

ADDITIONAL COMMENTS BY SENATOR HANSON-YOUNG

Introduction

1.1 The Australian Greens commend the Chair and the 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 – General Law Reform) 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 outstanding concerns which we consider need to be addressed to ensure that universal 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 in Commonwealth legislation for decades.

1.5 The first stage of the Rudd Government's election promise to remove discrimination against same-sex couples from 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 in Australia experience systematic discrimination daily.

1.6 The Bill seeks to amend some 68 Commonwealth Acts which involve 19 government departments. It amends the definition of de facto relationships, child and parent to ensure same-sex couples are treated equally by the law.

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

Definition of a child

1.8 The Australian Greens support the inclusion of children of same-sex relationships in the Bill to ensure all children, regardless of whether they are being raised in a same-sex or opposite sex household, have the same rights and entitlements.

1.9 Ensuring that children in same-sex families have the same entitlements as children in opposite-sex families is fundamental to protecting the best interests of these children. It is for this reason that the Australian Greens fully support the removal of discrimination against the children of same-sex families.

1.10 However in evidence provided to the committee during the course of this inquiry, concern over the consistency in the legal recognition of the parent-child relationship in Commonwealth, state and territory law was raised.

1.11 To ensure greater consistency, it was recommended that the parenting presumption in section 60H of the *Family Law Act 1975* be amended to ensure children of same-sex relationships are recognised as a child of the relationship for the purpose of the entire *Family Law Act 1975*.

Recommendation 1

1.12 The Australian Greens fully support the committee's recommendation that the definition of 'child' within this Bill be amended to reflect the definition of 'child of a de facto relationship' proposed for the *Family Law Act 1975* in the amendments circulated by the Attorney-General to the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008.

Education Campaign

1.13 Legal reforms in this area are only beneficial to the intended recipients if they are appropriately administered and implemented.

1.14 While the Australian Greens support the committee's recommendation that all government departments and agencies responsible for providing Commonwealth benefits implement user-friendly initiatives and strategies to educate both clients and staff, we believe this must go much further.

1.15 The NSW Gay and Lesbian Rights Lobby outlined in their submission the importance for a public education campaign to outline the new rights and responsibilities arising for same-sex couples from the reforms:

In our consultation with over 1,300 lesbian, gay, bisexual and transgender people in NSW, confusion and uncertainty about legal rights were highlighted as a significant impediment to taking advantage of equal rights – even those which were granted to same-sex couples in NSW as far back as 1999.¹

Recommendation 2

1.16 The Australian Greens recommend that the government fund a cross-departmental educational program, for individuals, service providers, and

1 Gay and Lesbian Rights Lobby (NSW), *Submission 18*, p. 42.

businesses, collating the relevant changes to legislation in one centralised location.

Recommendation 3

1.17 The Australian Greens further recommend that the government establish a hotline for twelve months, specifically for professionals, to ensure discrimination does not continue due to a lack of understanding of the changes. This could be funded through community legal centres.

Protection of vulnerable demographics

1.18 During the course of the inquiry, the committee heard evidence about individuals in same-sex relationships who had structured their finances in a certain way due to their relationship not being recognised by Commonwealth laws.

1.19 The Australian Greens are particularly concerned about the negative financial impact the changes will have on individuals who may be receiving the disability support pension, sole parenting payments, or concession card benefits.

1.20 While the Australian Greens recognise that the majority of the proposed reforms will benefit same-sex couples, we are concerned that some aspects – particularly those related to social security – could have an unintentional negative consequence on some same-sex couples.

1.21 While the Australian Greens commend the Chair's recommendation that further consideration be taken to what could be done to appropriately manage the negative impact that the reforms could pose on some same-sex couples, we believe that it could go much further.

Recommendation 4

1.22 The Australian Greens recommend that the government implement a transitional period of at least 12 months to ensure that individuals currently receiving social security payments have sufficient time to readjust their finances.

Recommendation 5

1.23 The Australian Greens further recommend that the government, as part of the proposed educational program, ensure the centralised 'hub' contain relevant material on the sunset clause for vulnerable demographics.

Umbrella term for couple relationship

1.24 The Australian Greens strongly support the recommendation from the Australian Coalition for Equality for the introduction of an umbrella term in the *Acts Interpretation Act 1901* of 'couple relationship' to include marital relationships, de facto relationships, and registered relationships.

1.25 In applying an umbrella term to capture all forms of relationships, the separate definitions would ensure that the relationships are identified as being different from one another, especially in keeping the distinct recognition of marriage separate, while recognising same-sex couples who choose to formalise their relationship through entering into a registered relationship.

Recommendation 6

1.26 The Australian Greens recommend that the government amend Schedule 2 Part 1 of the Bill to revise the definition of 'couple relationship' to include each of the three relationship terms - marital, de facto, and registered - clearly defined at the front of each piece of legislation.

International recognition of registered relationships

1.27 The committee also heard evidence from individuals suggesting that the term 'state or territory' be removed from the *Acts Interpretation Act 1901* to allow for international registry schemes to be recognised. While the Greens note that this would not require the government to automatically recognise overseas unions, it does allow for future consideration.

Recommendation 7

1.28 The Australian Greens recommend that the words 'under a prescribed law of a state or territory' in Schedule 2 Part 1 of the Bill be removed.

Sex Discrimination Act 1984

1.29 The Australian Greens have some concerns about the approach taken when amending the *Sex Discrimination Act 1984*.

1.30 While the Australian Greens are indeed supportive of the amendments removing discrimination against same-sex couples on the basis of family responsibilities, we are concerned that the provisions of the *Sex Discrimination Act 1984* (SDA) relating to discrimination on the basis of marital status have not been amended.

1.31 Section 6 of the SDA explicitly prohibits discrimination on the grounds of marital status, which is defined as being:

- single;
- married;
- married but living separately and apart from one's spouse;
- divorced;
- widowed; or
- the 'de facto spouse' of another person.

1.32 The Australian Greens are concerned that the definition of 'de facto spouse' only recognises opposite-sex couples, which effectively only provides protection from discrimination for people in an opposite-sex relationship. The Australian Greens believe that the SDA should be amended to provide equal protection to both same-sex and opposite-sex couples from discrimination on the basis of being in a de facto relationship, and also include another subsection identifying registered relationships.

Recommendation 8

1.33 The Australian Greens recommend that the *Sex Discrimination Act 1984* be amended to replace the term 'marital status' with 'couple status.'

Recommendation 9

1.34 The Australian Greens further recommend that the definition of de facto relationship proposed in the Bill be adopted into the *Sex Discrimination Act 1984* with a category that also recognises registered relationships as another form of a relationship.

Migration Act 1958

1.35 The Australian Greens are concerned by amendments to the *Migration Act 1958* that state a child can have no more than two parents for the purpose of this Act.

1.36 In particular, the Australian Greens believe subsections 5CA(2) and 5CA(3) of the *Migration Act 1958* are too restrictive in being able to remove discrimination against children of same-sex couples, particularly as it may exclude some people in same-sex parenting arrangements from being recognised as a parent of the child.

Recommendation 10

1.37 The Australian Greens recommend that the proposed amendments to subsections 5CA(2) and 5CA(3) of the *Migration Act 1958* should not proceed.

Amendment to the Marriage Act 1961

1.38 Those against same-sex unions argue that it would destroy the 'sanctity' of the institution. In countries which have recognised same-sex unions for a reasonable period of time, heterosexual marriage still exists, and the institution has not fallen into disarray.

1.39 Many other Western countries, such as Canada, the United Kingdom and our neighbour New Zealand, have enacted laws to provide for same-sex civil unions.

1.40 Yet, while the Greens commend the government for staying true to its election promise to remove same-sex discrimination from Commonwealth Acts, we continue to see people of the same sex who are engaged in a loving and committed relationship voluntarily entered into for life, denied the basic right afforded to married heterosexual couples.

1.41 Last year, former Australian Greens Senator Kerry Nettle, introduced the Marriage (Relationships Equality) Amendment Bill 2007 which aimed to remove from the *Marriage Act 1961* discrimination on the basis of sexuality and gender identity, and to permit marriage regardless of sexuality and gender identity.

1.42 The Australian Greens believe that discrimination such as that espoused by the *Marriage Amendment Act 2004* must be overturned because freedom of sexuality and gender identity are fundamental human rights, and that acceptance and celebration of diversity are essential for genuine social justice and equality.

Recommendation 11

1.43 The Australian Greens recommend that the *Marriage Act 1961* be amended to remove the use of gender specific terms such as 'man and woman' and substitute it to read 'marriage means the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.'

Conclusion

1.44 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 expeditiously.

Senator Sarah Hanson-Young

Greens' Spokesperson for LGBTI