

ADDITIONAL COMMENTS BY SENATOR HANSON-YOUNG

Introduction

1.1 The Australian Greens commend the Chair and committee secretariat on the comprehensive nature of the committee's report.

1.2 We believe that the inquiry into the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008 (the Bill) has provided the committee with the opportunity to recommend to the Government ways to strengthen and tighten the legislation to ensure same-sex couples are not discriminated against in any way.

1.3 However, the Australian Greens have a number of additional concerns which we consider should be addressed to ensure equality for all couples – regardless of their sexuality – is actually met.

Background

1.4 There has been discussion and public debate about the removal of same-sex discrimination for decades.

1.5 The first stage of the Rudd Government's election promise to remove discrimination against same-sex couples in more than 100 pieces of Commonwealth legislation following a 2007 Human Rights and Equal Opportunity Commission (HREOC) report highlighted that at least 20 000 same-sex couples experience systemic discrimination daily.

1.6 The Australian Greens believe that freedom of sexual orientation and gender identity are fundamental human rights.¹ The need for acceptance and celebration of diversity, including sexual orientation and gender diversity, is essential for genuine social justice and equality.

Private Superannuation Funds

1.7 The Australian Greens do not think people should be discriminated against on the basis of their sexuality.

1.8 In particular, we, along with other key witnesses, are concerned that while the government's proposed piece of legislation will provide for superannuation

¹ United Nations Universal Declaration of Human Rights: <http://www.unhchr.ch/udhr/lang/eng.htm>

entitlements for same-sex couples who have Commonwealth super schemes, for those who have commercial super schemes, the discrimination could continue.

1.9 Where a superannuation fund provides for recognition of an opposite-sex relationship as a “de facto relationship” we believe this should be non-discriminatory.

1.10 While this Bill specifically legislates for judges, veterans and Commonwealth public servants, it allows private superannuation firms to, if they choose to, remove the discrimination, and yet does not actually mandate them to do so.

1.11 While the Australian Greens were indeed pleased to see the government commit to its election promise of removing same-sex discrimination in all areas of law, we are disappointed to see that this legislation does not specifically mandate private superannuation firms to stop discriminating against same-sex couples, considering that around 90 per cent of Australians have their super tied up in private funds.²

1.12 The *Superannuation Industry (Supervision) Act 1993* (Cth) (the SIS Act) regulates private superannuation schemes. Where private superannuation trust deeds refer directly to the definitions contained in the SIS Act, they will have the immediate effect of including same-sex couples. Yet, the legislation, in its current form, does not require all trust deeds to incorporate these definitions.

Recommendation 1

1.13 The Australian Greens recommend the government amend the SIS Act, to mandate that, where an individual superannuation fund recognises opposite-sex de facto couples, they must also recognise same-sex de facto couples.

Recommendation 2

1.14 The Australian Greens further recommend that any amendment that is made will not cause any resettlement of the trust funds or otherwise pose a risk to security of those funds including tax liability.

Definition of a ‘couple relationship’

1.15 The government explicitly outlines the reasoning for the adoption of the definition 'couple relationship' in its Explanatory Memorandum stating:

The effect of [these amendments] is to ensure that the definition of a relationship, for the purpose of the payment of death benefits, includes a same-sex relationship as well as an opposite-sex relationship. The inclusion of same-sex relationships within this definition is not intended to change the treatment of married or opposite-sex de facto couples. It removes same-

² APRA Statistics Annual Superannuation Bulletin June 2007

sex discrimination but does not change or re-define any other indicia of a relationship.³

1.16 It is for this reason that the Australian Greens welcome the new definition of a ‘couple relationship’ contained within the Bill.

1.17 We particularly support the explicit reference to same-sex couples in the definition of partner and the addition of registration of a relationship as evidence of the existence of a couple relationship.

1.18 The Australian Greens particularly support point number 17 in HREOC’s submission that states:

The combined effect of replacing the term ‘marital relationship’ with ‘couple relationship’ and replacing the phrase ‘husband and wife’ with ‘partner’ ensures the equal treatment of same-sex and opposite-sex relationships.⁴

1.19 It is for this reason that the Australian Greens do not support the committee’s recommendation to amend the definition of ‘couple relationship’ in the Bill to read ‘marital or de facto relationship’.

1.20 Further to this, the Australian Greens also support the recommendation put forward by the Australian Coalition for Equality that the recognition of registered relationships needs to be completely separate from the distinct recognition of de facto relationships.⁵

Recommendation 3

1.21 The Australian Greens recommend that the current definition of a ‘couple relationship’ contained within the legislation remains, to ensure the equal treatment of same-sex and opposite-sex relationships for the purpose of a payment of a death benefit.

Recommendation 4

1.22 The Australian Greens further recommend an ‘umbrella term’ of ‘couple relationship’ be adopted, to ensure the courts do not treat married, registered or de facto couples differently, in that each will have unique criteria but be provided with equal ‘couple relationships’ entitlements.

³ Explanatory Memorandum, paras 33, 78, 110, 113, 149, 159, 161, 193, 194, 225, 242, 248, and 266.

⁴ HREOC, *Submission 34*

⁵ Australian Coalition for Equality, *Submission 30a*

Definition of a ‘child’

1.23 The Australian Greens support the intention in the Bill to ensure that children born into same-sex families have the same rights and entitlements to superannuation benefits as children born into opposite-sex families.

1.24 The Bill expands the changes the definition of 'child of a relationship' by adding the concept of a child who is the 'product of the relationship', which caused significant confusion during the inquiry. Many witnesses claimed it was ‘ugly’ language without any legal precedent.

1.25 During the inquiry in Sydney, Professor Jenni Millbank suggested to the committee that the ‘product of a relationship’ concept was attempting:

...to do too many things while pretending it is not doing very much and that the ensuing confusion and uncertainty will deprive the people of their rights rather than grant them rights.⁶

1.26 It is for this reason that the Greens, along with other key witnesses, have concerns about the terminology ‘product of a relationship’ used to define a child.

1.27 While we support the need for a more concise and legally tested definition of a 'child', the Greens do not support the committee’s recommendation that a review be conducted to determine the necessity for the definition to be included within this Bill.

1.28 While many witnesses highlighted the need to amend section 60H of the *Family Law Act 1975* to express gender neutral language, it should be noted that the Government has tabled amendments to the *Family Law Act 1975*, which would address this concern in the current Bill.

Recommendation 5

1.29 The Australian Greens recommend that the definition of a child and a parent should simply be called ‘child’ and ‘parent’ (with the exception of adoptive, step or grand interrelations). This essentially means that the term 'relationship parent' and 'relationship child', as defined within the *Social Security Act 1991*, would be amended to simply state 'child' or 'parent'. The definition should be amended to ensure children across Australia will be equitably included, and the distinction between parents/co-parents and step-parents should not be inappropriately blurred.

⁶ Professor Jenni Millbank, *Committee Hansard*, Sydney, 5 August 2008, p. 15.

Conclusion

1.30 The Australian Greens support the removal of discrimination in all areas of federal law, and we do not want to see the Bill delayed any further. The public have expressed their desire to have same-sex discrimination removed from law, and we need to see this discrimination removed expediently.

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