Mr Duggan—I can certainly make a copy.

Senator BARNETT—What are the dates again?

Mr Duggan—The press announcements were 30 April.

Senator BARNETT—And the Attorney-General encouraging states to go down that track?

Mr Duggan—That is right.

Provision of additional information in relation to the honourable senator’s question:

On 4 May 2008, the Attorney-General also issued the following Media Release:

“4 May 2008

ACT RELATIONSHIP REGISTRATION SCHEME

Attorney-General Robert McClelland has today welcomed the commitment by the ACT Government to introduce legislation providing for registration of relationships, becoming the third jurisdiction to do so following Tasmania and Victoria.

Mr McClelland said, "The Federal Government has been calling for nationally consistent State and Territory legislation for the registration of committed, adult relationships."

"This week I announced the Rudd Government will introduce legislation in the Winter Sittings to remove same-sex discrimination from a wide range of Commonwealth laws. These reforms will make a practical difference to people's lives. Nationally consistent State and Territory laws providing for registration of relationships will help people access these entitlements."

"The Government notes that the ACT has confirmed the legislation will not provide for ceremonies. Consistent with Federal Labor's national platform, the Government made clear to the ACT that it would not accept legislation that mimics marriage."

"We also note that the landmark HREOC report Same-Sex: Same Entitlements found that while there was absolute consensus in the gay and lesbian community that same-sex couples should be recognised equally, there was not consensus that marriage was the most appropriate way to achieve this."

The Federal Government looks forward to reviewing the detail of the ACT legislation when it becomes available, before responding further."