



New South Wales
Council for
Civil Liberties

New South Wales Council for Civil Liberties Inc

149 St Johns Road
Glebe NSW 2037
Australia
www.nswccl.org.au

Ph 61 2 9660 7582
Fax 61 2 9566 4162
Email office@nswccl.org.au
DX 1111 Sydney

Correspondence to:
PO Box 201
Glebe NSW 2037
Australia

**Submission to the Senate's Standing Committee on Legal and Constitutional Affairs
concerning the Family Law Amendment (De Facto Financial Matters and Other
Measures) Bill 2008.**

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to ensure the equal rights of everyone in Australia and to oppose any abuse or excessive power by the State against its people.

CCL thanks the Senate Committee for the invitation to comment on this bill. We should be happy to comment further, should the Senate Committee so desire.

Summary.

CCL supports this bill. Separation after a lasting relationship is traumatic for the partners, and disputes about property and children add to the distress. The bill will extend to same sex and de facto couples the benefits married couples have, of having these disputes settled in the Family Court, instead of them needing to go to State courts to have property disputes settled—and sometimes, to more than one state court.

1. Ideally, the state and society would support same sex relationships in the same ways that they support heterosexual ones—for example, by introducing and supporting same sex marriages. Long lasting relationships are a source of human good, of happiness and of fulfilment. These relationships are also good for society—for example because the partners care for each other, reducing the burden on medical and social services, and because they contribute to stable communities.

2. As it is, same sex attracted people are excluded from marriage by their sexuality.

3. But, like marriages, same sex relationships are susceptible to disruption. In the absence of state and social support, they are more susceptible to disruption, and more breakdowns occur. A society that denies the support of legal recognition has an added responsibility to help those whose relationships break up.

5. People in same sex relationships and people in de facto relationships suffer in the same ways that people in marriages do from the breakdown of their relationships. There

is no good reason for their being treated differently in relation to the settlement of disputes.

6. The present situation, in which disputes about property settlement and partner maintenance are settled in one court and family matters in another, increases the suffering undergone by the partners, especially where one person will be dependant on maintenance provided by the other. The situation is made worse when matters must be dealt with in courts in more than one state, whose laws are not uniform.

7. As the Attorney General noted in his second reading speech, 'The federal family law courts are the specialist courts in Australia with vast experience in relationship breakdown matters. They also have procedures and dispute resolution procedures which are more suited [than other courts] to handling family litigation arising on relationship breakdown.'

8. Included in these procedures is the capacity to protect the privacy of the persons involved.

9. CCL supports the inclusion of the sections in the bill enabling de facto couples to split their superannuation interests in the event of a breakdown in their relationship. A couple typically negotiate their domestic arrangements and their work careers, often deciding that one should spend more time pursuing career advancement while the other has greater responsibilities in and around the home. A marriage where one partner stays at home to look after the children and the domestic chores while the other goes out to work is a traditional example at one end of the range.

10. CCL also supports proposed paragraph 4AA (5) b: the inclusion of de facto relationships where one partner is also involved in another such relationship, or is married. A person may incur substantial responsibilities as a result of his or her actions and words in such a situation, possibly deceiving an innocent partner in the second relationship and benefiting from the latter's sacrifice of his or her financial position for the former's benefit. It should then be up to the Court to determine the priorities of the spouse or first de facto partner and those of the second. The situation is in many respects parallel to that of the two former spouses when a person has been twice married and twice divorced.

11. Countries in the European Union are moving to remove discrimination on the grounds of sexual orientation.¹ Australia should follow suit.

12. Same sex attracted persons have suffered substantially in Australia. They have been imprisoned, been subjected to barbarous psychological experiments, been the targets of blackmail and threats. They have been brutally attacked, sometimes by police. Some

¹ See European Union Agency for Fundamental Rights 2008: *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States* (Report prepared by Olivier de Schatter).

have been murdered, in at least one case, by police. The passage of this legislation will be an important recognition of the wrongness of these actions, and for these persons, of their equality as human beings.

Martin Bibby
Convenor
Civil and Indigenous Rights Subcommittee
New South Wales Council for Civil Liberties