

sub09.txt

The Standing Committee on Legal and Constitutional Affairs,  
The Senate,  
PO Box 6100, Parliament House, Canberra, A.C.T. 2600.

Monday, 14 July 2008.

From: Kendall Lovett and Mannie De Saxe,  
Lesbian and Gay Solidarity (LGS) Melbourne,  
PO Box 1675,  
Preston South, Victoria 3072.

SUBMISSION  
TO THE INQUIRY INTO THE FAMILY LAW AMENDMENT  
(DE FACTO FINANCIAL MATTERS AND OTHER MEASURES) BILL 2008.

Preamble

This Bill apparently will amend the Family Law Act 1975 to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters. The primary objective is to extend the financial settlement regime under the Act to parties to a de facto relationship. It is a long time coming but nevertheless will benefit those in de facto relationships when a relationship breaks down and there are disputes over financial arrangements and child-related matters arising between separating de facto partners. In the case of same-sex couples it at last recognises that theirs is a valid relationship and can be the equal of a hetero family.

Sadly, though, instead of leading the way, it seems that the Commonwealth has been forced into providing equal treatment for same-sex couples under the federal family law system by some of the States who have legislated similarly and which has caused heavy financial problems for separating same-sex de facto partners which are minimised for separating married couples under the federal system. To have a nationally consistent financial settlement regime to minimise disputes and uncertainties with access to the family law system for determining financial matters arising on relationship breakdown, is a step forward in accepting the validity of a same-sex relationship which is on a par with the heterosexual equivalent.

Nevertheless, same-sex couples will still have to prove they are in a genuine de facto relationship by conforming to a set of standards listed in this Bill at Item 21: after Section 4 at 4AA. It is still not equality with married couples despite a same-sex relationship being a loving partnership. Surely, the government needs to revise its objection to a legal document (officially recorded and similar to a marriage certificate) which unites a same-sex couple if they so wish. Many hetero couples choose not to unite in a religious ceremony these days yet are still granted a genuine marriage licence which is their entitlement to all government benefits and responsibilities bestowed by the religious ceremony. The same should apply equally to a valid same-sex relationship.

Comments by LGS on this Bill are limited to those sections which define the meaning of "de facto relationship" and related terms used to replace pre-existing definitions in the Act.

---

The BILL  
Specific comments on aspects of some amendments

5 Subsection 4(1) (definition of de facto relationship)

The current definition is repealed and replaced by de facto relationship and has the meaning given by 4AA.

21 After subsection 4 insert:

4AA De facto relationships

Meaning of de facto relationship:

1.. A person is in a de facto relationship with another person if  
1.. the persons are not legally married to each other, and  
2.. the persons are not related by family (see subsection 6); and  
3.. having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has effect subject to subsection (5).

Working out if persons have a relationship as a couple:

1.. Those circumstances may include any or all of the following: (then 9 separate circumstances which indicate a genuine domestic basis of a de facto relationship (c) above. Subsection (5) sets out the following: For the purposes of this Act:

- 5.. (a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and  
(b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

LGS would like an extra paragraph (c) added to the two immediately above, as follows: (c) a de facto relationship can exist even if one of the persons is transsexual/transgender or both persons are transsexual/transgender or in the process of realignment, or one of the persons is legally married to someone else or in another de facto relationship.

LGS considers that post-operative trans people should be recognised separately in any changes made to the definition of de facto couples. The majority of trans people form relationships or are already in a de facto relationship before realignment and as the purpose of this Bill is to recognise and benefit same-sex couples in a legal way, it is the ideal time to do so for transsexuals/transgender people.

Item 21: subsection 4AA: line 30, Working out if persons have a relationship as a couple; (2) Those circumstances may include any or all of the following:

(g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

LGS takes issue with paragraph (2)(g): because a lot of Local Government Councils have also offered same-sex couples the opportunity to register their relationships but none of these are binding and the State and Territories probably aren't binding either. The federal government has a duty to its citizens to provide its own genuine same-sex relationship legal register which is the equivalent of the Marriage Licence.

As with hetero (different sex) couples who prefer not to marry but live together in a de facto relationship, there would be plenty of same- sex couples who would prefer to do the same. Just as many same-sex couples, though, would be committed to a licensed federal partnership. It is therefore unfair of the federal government to refuse them equality with a woman and man's married partnership.

LGS also considers that paragraph (2) (f): the degree of mutual commitment to a shared life; should have inserted after the word mutual the words: love in any, so that (f) reads: the degree of mutual love in any

sub09.txt

commitment to a shared life. Love appears not to enter the equation when legality is used to describe a human condition.

LGS is also concerned that these listed circumstances of 4AA (2) allow government agencies such as the Taxation Office and Centrelink to assume for instance that two people sharing a house/dwelling are a de facto couple and if both are receiving government pensions would re-classify them as a couple without reference to the parties concerned, leaving it up to one or both people to query the change.

Signed: Kendall Lovett,  
For Lesbian & Gay Solidarity (LGS) Melbourne.  
1