

GOVERNMENT SENATORS' REPORT

Introduction

1.1 Whilst in agreement with most of the Majority Report, the Government Senators on the Committee wish to make the following additional comments in respect of the provisions of the Superannuation (Entitlements of same sex couples) Bill 2000.

1.2 The Committee received evidence from a range of groups supporting the principal thrust of the Bill. This evidence is reflected in the main body of the report. A further body of evidence revealed various shortcomings in the actual provisions of the Bill including concerns in relation to potential unintended consequences from the proposed definitions, and the Bill's limited potential to eliminate discrimination industry-wide with exemptions of coverage of major public sector funds. These issues are examined in Chapter 4, while implementation issues, should the Bill be passed, are discussed in Chapter 5 of the report. Further, evidence was received from persons and groups opposed to the passing of the Bill. Government Committee members are concerned that these views have not been sufficiently represented in the Majority Report. Consequently, these views have been reported below.

Opposing views

1.3 A small number of groups and individuals expressed their opposition to the passing of the Bill. In expressing this view, the Festival of Light, for example, noted that, although as an individual piece of legislation, the Bill is not considered to be that significant, in its view it is a continuation of the gradual devaluation of the traditional family structure in the eyes of the law and society in general.¹ In its opinion, putting same sex relationships on the same basis as heterosexual relationships is a very substantial social change.

1.4 In evidence at the hearing the Festival of Light and the Australian Family Association cited a number of reasons for their opposition to the Bill, including the need to maintain the favoured status of traditional marriage.

Status of marriage

1.5 The Festival of Light (SA) considered that 'there are good sociological, psychological and health reasons for governments to continue to discriminate in favour of those men and women who take the trouble to make a lasting, legally binding commitment to each other and their children through marriage.'² Both the Festival of Light and the Australian Family Association indicated that, in their view, positive discrimination in favour of traditional heterosexual families was to the benefit of society and the most appropriate environment for the raising of children. The Festival of Light submitted that:

Positive discrimination implies negative discrimination against those who choose not to make a permanent commitment. De facto heterosexual couples should not

1 Committee Hansard, p. 62.

2 Submission No. 35, p. 2.

receive special encouragement, because their relationships have been shown to be much more unstable, and more prone to domestic violence and child abuse, than legally married couples. ... The more society benefits other unions as well as marriage, the more it reduces its support for marriage.³

1.6 The Australian Family Association also noted at the hearing in Canberra that it considered that the Bill presented the wrong messages to society about what it values in terms of appropriate relationships and family structures. In its submission, the Association noted:

Our Association firmly opposes any recognition of same sex couples as equivalent to marriage.⁴

1.7 In its submission, the Association went on to say that, in its opinion, 'it seems inappropriate to change the [legislation] for purely symbolic reasons to satisfy the demand of a particular interest group'.⁵

Other issues

1.8 At the hearing in Canberra, the representative from the Festival of Light drew attention to the recent decision in Hawaii which rejected recognition under the law of same sex marriages. In December 1999, the people of Hawaii voted in favour of a constitutional amendment reserving to the legislature the power to limit marriage to opposite sex couples, overturning a 1996 Hawaii Supreme Court decision to issue marriage licenses to three same sex couples.

1.9 The Festival of Light also raised the issue of inconsistency which it perceived in the proposed Bill whereby the emphasis is on same sex gay and lesbian couples, rather than other relationships such as two sisters cohabiting, which appear to have similar legitimate concerns in relation to this type of discrimination. The organisation submitted that:

Same sex couples are in a similar position to adult siblings or friends who share accommodation and provide some social support to their flat or house mates. Why should same-sex couples ... be given special superannuation benefits that are not available to siblings or adult flatmates ...

The ... Bill is, therefore, demonstrably inconsistent. It would benefit some non-marriage domestic arrangements, but not others. It would discriminate against those who share accommodation but do not claim to have a homosexual orientation.⁶

1.10 The Festival of Light and the Australian Family Association urged the Committee to reject the Bill as unnecessary and contrary to the values of most Australians and contrary to the definition of marriage according to the *Marriage Act 1961*.⁷

3 Submission No. 35, p. 2.

4 Submission No. 38, p. 1.

5 Submission No. 38, p. 1.

6 Submission No. 35, p. 2.

7 Submission No. 38, p. 1.

Conclusions

1.11 The Government members of the Committee note that organisations such as the Festival of Light consider that there are good sociological, psychological and health reasons for governments to continue to discriminate in favour of those men and women who take the trouble to make a lasting, legally binding commitment to each other and their children through marriage. We respect these moral views, and consider them very important. However, we consider that there are also ethical issues and a wider group of people disadvantaged who fall outside the group referred to in the Bill.

1.12 The Government Senators on the Committee are in full support of the removal of all forms of discrimination from legislation affecting all members of superannuation funds, including those of any gender in close and bona fide domestic relationships (for example siblings, carers of aged and disabled people), where there are strong elements of personal and financial dependency, which do not always currently come within the ambit of current superannuation arrangements.

1.13 The Government members of the Committee consider that this Bill would effectively put same sex relationships on the same basis as heterosexual relationships and that therefore the Bill is initiating significant social change. We consider that while some may see change as being desirable, superannuation should not be the 'lead vehicle' for this social change, especially since the ramifications of the Superannuation (Entitlements of same sex couples) Bill 2000 are not fully known.

1.14 As discussed in the previous chapters of the Majority Report, the Bill raises a number of issues which witnesses considered could have the potential to reduce the effectiveness of the intent of the Bill. These issues include:

- the appropriateness of the definitions proposed in the legislation;
- the unintended consequences of the proposed definitions; and
- the exemption of Commonwealth public sector and defence force schemes from the provisions of the Bill.

1.15 Government members of the Committee agree with the other members of the Committee that the proposed definitions may not be the most appropriate to achieve the intent of the Bill, and that without significant amendment to the proposed definitions, there could be some serious unintended consequences.

1.16 The Government Senators on the Committee also note that amending the proposed legislation to remove the exemption of Commonwealth public sector and defence force schemes from the provisions of the Bill will only be achieved at a cost to the Commonwealth.⁸

1.17 Inequities in the taxation treatment of the entitlements of same sex couples to superannuation benefits are not addressed by the Bill, neither does the Bill address the inequitable treatment of persons of the same sex in relation to social security payment eligibility. As such, the Government Senators on the Committee agree with the other

8 See Chapter 4, paragraph 4.69.

members of the Committee that amendments to both taxation and social security legislation would be required to remove discrimination in the treatment of same sex couples in respect to superannuation.

1.18 Government Senators on the Committee accept that many in the community acknowledge the existence of discrimination and are anxious for change and that this Bill is seen as an incremental step in that overall process of change. Nevertheless, the Government Senators do not consider that the Bill as currently drafted should be passed because of the limitations described above.

1.19 Rather the Government members of the Committee consider that there is a need for consideration of all Commonwealth legislation to determine areas of discrimination across the board and to evaluate the consequences of such discrimination. Such a consideration should take into account the likely impact on traditional families and traditional values. This review should not be confined to examining discrimination associated with the superannuation entitlements of same sex couples, but rather such a study should take a more holistic view of removing discrimination in other areas.

1.20 The Government members of the Committee note that Labor Senators' position on the Superannuation (Entitlements of same sex couples) Bill 2000 is in contrast to their position of not recognising same sex couples with respect to the proposed Democrat request to amend the Youth Allowance Consolidation Bill 1999. On 3 April 2000, in debating the Youth Allowance Consolidation Bill 1999, aimed at specifically recognising same sex couples under the Common Youth Allowance, Senator Chris Evans (Labor, Western Australia) stated in the Senate that:

This request seeks to apply rules currently benefiting couples of the opposite sex to those of the same sex. While Labor acknowledge that the issue of equal treatment of same sex couples raised by the Democrats is an important one and that many of the arguments put by Senator Bartlett deserve recognition, Labor are not inclined to support this request. Labor have an open mind about the way in which same sex couples might be treated under the youth allowance. We would favour a broader approach in terms of the social security legislation and how it might be amended to put same sex couples on an equal footing. We do not think that making an amendment to this largely technical bill that applies to a small part of the social security arena is the way to go forward. We think a thoroughgoing assessment of the treatment of same sex couples in the social security legislation is a much better approach. It would need to address a range of issues, including how amendments cross this legislation would be achieved technically, taking into account other Commonwealth legislation; how we could achieve practical implementation of those amendments; who would be better off and who would be worse off under such changes, which I gather is a fairly live issue; and, of course, the net financial impact of such changes. So while Labor do not support an amendment dealing with the youth allowance alone, we would support a proposal that allows for the thorough examination of the issue of same sex couples.⁹

1.21 In the light of the evidence presented to the Committee, the Government members of the Committee conclude that:

9 Senate Hansard, Monday, 3 April 2000, p. 12757.

- The Bill should not be passed in its current form, but rather the opportunity should be taken to review the legislation in the context of its workability, unintended consequences and equity impact.
- If the Bill were passed, we agree with the majority recommendation that the Bill should not apply retrospectively.
- We also agree with the majority recommendation that a Commonwealth Inter-Departmental Committee, coordinated by the Attorney-General's Department, be established with specific terms of reference to examine the full range of Commonwealth legislation with respect to discrimination.

Recommendation

1.22 However, because of the limitations of the Bill and the need to consider this area of reform in a holistic way, Government Senators on the Committee recommend that the Bill not be passed in its current form.

Senator John Watson

Senator Grant Chapman

Senator Ross Lightfoot

Committee Chair

