

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
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Canberra ACT 2600
Australia

Private Submission

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Summary

In making this submission to the Senate Inquiry on the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008*, I commend the Bill to the Inquiry and recommend that the Inquiry report back to the Senate that the bill is an important piece of legislation which deserves to be passed by both Houses of the Parliament without further delay.

I submit that the Senate Inquiry should recommend to the Senate that, while the issue of preserving the unique place of marriage may have been raised as an issue in the context of this bill, that marriage as a legally sanctioned institution is of such importance to the Australian people, it deserves to be properly and directly addressed in the context of a review of enquiry into the Marriage Act. I submit that marriage should not be treated as a side issue to the central thrust of this bill which is to secure for the future of all Australians a much fairer and equitable society.

I further submit that the Inquiry should recommend to the Senate that the issue of ‘interdependent relationships’ which has been raised in the context of consideration of this bill, is also of such importance that it deserves to be the subject of specific consideration. The complexity of the issue of interdependent relationships is such that their consideration at this time risks making policy in regard to this area without due regard to all the available evidence, including the lack of clear definitions or any substantial opportunity for public and open enquiry on the matter.

Finally I make a personal appeal that the Inquiry respond positively to this submission and the measures of the Bill as a means of securing a safer and fairer future for my grandchildren and their friends.

This Legislation is an Opportunity for a Fairer Australia

This is a time of opportunity for the Parliament of Australia and for this current Senate to participate in what will be an historic declaration, backed by a legal imprimatur that fairness and equity for all Australians is indeed a central value of this nation and of its people. So fundamental is this principle and so overdue, that decisive action by the Parliament will demonstrate to Australians and the international community, our national credentials as a leader in the recognition of the rights of its citizens. The Commonwealth will achieve this by amending its own legislation.

I commend these actions to the Inquiry because I believe the risks of delaying outweigh any perceived risks or proceeding.

The passing of this Bill will achieve the following things:

- Passing this Bill will remove legal and systemic discrimination against a substantial group of Australian citizens and their children. Although not always as visible as they may be today, same sex couples and same sex couples with children are not unique to this day and age,

they are not a figment of some passing social fad and removing legal discrimination against them through Commonwealth law is long overdue, such discrimination having injured for too long the central meaning of the word commonwealth through the exclusion of some citizens from the full enjoyment of the benefits of our Commonwealth.

- Passing of this Bill will enshrine equity and fairness as a core Australian value. So central is this value to our legal frameworks, our national psyche and our international standing that it underpins other great values that we hold dear. In the context of discussion on this Bill it is sobering to consider that when we as a society draw back from emphatically reinforcing the value of fairness and equity we do in fact undermine the legal foundation of our great institutions like marriage. Without a fully fair and equitable legal and social framework in Australia, marriage, along with other institutions is deprived of a substantial portion of its legal underpinnings of gender equity and mutual respect. Unwittingly we could be casting marriage as a means of division within our society, dividing loving adults and innocent children into haves and have-nots. Marriage is far too important for this and its preservation and celebration deserves much more than being the current side discussion to the main reason for this legislation. While recommendations about marriage as such are beyond the scope of my submission, if there are members of the Inquiry or those who suggest that marriage is under some threat or uncertainty then it seems clear to me that the importance of this should be addressed in another way, given this Bill does not alter the status or standing of marriage in any way.
- Passing this legislation will bring improved order and certainty into the legal and related social fabric of our society. State and Territory governments have already moved to recognise same sex couples as de facto couples and have altered relevant legislation accordingly. The passing of this Bill into Commonwealth law will demonstrate mature leadership on the part of the Commonwealth in upholding and reinforcing the level of public and parliamentary debate that occurred in those jurisdictions as germane to our federal form of democracy. It will also allow the Commonwealth to be the bringer of continuity and certainty that will lay the ground for any subsequent discussion or debate as social circumstances may move our children or their children to seek adjustments to our legal system. This preservation of commonwealth, continuity and legal regularity is central to our nations' well-being and an essential element of the role of the Commonwealth.
- Passing this Bill will be, in fact, acknowledgement for and support of marriage relationships and the benefits that flow from their legal recognition as part of the fabric of our socio-legal framework. The passing of this Bill will add to the efficacy of our system and subtract nothing of substance from what already exists as a much valued institution. Passing of this Bill will give legal credence to the recognition that marriage is a good model for the way in which Australia should treat its citizens who through circumstances of their choice or of their sexuality, do not or cannot participate in the institution of marriage

And

- In undertaking this Inquiry the Senate has drawn attention to the need to give careful and well researched consideration of the complex issue of interdependent relationship. The needs of this group, if indeed we may call it 'a group' are diverse. What works in a policy sense for one interdependent relationship may not work for others. The policy issues being addressed by this Inquiry are potentially far removed from those relevant to many interdependent relationships. For example:
 - a) An unmarried man might enter an interdependent relationship with his ageing father who is a widower and has significant health issues. These two may share living space and lead a co-domestic life with shared arrangements that could include the son contributing both financially and in kind to the maintenance and good order of their jointly occupied

dwelling. The son may assist the father in access to and full utilisation of existing support services and in other ways may obviate their need.

- b) Two unrelated but very close friends, who may be joined by any range of emotional ties such as shared military experience and shared ill fortune in life or two unrelated but close friends who may be joined by similarity of need through disability, may choose to pool their resources, pledge each other mutual support and assist each other and possibly their non-cohabiting friends, of which ever gender, in the access of services and other resources.

In offering these hypothetical examples, I admit that I am not sure they would fit within the definition of 'interdependent' since there is no clear definition to be found. Significant aspects of the relationship may be marriage-like or de facto-like but in other ways they may be quite different. Within the broad outline of the two examples I have given, the issues could fundamentally change with the specifics of the mutual relationship involved. The need to be treated fairly and equitably for these interdependent couples may still exist but it is by no means clear that these needs will coincide with the alterations proposed to Commonwealth legislation in the Bill under enquiry. These matters would be most prudently addressed as a separate issue.

Now is the time to build a better Australia

The risk for the Parliament in not passing this legislation with historic and decisive action is

- to extend disadvantage and discrimination,
- to fail to provide support to a fundamental national value,
- to extend disorder that will only fuel what at times can be adversarial debate.

The actuality or the potential for such adversarial style of debate will help no-one. That kind of debate has the potential to expose marriage, opposite sex de facto relationship and same sex relationships to unwarranted disparagement and ill-informed point scoring because it will contribute to a climate of 'win at all costs', which is the very antithesis of the Australian Commonwealth and its support for its citizens.

The hallmark of a win or lose debate is likely to be division of citizen from citizen instead of the finding of ways forward where all people are valued equally and provided with legal opportunity to be co-participants in our common national endeavour.

The risk in not passing this legislation, is to delay intolerably or indeed to actually derail the Bill's intent of a fairer and more equitable Australia.

The passing of this legislation will not disadvantage interdependent relationship any more than they may be disadvantaged currently, recognising that any such disadvantage is yet to be identified, quantified and understood.

The passing of this legislation will neither undermine the legal status nor the sanctity of marriage, which is legally protected in its own legislation and whose sanctity goes way beyond, with respect, the ability of any Senator to fine tune the words.

A personal appeal

I would like to thank the Senate and specifically the Senators who are part of this Inquiry for the opportunity to submit my point of view on this legislation. While there is perhaps still more that could be said, I hope that I have made some relatively succinct points to which you may ascribe some relevance.

I would, however, like to complete my submission with some views of a decidedly more personal nature. I offer this personal anecdote not as an example of the issues for same-sex couples but perhaps as a story that might demonstrate the need for you not to accede to the temptation to characterise us or others by reference to any stereotype or preconceived idea about how people might live or indeed should live as fully participating citizens of Australia. But rather it is part of my request for you to remain focussed on the desired outcomes of the Bill that you are considering. It is also an appeal, not on my own behalf nor on behalf of my partner and I. It is an appeal for the future of this country and for the good welfare of our mutual descendents, yours and ours.

I am a man in my sixties, living with my man in a very small town in the Top End of the Northern Territory. We have been a cohabiting and committed couple for just over five years. Our commitment is many faceted and lifelong. We have jointly purchased land in our town and taken the risk of borrowing the money to build our own house. Establishing a stunning garden on our half acre town block is both the culmination of a lifelong dream of mine and now has become a whole of life task for us both.

We both found employment in our town and have become part of the local community, volunteering in a range of community activities and winning wider and wider acceptance for who we are, including the fact that we are a gay couple. We like to think we are true country folk who do not sit back and demand respect but who get out there and earn it by our contribution to the life our community, according to our interests and abilities. Whether it is assisting in running community quiz nights, leading a yoga exercise group, serving at the bar at our local festival, receiving and judging exhibits at the local agricultural show, helping out as an occasional keyboard player at the local church or driving the community bus to the Anzac Day dawn service, we both value and enjoy our community involvement more than we can say.

My partner and I are also socially concerned, and now that I am retired I will no doubt add other activities into my schedule, including making opportunity for activities and events that will allow an interface between the gay community and the wider community. Both my partner and I, through previous relationships are both parents and grandparents and we are particularly concerned that we are visible as a gay couple, at whatever risk to ourselves, so as to help build a more inclusive sense of community that models to young people, acceptance of gay people as valued members of society. We are conscious of how isolating and how unhealthy it can be for young people in the bush to realise they are homosexual and try as they might, find no role models or reference points to help them in the all too difficult task of self acceptance and finding of their own social place in their community. If our being 'out there' helps, we are pleased.

I am writing these things for you not because I want in any way a pat on the back for what we are doing, I only share them so that you will understand at least part of my motivation for making this submission. As I mentioned before, both my partner and I have grand children through circumstances which I won't elaborate on here. Suffice it to say that we both are vitally concerned that the Australia in which our grandchildren and their friends will grow up in, is as fair and equitable and inclusive as it can be. Much more than that, we want to eventually leave behind an Australia that is welcoming and affirming to our grand children and to their children, should any of them realise that they too are attracted to their same sex.

Unlike us, we would like them to experience an Australia which is fully accepting of gay people and totally non-discriminating at law for those who enter same-sex relationships. For by this means, we believe that the Commonwealth Parliament now has the opportunity to set substantial legal building blocks for this kind of Australia. We look forward to a society in which young people, realising they

are same sex attracted, do not find the legal barriers that can distort their judgement, hide their opportunities and appear to bar them from a full and participating community life, simply because of who they are. Their life journey and the choices that they need to make about their future are difficult enough, given that they will always be in a minority. In truth our society is now more open and possibly more accepting of homosexuality but same sex attracted young people should not have their life made more difficult by the existence of legal discrimination.

In these final paragraphs I will not use the 'demand' word but I would like you to realise that my partner and I emphatically want a fairer and more equitable society. We want you to recommend to the Senate that all things considered, this is the time and the legislation to pass into law on this matter.

There is virtually not one family in this country that is not touched in some way by the existence of a gay person, at least in their extended family. Many of these families may not know this is the case, sadly in many cases they might never know until sorrow intervenes in some way shape or form. All of these families and every one of their members deserve the kind of Australia that passing this legislation will help to build.

Now is the time and now is your opportunity.

Thank you again for allowing me to add these thoughts for consideration.

Darryl Butler
Forwarded by email
15 September 2008