



gay and lesbian equality
nothing less than full equality

www.galewa.asn.au

Post: PO Box 420, Northbridge WA 6865
Web: www.galewa.asn.au
Email: info@galewa.asn.au

Mr Peter Hallahan
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2601

17 September 2008

Dear Committee Secretary,

Re: Inquiry into the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008*

Gay and Lesbian Equality (WA) Inc. (GALE) is the peak representative human rights body for people with diverse sexual orientations and gender identities in Western Australia. We wish to thank the committee for extending an invitation to us seeking our organisation's comments on the Bill before the Senate.

We support the submissions made by other groups from around Australia that represent the interests of people of diverse genders and/or sexualities.

However, we wish to bring to the committee's attention a particular relevant point regarding the recognition of de facto relationships under Western Australian law, and how that recognition under WA law has relevance to the Bill before the Senate.

In Western Australia, the *Interpretation Act 1984* was amended in 2002 to recognise a broader range of de facto relationships under WA law, including those that may encompass same-sex couples. At that time, the Western Australian Government identified and recognised a problem with existing de facto relationship definitions, in that a relationship might be deemed to not exist at law if one or both of the persons inside the de facto relationship was still deemed to be in a prior relationship.

Specifically, the definition inserted into the *Interpretation Act 1984*, s13A included the following statement regarding relationships that may exist concurrently at a point in time:

- (3) *It does not matter whether –*
 - (a) *the persons are different sexes or the same sex; or*
 - (b) *either of the persons is legally married to someone else or in another de facto relationship*

Therefore, it was recognised by the Western Australian Government that relationships as described above should not be denied recognition before the law, and that suitable arrangements exist at law to recognise the existence of such a relationship. To remove such doubt as to whether a relationship exists, it was proposed that the existence of another relationship (de facto or marriage) should not be a barrier to recognising a de facto relationship from the time that relationship begins, rather than at some point further along in time when a prior relationship is deemed to be extinguished.

During the debate on the issue in the Western Australian Parliament, it was purported that the Western Australian law may allow 'group relationships' or 'polygamy'. This notion was refuted, as the legislation clearly expressed that a relationship was something that existed between two individuals which had, among other things, a commitment to a shared life together, the public relationship of the relationship, and other such factors. It is clear that it would not allow for the recognition of multiple people in a relationship at once (3 or more individuals) nor co-existent continuing relationships of substance (which would clearly be against the concept of a mutual commitment by a person to a shared relationship with another person).

Indeed, the WA Attorney-General at the time – The Hon. Jim McGinty, MLA – rejected the concept that 'polygamy' was the intended outcome of the law¹, stating in part:

Mr McGINTY: There is no reference to bisexuality in this clause. It talks about different sorts of relationships - gay or lesbian relationships and heterosexual relationships. Each relationship needs to be looked at in its own right. The question of whether a stable relationship is in existence is one that will need to be determined on its own facts.

GALE notes that the definition of a de facto relationship under the Bill before the Senate mirrors the language of the Western Australian bill, and we commend the Australian Government for considering that a relationship may exist while another relationship is still in the process of termination.

This approach that the Bill takes is meritorious for a number of reasons.

Firstly, it eliminates the possibility of children born as a result of the newer de facto relationship being not recognised under the law due to their parents' relationship being deemed non-existent due to the presence of a prior relationship.

Secondly, it allows those people of faith who do not believe in divorce to live in estrangement to a former married partner, but provide protection to any de facto partner they may have subsequent to that estranged marriage. GALE strongly supports the concept that people should have the religious freedom to not divorce if they so believe. But, similarly, we also understand that a subsequent relationship is very real and deserving of protection under the law. Indeed, it would be directly harsh and discriminatory to any prospective de facto partner and any subsequent children if the second relationship was not seen to exist at law.

Thirdly, the approach mirrors best practice and the most encompassing approach to recognising de facto relationships as recognised by States in Australia. A failure to mirror the Western Australian definition of de facto relationships means that some relationships deemed to exist under WA law would still remain unrecognised at a Federal level.

1 *Hansard*, Western Australian Parliament, 6 December 2001, page 6717

We do understand that, uniquely, the recognition that a person may be considered at law to be in two existent relationships at once to be fraught with difficulties if there is not a clear understanding by the Federal Government as to a person's relationship status. We believe, however, that administrative matters dealing with such transitions between one relationship and another can be effectively handled by appropriate government departments and legislation.

Again, we thank you for granting us the opportunity to comment on the Bill and we hope that our submission provides the Committee with an essential insight into how identical legislation works in Western Australia, and why fears that the legislation will lead to polygamy are unfounded.

Yours,

A handwritten signature in blue ink that reads "Rod Swift". The signature is stylized with a large, looped "R" and "S".

Rod Swift
Co-convenor
Gay and Lesbian Equality (WA) Inc.