

Kevin Boreham
Lecturer

Canberra ACT 0200 Australia
Telephone: +61 2 6125 8526
Facsimile: +61 2 6125 3971
Email: BorehamK@law.anu.edu.au
<http://law.anu.edu.au>

The Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

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

I would like to bring two points to the attention of the Committee's inquiry into this Bill. This is a personal Submission which does not necessarily reflect the views of the ANU College of Law.

Equal recognition for state registered partners

I support the view put forward in the submission of the Tasmanian Gay and Lesbian Rights Group (the TGLRG) of 10 September 2008, under the heading 'Equal recognition for state-registered partners', with reference to Schedule 2 Part 1 of the Bill, the proposed new Sections 22A-22C of the *Acts Interpretation Act* (the Act).

The use of the term *de facto partner* for both registered partnerships under the proposed new Section 22B of the Act, and other relationships to be proven by the criteria in the proposed new Section 22C of the Act, does not reflect the moral and legal significance of registration of a partnership.

The relationship of my partner and myself was registered this year under the *Civil Partnerships Act 2008* (ACT). We had been living together for 25 years and would have fully met the criteria illustrated in the new Section 22C. Moreover, we had long ago taken all the legal and financial steps to overcome the practical difficulties arising from lack of legal recognition of same sex relationships.

There were no practical advantages to us of registering under the new ACT arrangements. Why then did we do it?

We decided to register our relationship because we wanted our community to recognise our relationship formally: we wanted to move *beyond* the *de facto* status of our relationship. I would therefore strongly agree that the Bill, by equating a registered partnership with a *de facto* relationship, fails to recognise the moral significance of the step two people take in registering their relationship, and fails to reflect the role of the law in making a statement about society's moral values.

The Attorney General said in his Second Reading Speech of 4 September on the current Bill that 'It is time to stop treating people differently under Commonwealth laws or programs as a result of who they are in a relationship with or indeed who they love'. This Bill fails in respect of registered relationships to carry out that statement of moral values. By denying same sex couples who register their partnership the public recognition of the depth of their mutual commitment, which is extended by the law to heterosexual couples who marry, the Bill *does* treat people 'differently as a result of who they love'.

I would therefore agree that different terminology, such as 'couple relationship', which is used in the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008, be used in Schedule 2 Part 1 of the Bill to describe partners who have registered their relationship.

Registration schemes

It follows from the above point that I would also urge the Committee to consider the desirability of recommending in its report on the Bill that a national system of partnership registration be established.

Registration of a partnership is a significant moral commitment. Same sex couples who do not live in jurisdictions which have introduced registration schemes should not be denied the opportunity to make this public commitment. The Attorney General in his Second Reading Speech on the current Bill said that it was 'an incentive for other states and territories that do not have such schemes to develop and implement their own'. It would seem more expeditious and efficient for the Commonwealth to proceed with a national scheme.

I hope the above comments are of assistance to the Committee.

Yours sincerely

(Kevin Boreham)
22 September 2008