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Submission to the Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008

I am making this submission both as a partner in a same sex relationship and as a legal academic, but in a personal capacity; my views are not necessarily those of the ANU College of Law.

I wish to address two aspects of the Bill: the need to maintain the explicit recognition of same sex relationships, and the need for the entitlements under the Bill to be made more efficiently and equally available to partners in same sex relationships by a national civil partnerships registration scheme.

'Couple relationships' and 'interdependent relationships'

I would like to express my opposition to the Opposition's proposal that the new category of 'couple relationship' under the Bill should be replaced by a broader category of 'interdependency relationships'.

The difficulties for same sex couples in fitting into existing legislative definitions of 'interdependency relationships' were highlighted in the 2007 HREOC Report *Same-Sex: Same Entitlements* [para 4.2.]. The disbenefits for other members of the community who may be caught by a general category of 'interdependent relationships' were highlighted by the Attorney General in his speech in the debate on the Bill in the House of Representatives on 4 June 2008.

These issues reflect the need for appropriate recognition of different types of realtionships. This issue has been raised in debates on recognition of same sex relationships by groups in the community who oppose same sex relationships being treated in the same way as marriage. It would be unfair for the Parliament, having denied same sex couples the status of married couples in the 2004 amendments to the *Marriage Act*, now to deny us even the recognition that a committed same sex relationship has a definable difference from other relationships of people living together.

My partner and I recently had our relationship recognised under the new ACT *Civil Partnerships Act*. This was an intensely valuable experience for us because it was, in the words of the Gay and Lesbian Rights Lobby (NSW) submission to the HREOC Inquiry [at para 4.5], 'an important symbolic expression of love between two people'. Other sorts of relationships of people living together merit appropriate recognition, but they do not have this quality.

This is not a question, as the Leader of the Opposition put it in his speech in the House of Represntatives on 4 June, of society inquiring into whether 'relationships are sexual' but of society recognising that same sex partnerships are relationships of love and commitment.

I think it would intensely disappoint members of the gay and lesbian community if the Bill were amended to remove this implied recognition and put gay and lesbian couples into an amorphous category of 'interdependent relationships'. This would be a retrograde step in community recognition of same sex relationships, taking us back to the past where same sex relationships were refered to in euphemisms. My partner and I are not 'roommates' or 'two gentlemen sharing' or members of an 'interdependency relationship': we are partners in a long term loving

commitment. We do not want to see the recognition in the Bill of that quality of our relationship diluted.

Registration schemes

There is a basic deficiency in the implementation scheme of the Bill. ***Item 26*** of the amendments to the *Judges' Pensions Act 1968* provides that 'relevant evidence' for a determination by the Attorney-General 'whether a person ordinarily lived with another person as their '*partner'* on a permanent and *bona fide* domestic basis at a particular time' would include that 'the persons' relationship was registered under a prescribed law of a State or Territory as a prescribed kind of relationship' (new paragraph 4AB(4)(ba) of the *Judges' Pensions Act*).

The amendments to other legislation in the Bill cross refer to this category of evidence.

This provision is unequal and inefficient. It means that partners in a same sex relationship will be able to access the entitlements recognised in the Bill only if one partner lives in the ACT, Tasmania or Victoria, the only jurisdictions which have registration schemes for same sex partners. Other people in same sex relationships will have to wait until the Parliaments in their jurisdiction get around to establishing registration schemes.

The only non discriminatory and efficient way to give same sex partners access to the entitlements under the Bill would be to establish a national relationships registration scheme. This would probably require a referral of power by the states under s 51 (xxxvii) of the Constitution. However, it seems much more likely that the States would make such a referral promptly if requested, than that they will each assign the same high priority to drafting, consulting on and enacting consistent partnership registration schemes.

I would therefore suggest that the Committee's report should include a recommendation that the second tranche of legislation foreshadowed by the Attorney General should include, once the necessary referral of power from the states has been obtained, the setting up of a national relationships recognition scheme.

I hope the above comments are of assistance to the Committee.

(Kevin Boreham)
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