Dear Mr Hallahan,

We would like to thank the Legal and Constitutional Affairs Committee for the opportunity to provide an oral submission. The Gay & Lesbian Rights Lobby (NSW) offers this supplementary comment to clarify our arguments with respect to the definition of a parent/child in both the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008* ("De Facto Bill") and the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008* ("Super Bill").

In our original submission to the De Facto Bill, we articulated the view that the De Facto Bill should consistently amend section 60H of the *Family Law Act* (FLA) to recognise consenting male and female partners of birth mothers as 'parents' for the purposes of family law and child support. This will ensure a co-mother is treated as a 'parent' for all purposes of the FLA and *Child Support Assessment Act* - not merely for de facto property issues.

In our original submission to the Super Bill, we articulated a model definition of child to replace the concept of 'product of the relationship'. Our model definition drew upon existing and evolving definitions in federal, state and territory law and was inclusive of all children, regardless of their place of residence.

We strongly believe that the federal definition of child/parent relationships should be inclusive of same-sex families. As such, we feel it is inappropriate to define a "child" in a way which will lead to a patchwork of recognition for children and their families depending on where they live in Australia. We express strong concerns that the proposed definition outlined in other submissions to the Inquiry will do just that and will not in the best interests of children.

In our model definition, we finely balance the need to retain state/territory control over the definition of a parent, except where the definition is inadequate to cover contemporary family forms (such as some gay and lesbian families). As such we anchored child-parent definitions in state/territory laws to the extent possible, then added further recommendations to ensure no child in Australia would be disadvantaged depending on where they lived.

We also retained a distinction between parents/co-parents (intended parents of a child from birth) **and step-parents** (new partners to spouses who take a parenting role at a later stage in a child's life)**.** We stress that biological relationships are not always the line where these distinctions are drawn by the law. As an illustration, consenting male (and female) partners to birth mothers who have children through assisted reproductive technology are intended parents from birth (i.e. co-parents) - despite the presence or absence of a biological relationship with a child. In all jurisdictions, heterosexual co-fathers, and in a majority of jurisdictions, lesbian co-mothers, are recognised as co-parents.

The distinction between parents/co-parents and step-parents is an important one. This is because co-parents should be (and generally are) uniformly recognised across all parent-child definitions as parents - **not** as *spouses* of parents as one submission recommends. The former is a direct recognition of a parent-child relationship with a person's child, whilst the latter is an acknowledgement of a subsequent relationship with a child by virtue of a new relationship with a current (or former) partner. The former allows a co-parent or child to access rights by virtue of a direct recognition of their parent-child relationship - as the original and

intended parents of a child. The latter allows a step-parent or step-child to access a benefit by virtue of a parent-child relationship created through a later spousal relationship.

The significance is, in some laws, a child will have both parents/co-parents (who may have separated) and step-parents (new partners to their original parent and co-parent). The co-parents' place as the original parents to the child should not be displaced or diminished, notwithstanding the important and invaluable contributions made by step-parents. This is reflected in the law which provides more limited recognition to step-parents, but generally[1] recognises co-parents in all parent-child definitions as 'parents', regardless of their biological relationship with their child. For example, the law only recognises parents/co-parents in the following - but does not recognise step-parents:

- **Child support** - co-parents have obligations for child support as 'parents' under the *Child Support Assessment Act* 1989. Parents/co-parents have a primary duty to maintain their children: see also 66C, FLA. Step-parents have a more limited obligation for child support in some cases under child maintenance orders under the FLA , but that is secondary to the parents'/co-parents' primary obligation to maintain their child: FLA, s 66D.

- **Presumptions of shared parental responsibility, and if there is shared parental responsibility, mandatory consideration of equal time or significant and substantial time (s65DAA, FLA)** - These presumptions only apply to parents/co-parents recognised under the FLA, not step-parents.

We therefore submit that the definition of child should ensure children across Australia will be equitably included regardless of their place of residence and the distinction between parents/co-parents and step-parents should not be inappropriately conflated. We believe our model definition of child, outlined in our written submission, achieves that purpose. We trust this information will be of some assistance.

[1] We use the word "generally", as lesbian co-parents, and intended parents and co-parents of children born through surrogacy arrangements may not always be recognised under existing law, due to gaps or discrimination in the law.

Regards,

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