
The Standing Committee on Legal and Constitutional Affairs,
The Senate,
PO Box 6100, Parliament House, Canberra A.C.T. 2600.

Friday, 12 September 2008.

From: Kendall Lovett and Mannie De Saxe,
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SUBMISSION

TO THE INQUIRY INTO THE SAME-SEX RELATIONSHIPS (*Equal Treatment in Commonwealth Laws –General Law Reform*) BILL 2008.

Preamble

Despite the Attorney-General's key concepts and definitions in his Explanatory Memorandum to this Bill, LGS points out that it falls far short of equal treatment. The whole Bill hinges on re-defining the meaning of *de facto partner* in the Commonwealth's Acts Interpretation Act 1901 to encompass members of both *same-sex and opposite-sex relationships*. That equates same-sex partners as equal to a man and a woman living, in religious marriage terms, in sin while at least one of the partners is married to someone else.

That's outrageous and simply does not apply to the majority of same-sex relationships. So it is not equality; rather it enshrines the religiously-encouraged myth that same-sex relationships are all unstable and less than an opposite-sex licensed relationship, in other words a marriage. Separate treatment is not equal treatment; it's sexual apartheid in this country!

De facto is acceptable to LGS only if at least one of the same-sex partners is already married to someone else and has not been legally divorced from such a person; because that is how de facto is applied to different-sex partners.

If the federal government does not provide the equivalent licence for same-sex partnerships as it provides for a partnership of a woman and a man, it can never be termed to have provided equality for same-sex partnerships in Commonwealth law.

LGS does not agree that by providing same-sex relationships with an alternative licence, automatically entitling them to the same benefits and responsibilities, reduces the value or belittles the marriage licence. Both licences are fair and honest contracts between two human beings who love each other and wish to share their lives as well as the benefits, entitlements and responsibilities of their partnership.

It also follows there will be a percentage of same-sex relationships that will fail as happens frequently in opposite-sex relationships. In like manner there will be those same-sex partnerships who will not wish to register their relationship just as many opposite-sex partnerships refrain from registering a marriage.

Other serious concerns

LGS believes that if this Bill passes into law, it will in no way reduce homophobic discrimination but simply increase the impact on same-sex age pensioners, people who are HIV-positive and lesbian mothers, all who share their lives with another of the same sex. Allowing couples time (July 2009 perhaps) to sort out their finances is another way of saying 'prepare to be poorer; Centrelink is going to point their pitbulls in your direction!' It's a great pity that the federal government does not state explicitly in this Bill that it is illegal to discriminate against lesbian, gay, and transgender people especially in the provision of any aged care service whether in the home or in an institution either public or private.

It is also extremely worrying that there is no indication in the Bill that the government will fund gay, lesbian and trans (GLT) organisations to provide advice, advocacy and information about the impact of the legislation on this community. The fact is that Centrelink will enforce the legislation to the letter and actually use the State and Territory same-sex registers (and no doubt endeavour to use similar Local Government love registers as well) to track down GLT couples.

LGS has genuine concerns about the lack of any plans in the Bill whereby the federal government will provide education for the public and for, in particular, public servants who are at the hands-on level of delivering services to taxpayers, about this incredibly wide-ranging change in legislation. It may seem that the public generally accepts same-sex people in their midst from the various surveys which have been publicised but violence towards us and youth suicide in our gay communities remains high. So it is not true to say that by amending all these laws makes the changes easily acceptable. It needs some very widespread and sensitive education. LGS urges the Senate Committee to make these funding and educative measures essential recommendations in its report back to parliament.

LGS also considers that the lead-in time is insufficient to allow for educative measures to be properly understood and accepted by the public, the educators and the lesbian and gay communities throughout Australia. If the government is prepared to allow the present de-unionised building-site workplaces laws to remain active until 2010 before being reviewed, surely the lead-in time for this Bill should be extended to July 2010.

Specifics of the Bill

The Attorney-General says that this is a Bill for an Act to address discrimination against same-sex couples and their children in Commonwealth Laws, and for other purposes. As we have said in our preamble, the whole Bill hinges on re-defining the meaning of 'de facto partner' in the Acts Interpretation Act 1901. However, it's rather like putting the cart before the horse. It would have been more relevant to have provided the equivalent licence for same-sex relationships as is provided for opposite-sex relationships, regardless of what you may have decided to call it to placate the diehards. Nevertheless, if this Bill is passed into law it still leaves a more relevant same-sex relationship licence open for future attempt at legislation.

Acts Interpretation Act 1901

1. After section 22, insert: 22A References to de facto partner:-

LGS takes issue with both 22A(a) and 22(b) as defined in 22B: Registered Relationships.

Line 18: For the purposes of paragraph 22A(a), a person is in a registered relationship with another person if the relationship between the persons is registered under a prescribed law of a State or Territory as a prescribed kind of relationship.

LGS believes this to be a cop-out by the federal government because of its refusal to support a proper federal law of its own.

LGS regards this use of State and Territory relationship registers by the federal government as a corrupt procedure because it affects the privacy laws enacted by all States and Territories.

LGS would hope to see the States and Territories concerned (not all have relationship registers) refuse to supply any such information because of a privacy issue. Furthermore, other States and Territories should be wary about setting up such registers and instead insist that the federal government sets up a national register.

It is therefore necessary to recommend that all federal agencies such as Centrelink and the Taxation Office should be made aware that they may not seek information from any State or Territory relationship register nor any other such relationship register in the possession of Local Government Councils or Shires.

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