# AUSTRALIAN COALITION FOR EQUALITY

Equality For Australia's Lesbian, Gay, Bisexual, Transgender & Intersex People

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Wednesday 8 October 2008

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: legcon.sen@aph.gov.au

Dear Mr Hallahan

*Supplementary Submission for Senate Inquiry - Same-Sex Relationship (General Law Reform) Bill 2008*

Thank you for the opportunity to present at the recent Senate Inquiry hearings. Following the viewing the hearings held in Canberra into the specifics of the above bill, the Australian Coalition for Equality (ACE) wishes to make a supplementary submission to highlight key points for the committee's consideration.

## Registered Relationship – Recognition of international schemes

The Australian Coalition for Equality would like to submit the following information to supporting our recommendation to remove the words "state or territories" from the definition of Registered Relationship in s22B of the Acts Interpretation Act.

a) Civil Union & Registered Relationship – a rose by another name
It may be helpful for the committee to understand that the term "civil union" is internationally interchangeable with the term "registered relationship". Other terms meaning the same thing include "civil partnership", "life partnership" and "registered partnership".

As ANU law lecturer, Mr Wayne Morgan, stated during the recent hearings:

> *There is sometimes a misconception that the schemes that operate in Australia are somehow fundamentally different from the schemes that operate overseas, that a registration scheme is somehow different from or lesser than the sort of civil union schemes that occur overseas. That is simply not the case. The schemes that operate in Australia are very similar to the schemes that operate overseas in all substantial respects.* [1]

[1] Senate Committee Hansard – Legal & Consitutional Affairs Committee, 23rd September 2009 (http://www.aph.gov.au/hansard/senate/commttee/S11310.pdf)

To assist in deeper understanding, the committee may find a list of some of the international schemes recognised by the United Kingdom in Schedule 20 of their Civil Partnership Act 2004[2]. For the purposes of this submission, we will use the term proposed in the Acts Interpretation Act which is "Registered Relationship", to refer to all international schemes.

b) Registered relationships are not a backdoor to same-sex marriage
The Australian Coalition for Equality has on many occasions advocated for a three tier system of relationship recognition, in which rights and protections are identical for both same-sex and heterosexual couples. Similar models already exist in Belgium, the Netherlands and the Canadian provinces of Nova Scotia, Quebec and Ontario.

In practice this model would entail –

- *the right to marry for opposite and same-sex couples* This is essential to ensure legal and social equity for same-sex relationships. It is also important for removing the stigma still wrongly associated with same-sex relationships. The right to marry the partner of one's choice is a key marker of adulthood, citizenship and full humanity.
- *the presumptive recognition of defacto and interdependent relationships* in all national laws which create and bestow spousal rights This would include unmarried or defacto different-sex couples, unmarried or defacto same-sex couples and partners in all other emotionally interdependent relationship. We note however that the recognition of these interdependent relationships would require further investigation by the government.
- *a relationship registry open to all the relationships mentioned.* This registry would provide the benefits of formal certification to all couples who choose not to, or who cannot, marry. These benefits include the capacity to prove one's relationship status if challenged (this can be particularly important in medical emergencies or when claiming government entitlements), immediate access to all spousal rights without the need to fulfil presumptive, interdependency criteria, and official validation and affirmation from government and society.

As such we note that this discussion is about the recognition of registered relationships or civil unions, and is distinct from a future discussion around equal marriage access. We also note the special status afforded to marriage and that this reform is not related to equal marriage access.

ACE rejects the suggestion that international registered relationship schemes are "marriage-like". We believe that these schemes are distinct from marriage and note Mr Morgan's comments regarding ceremonies as additional evidence of this:

> *Of course there are differences in the law, but one thing that has been focused on in particular is the position of ceremonies and whether there is a ceremonial aspect in much of the overseas legislation.*
>
> *We would make the point that in a number of the schemes that have been discussed in these reforms, for example, the United Kingdom scheme and the New Zealand civil union scheme, there is no* (mandatory) *ceremonial aspect. Those laws are very similar to the ones operating in Tasmania, soon in Victoria and in the ACT, and therefore it would not be recognising anything different in terms of recognising the overseas schemes if that definition were amended so as to remove the words 'state or territory'.*[3]

c) Other schemes recognise international registered relationships/civil unions
Both New Zealand[4] and United Kingdom[1], along with schemes in other countries recognise overseas schemes, including those schemes currently operating in Australia. Some international schemes prevent a partner from another country from registering without confirmation that they are not in a registered relationship in their home country. Thus, without the recognition international schemes, it a couple in these countries would be required to meet presumptive criteria in the country in which they have not registered.

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[2] Schedule 20, pg 360, Civil Partnership Act 2004 (UK) http://www.publications.parliament.uk/pa/cm200304/cmbills/168/2004168ii.pdf & additional updates on 5 December 2005 located http://www.opsi.gov.uk/si/si2005/20053135.htm

[3] Senate Committee Hansard – Legal & Consitutional Affairs Committee, 23rd September 2009 (http://www.aph.gov.au/hansard/senate/commttee/S11310.pdf)

[4] http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Births-Deaths-and-Marriages-Overseas-Relationships#seven

d) Impact of not making changes

Without making the above changes to recognise international schemes, couples who have been registered via an international scheme, would be forced to meet the criteria of "defacto relationship". Should one partner continue to work overseas for a period of time, this may make the ability to meet the definition a difficult proposition. With a large number of United Kingdom expatriates living in Australia having entered into a UK Civil Partnership with their Australian partner, it would be inappropriate to require these couples to meet the presumptive "defacto relationship" criteria.

d) Change simple & retains safeguards

These changes are simple to achieve, by removing of the term "state or territory" permit the Acts Interpretation Act to prescribe the relevant schemes that may be recognised as a form of "registered relationship" for the purposes of the Acts Interpretation Act. This this does NOT amount to an "automatic" recognition of overseas unions, the government would still have to prescribe which overseas schemes it would recognise, via regulation.

**Registered Relationship – Removal of "defacto partner" label**

We would like to take the opportunity to reemphasis our verbal submission that the term "defacto partner" is an inappropriate label for opposite and same-sex couples who chose to formalise their relationship through entering into a registered relationship. It is inappropriate to continue to label these relationships as defacto. As per our substantive submission we would recommend the use of the term "partner of a couple relationship" or other such terminology as the committee sees fit.

**Vulnerable demographics affected by changes - transitionary considerations**

The committee heard from a number of witnesses about the various individuals who had structured their finances in anticipation of their relationship not being recognised by Commonwealth laws. Further, the committee heard that some couples who remain closeted may not feel comfortable with "outing" themselves to the relevant government department. Specifically ACE recognises the following groups of vulnerable demographics:

- Elderly couples (those over 60 and entering or preparing to enter retirement)
- Disability Support Pension recipients
- Couples where one partner is currently on social security entitlements living financially independent from their partner.

The Australian Coalition for Equality recognises that to delay implementation of the proposed changes would continue to perpetuate discrimination against same-sex couples. However, ACE also recognises the very real financial impact these changes may have on individuals in a relationship. Couples in these vulnerable demographics may, as a direct result of these changes, have their benefits altered from a dual single rate of benefit, to a couples benefit rate. In some scenarios their benefits as a single person may be removed all together based on partners financial income.

ACE would propose that the Senate Committee recommend that the responsible minister for the relevant payments:

a) Ensure that a sunset period of 12 months be extended to all individuals currently on a social security payment. This would allow an adequate time for the individual to adjust their finances

b) Place an embargo of 5 years against prosecution of couples who are currently registered as individuals and due to changes of definition of "member of a couple" have continued to be overpaid. This will ensure that couples who may not be aware of the changes, or are in a position where they unable to "out" themselves will be adequately protected from prosecution under the relevant Act. This would include back-pay amounts, but after the 12 month sunset period, would not include a further period of payment adjustment.

c) Ensure the above recommendations are implemented as part of the relevant department's frontline management guidelines in dealing with first call resolution of hardship applications. Individuals should not be subject to a lengthy or complicated appeals process in order to access the above recommendations.

d) Direct their departments to include the above clauses in their relevant educational material regarding these changes, including placed on their website in an easy to locate section.

The Australian Coalition recognises that the balance between removing discrimination against same-sex couples and ensuring all other couples are not inadvertently discriminated against is a challenging one for the committee. We believe the above solution is a fair and balanced approach to ensuring that changes

occur immediately for couples seeking future social security benefits and couples with finances structured as two individuals.

**Education and awareness of impacts of changes**
Legal reforms are only beneficial if they are appropriately administered and implemented. This implementation requires the broader community to be aware of their detail and have a mechanism by which to seek further information about them. In order to provide such a mechanism we strongly urge the committee to recommend that the Government:

a) Fund a cross-departmental web portal and associated printed literature collating the relevant department's information regarding the changes in one centralised location

b) Fund an education campaign focusing on:
i) The individuals and couples affected by these changes
ii) The relevant government & non-government service providers and advocates, who deliver services or advise on matters affected by these changes (inc Aged Care, Social Workers, community reach out programs, welfare advocates, superannuation consultants, taxation consultants, immigration consultants and community legal centres)
iii) The businesses and professionals affected by these changes

c) Fund a hotline for a 12 month period specifically for professionals in this area. This could be funded through existing structures within the network of community legal centres.

**Terminology "same sex" and "opposite sex" can still discriminate**
ACE would reiterate to the Committee that use of the terms "same-sex" and "opposite-sex" continues to discriminate against those who have an indeterminate sex or are asexual. It is suggested these terms be replaced with "regardless of gender" ensuring 100% of Australians are captured.

**Definition of "Child"**
The committee heard from the Attorney-Generals Department that consideration was being given to amend the definition of child in the present bills. ACE supports in-principle the alteration of the current definitions of "child" reference to the amended and inclusive Family Law Act.

We strongly urge the committee to remove any impression of a two-tier level of recognition from the bill, as can be suggested by the Social Security Act through the term "relationship child". As recommended by this committee a child born through surrogacy or artificial reproductive technology should not be discriminated against because of the make up of the family they have been born into. As such all children, regardless of their method of conception, should be labelled and treated equally. We would of course, welcome the opportunity to comment on proposed amendments as tabled by the Attorney-Generals Department.

**Definition of "Parent"**
During the hearings the Australian Christian Lobby, in it's responses to questions by Senator Fisher, identified that it took exception to the labels used to convey the rights to children born in a family headed by a same-sex couple. The Australian Coalition for Equality strongly believes that it is the mother and co-mother or the two commissioning parents who should be recognised as the parent of the child for the purposes of the Family Law Act and all other Federal Acts.

Currently the male partner of a birth mother is deemed to be the "parent" under the Family Law Act. Whilst this male partner is not biologically connected to the child, it is deemed that he is the parent of the child. In much the same way, the female partner of the birth mother should be deemed to be the parent of the child. To create a difference between a male and female partner of the birth mother would perpetuate discrimination upon the child due to the family structure to which it was born into.

We would strongly urge the removal of any form of two-tier labelling for a parent in order to ensure that no discrimination occurs against the child born into a family headed by a same-sex couple.

Yours,

Corey Irlam
Committee Member
Australian Coalition for Equality