

22 July 2008

Mr Peter Hallahan
Committee secretary
Standing Committee on Legal & Constitutional Affairs

Email: LegCon.Sen@aph.gov.au

Dear Mr Hallahan

Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008 and Inquiry into the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008

I refer to your requests for comment, by 25 July 2008, in relation to these two Bills.

The Society's submission is attached.

Thank you for giving the Society the opportunity to comment.

Yours sincerely



Dudley Stow
President



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

and

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

**Submission to the Standing Committee on
Legal and Constitutional Affairs**

Peter Hallahan, Committee Secretary

July 2008

The Law  Society
— OF WESTERN AUSTRALIA —

**INQUIRY INTO THE SAME-SEX RELATIONSHIP (EQUAL
TREATMENT IN COMMONWEALTH LAWS –
SUPERANNUATION) BILL 2008**

AND

**INQUIRY INTO THE FAMILY LAW AMENDMENT (DE FACTO
FINANCIAL MATTERS AND OTHER MEASURES) BILL 2008**

**A Law Society of Western Australia submission in response to a request from the
Standing Committee on Legal and Constitutional Affairs dated 1 July 2008**

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

On 18 June 2008, the Senate referred the provisions of the Same-Sex Relationship (*Equal Treatment in Commonwealth Laws-Superannuation*) Bill 2008 to the Legal and Constitutional Affairs Committee for inquiry and report by 30 September 2008 (or after the consideration of any related bill or bills that may be introduced to give effect to the recommendations of the Human Rights Equal Opportunity Commission's report *Same Sex: Same Entitlements*, whichever is the sooner).

The purpose of the Bill is to eliminate discrimination against same-sex couples and the children of same-sex relationships in certain Commonwealth legislation that provides for reversionary superannuation benefits upon the death of a scheme member, and in related taxation treatment of superannuation benefits.

The Law Society of Western Australia has reviewed the *Same-Sex Relationship (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008*.

It is noted that the Bill amends legislation relating to the retirement, pension and death benefits of the Defence Forces, Federal Magistrates, the Governor-General, Judges, Law officers, parliamentarians and civilian members of a superannuation scheme.

The Law Society supports the Bill and commends the Bill's passage by the Commonwealth Parliament as representing a measure of basic equality of treatment before the law of same-sex relationships.

The Western Australian Parliament has already made a reference of powers to the Commonwealth Parliament in the *Commonwealth Powers (De Facto Relationships) Act 2006 (Western Australia)* in respect of superannuation entitlements of de facto partners. This legislation refers powers over superannuation matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships and relates, in alternative paragraphs, to de facto relationships between persons of different sexes or the same sex.

The Law Society supports this reference of powers and seeks that Commonwealth legislation be introduced to implement and utilise this reference in relation to de facto relationships, including same-sex partners. Although, not a matter for the Bill, the above also deals with the issue of discrimination against same-sex couples and implementation of the reference would eliminate discrimination in this area also.

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

On 26 June 2008, the Senate referred the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 to the Legal and Constitutional Affairs Committee for inquiry and report by 27 August 2008.

The Bill proposes to amend the *Family Law Act 1975* (the Act) to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters. The Bill also amends the Act to provide for amendments relating to financial agreements between married couples and superannuation splitting, and for an amendment to the Act providing for certificates given in relation to family dispute resolution.

The Law Society has also reviewed the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*.

It is the Law Society's view that the Bill is commendable in human rights terms because it provides defacto couples with a potentially nationally consistent financial settlement regime.

It noted that the State of Western Australia has not passed legislation referring the power to the Commonwealth to enact this legislation (as have New South Wales, Victoria, Queensland, and Tasmania). The legislation will apply to the Territories under the Territories power.



Dudley Stow
President

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