



Our ref: 22-015761

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**ATTORNEY GENERAL**

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MINISTER FOR HEALTH; ELECTORAL AFFAIRS

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FOR WESTERN AUSTRALIA

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Senator Trish Crossin  
Committee Chair  
Standing Committee on Legal and  
Constitutional Affairs  
The Senate  
Parliament House  
CANBERRA ACT 2600

by email: [LegCon.Sen@aph.gov.au](mailto:LegCon.Sen@aph.gov.au)

Dear Senator Crossin

Thank you for your email of 1 July 2008.

I have noted the matters in your email and, in particular, that your Committee has received a reference into the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008* (Clth).

I am aware that this Commonwealth Bill utilises the reference of State powers enacted by the NSW, Victorian, Qld and Tasmanian Parliaments, for example, the *Commonwealth Powers (De Facto Relationships) Act 2003* (NSW). That is, the Commonwealth Bill implements those references of State power in relation to de facto relationship settlement and spouse maintenance issues which have been enacted by State Parliaments (except SA and WA). At this stage, there are only two comments which I would make in relation to the above Commonwealth Bill.

First, as your Committee may be aware, pursuant to legislation introduced by the current WA Government amendments have been implemented to the *Family Court Act 1997* which already enable (albeit in State, not Federal, jurisdiction) de facto partners (whether of different sexes or the same sex) to utilise the Family Court of WA in property and other disputes. That is, at long last and on the initiative of the current Commonwealth Government, the Family Court of Australia will, if the above Commonwealth Bill is enacted, obtain jurisdiction (albeit federal, not state) over matters which can and are currently within the Family Court of WA's jurisdiction. Of course, subject to WA Cabinet approval and enactment by the WA Parliament, the *Family Court Act 1997* (WA) can be amended (as it has been in the past) to reflect the same substantive law as implemented by the *Family Law Act 1975* (Clth) each time that Commonwealth legislation is amended. I am pleased that, as a result of this Bill, de facto partners (whether of different sexes or the same sex) in other Australian

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jurisdictions will have the benefits which WA legislation already provides to similar persons in this State.

Second, I have, however, noted that this Commonwealth Bill does not implement the WA Parliament's reference of powers to the Commonwealth Parliament in the *Commonwealth Powers (De facto Relationships) Act 2006* (WA). This WA Act refers powers over superannuation matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships and relates, in alternative paragraphs, to de facto relationships between persons of different sexes or the same sex. Because the WA Family Court, acting under the *Family Court Act 1997* (WA), already enables de facto partners (whether of different sexes or the same sex) to utilise this Court in property and other disputes, as indicated above the Commonwealth Bill will enable de facto partners in other Australian jurisdictions to have similar benefits to those in WA. However, by not implementing the WA reference of power, WA de facto partners will, in comparison to those in other Australian jurisdictions in superannuation matters, be discriminated against. Implementation of the WA reference of powers by the Commonwealth Bill will eliminate this discrimination.

Thank you for informing me of your Committee's enquiry and I look forward to your report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. McGinty', written in a cursive style.

JIM MCGINTY MLA  
ATTORNEY GENERAL

03 JUL 2008