



## ***FAMILY COURT OF WESTERN AUSTRALIA***

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23 July 2008

The Honourable Senator Trish Crossin  
Chair  
Standing Committee on Legal and Constitutional Affairs  
P O Box 6100  
CANBERRA ACT 2600

Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator Crossin

### **Inquiry into the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008**

I note that submissions have been sought for the inquiry into the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*.

As you are no doubt aware, the Family Court of Western Australia is the only State Family Court created pursuant to the provisions of the *Family Law Act 1975*. As such the Court exercises both State and Federal jurisdiction in family law matters.

The Family Court of Western Australia has for some years been exercising jurisdiction in cases involving property disputes between parties to de facto marriage relationships including same-sex couples. The jurisdiction was conferred on the Court pursuant to the provisions of the *Family Court Act 1997 (WA)*. The legislation effectively replicates almost all of the property provisions of the *Family Law Act 1975*. Hence parties to de facto marriages have much the same rights and obligations as parties to marriages following the breakdown of their relationships. There is, however, one exception and that relates to the ability of the Court to make "superannuation splitting orders". The State Parliament lacks the necessary constitutional authority to enact legislation that would allow the Court to make such orders and hence parties to de facto marriage relationships in this State do not have the flexibility afforded to married couples to resolve disputes in cases involving superannuation.

I understand the State Government has invited the Commonwealth to legislate in this area so as to provide the Family Court of Western Australia with power to make superannuation splitting orders in cases involving de facto couples. I note that the proposed Commonwealth legislation does not deal with this issue. In my view this is unfortunate as the passage of the proposed legislation affords what would appear to be a suitable opportunity to provide the Family Court of Western Australia with this additional jurisdiction.

Apart from making these observations, there are no other submissions I would wish to make in relation to the proposed legislation as it appears the legislation will have no impact on Western Australia.

I appreciate the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Thackray', with a long, sweeping flourish extending to the right.

**STEPHEN THACKRAY**  
**CHIEF JUDGE**