



ALSO Care & Benevolent Society Inc A14911X

1st Floor, 6 Claremont St South Yarra 3141 Phone: (03) 9827 4999 Fax: (03) 9827 1622

Email: also@also.org.au Homepage: www.also.org.au ACN 006 130 650

Tuesday, September 4, 2007

Senator Lyn Allison
Senator for Victoria
62 Wellington Parade
EAST MELBOURNE VIC 3002

By email: senator.allison@aph.gov.au

Dear Senator Allison,

**RE: Ad hoc Senate Committee,
Inquiry into the Provisions of the Same-Sex: Same Entitlements Bill 2007**

The ALSO Foundation welcomes the opportunity to comment to the ad hoc Senate Committee (the **Committee**) considering the Same Sex: Same Entitlements Bill 2007 (the **Bill**).

The ALSO Foundation would like to congratulate the Australian Democrats and Senator Allison for introducing the Bill. The Human Rights and Equal Opportunity Commission's (**HREOC**) *Same Sex: Same Entitlements* report (the **HREOC report**) comprehensively identified all pieces of federal legislation that discriminates against same-sex couples and their children. We note that a particular strength of the recommendations contained in the report is their simplicity. The enactment of omnibus legislation that amends the definitions of 'de facto relationship' and 'de facto partner' is an easy, administratively simple way of removing discrimination against same-sex couples.

Our more detailed comments on various provisions of the Bill are discussed below.

About The ALSO Foundation

ALSO is fortunate to be able to draw on an extensive history, having recently celebrated 26 years of continuous service to Victoria's Gay, Lesbian, Bisexual, Transgender, Intersex and Queer community (GLBTIQ). This is a unique legacy that energises and inspires present day activity. This history and related experience has provided the basis for extensive networks, experience, and reputation, sensitivity and intellectual property relating to the depth, character and needs of our diverse community.

ALSO has contributed significantly to evolution, development and promotion of the GLBTIQ community, being the original auspice, initiator and supporter of many of the mainstay service providers, networks and groups of our community today. Most of these are current members of the organization and in this way contribute to its continued development.

The dual nature of the organization encompassing the ALSO Foundation and ALSO Care Benevolent Society recognise the twin roles of advocacy, education and promotion with the charitable services provided to those most disadvantaged. This is also reflected within our membership where there is both great need and significant material and strategic strength.

The organizations membership today is one of interconnected individuals, groups, networks, businesses, some with a long history of contribution such as our life members and others like Minus 18 much newer to our community.

Previous submission

The ALSO Foundation made a previous submission on this topic in June 2006 which we were pleased to see has been quoted in the recently released Same-Sex: Same Entitlements report issued by the Human Rights and Equal Opportunity Commission.

Although we acknowledge that this report is a critical first step. Relationship equality for same sex couples and families in entitlements and responsibility is urgently needed in Australia and the delay in the necessary legislative reform is most unwelcome. The response to the HEROC Report from our community has been one of relief at eventual recognition. It would be a travesty were this report allowed to languish and the hopes of the community once again betrayed. It is this critical opportunity to recognize the past injustices that simply must not be squandered

In respect of the specific recommendations we would again suggest the following specific matters be considered.

Definition of de facto relationship

The ALSO Foundation recognises the work undertaken by HREOC in proposing a new definition of 'de facto relationship', a definition that is replicated in the Bill. Despite this, ALSO supports the VGLRL recommendation that the following amendment, whereby criterion (vi) is elevated to the substantive definition. In our view, this criterion more clearly encompasses the necessary type of relationship to be covered by the definition.

As such, an appropriate definition of 'de facto relationship' would be:

'De facto relationship' means the relationship between two people mutually committed to a shared life as a couple on a domestic basis.

- (a) In determining whether two people are in a de facto relationship, all the circumstances of the relationship must be taken into account, including any of the following:
 - (i) the length of the relationship;
 - (ii) how long and under what circumstances they have lived together;
 - (iii) whether there is a sexual relationship between them;
 - (iv) their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them;
 - (v) the ownership, use and acquisition of their property, including any property that they own individually;
 - (vi) whether they mutually care and support children;
 - (vii) the sharing of household duties;
 - (viii) the reputation, and public aspects of the relationship between them;

- (ix) whether the relationship has been registered or formalised in accordance with any law of a State or Territory.

The ALSO Foundation believes that where a couple has had their relationship registered or formalised (*ie*, through a relationship declaration scheme or civil union scheme) in accordance with any law of a State or Territory, then that should be evidence that the couple satisfy the definition of 'de facto relationship'. Such registration or formalisation should be conclusive and not be indicative only.

In our view, especially in the absence of formal relationship recognition, a statutory declaration can also assist couples make out that they satisfy the definition of de facto relationship. Such a declaration can minimise the chance of future disputes over the history the facts of the relationship, especially when one partner is no longer around to tell their side of the story. Being a statutory declaration there is a third party, the witness, whose signature confirms the date it was made, and the fact that two people signed it, and that the partners knew they were signing a solemn declaration. The VGLRL have an example statutory declaration on its website.

Considering this, we believe an additional factor for the definition could be:

- (x) whether the couple have signed a statutory declaration that evidences their intention to fit within the definition of de facto relationship.

We also believe that the following additional sub-section be added to the definition:

- (d) No one factor, or any combination of factors, under (a) is necessary to establish a de facto relationship.

It is our view that the factors listed under (a) should be indicative only, and not be determinative of whether a de facto relationship exists. The above additional sub-section makes this clear.

Definition of step parent

The ALSO Foundation supports the definition of 'step parent' in the Bill. We support a broad definition that includes de facto partners of parents as well as persons who have a parenting order from the Family Court of Australia. It is our understanding that sub-section (3) will achieve this outcome.

Property entitlements and settlements

The amendments proposed in the Bill to the *Family Law Act 1975* (Cth) do not bring people in same-sex and de facto heterosexual relationships into federal regime for property division. Despite the amendments to the Family Law Act 1975 (Cth) contained in the Bill, people in same-sex and de facto heterosexual relationships will still be subject to a less comprehensive property settlement regime under the state property legislation. Further discussion about the nature and impact of this discrimination can be found in the attached submission to HREOC.

The ALSO Foundation recognises that the Federal parliament does not have clear jurisdiction over the breakdown of relationships that are not marriages. However, a number of State and Territory governments have attempted to refer their constitutional powers over property division to the federal government. We believe that an amendment to the Bill, or the enactment of accompanying

legislation, could accept these referrals. Additionally, we call upon the Committee to engage State and Territory governments to refer their powers where they have not done so.

Non-discriminatory marriage

The ALSO Foundation notes that an additional way to enable Federal Parliament to legislate comprehensively with respect to property division would be to enable all couples to marry. The ALSO Foundation supports non-discriminatory marriage, and has previously supported the Marriage (Relationships Equality) Amendment Bill 2007, introduced to the Senate by the Australian Greens earlier this year.

We note, however, that the Bill is required in addition to any amendments to the *Marriage Act 1961* (Cth). Many couples chose not to marry, and they should not be discriminated against by continued discriminatory definitions of 'de facto partner' or 'de facto relationship'.

Homophobia and gender identity

The HREOC Report recommends the enactment of 'sexuality discrimination' legislation along the lines of the Sex Discrimination Act 1984 (Cth) to help protect the rights of gay and lesbian individuals, couples and families in Australia. The HREOC Report also makes a specific recommendation for the introduction of legislation to protect against discrimination in employment on the grounds of sexual orientation.

We note that the Australian Democrats has introduced legislation prohibiting discrimination on the bases of sexual orientation and gender identity since 1995. The most recent bill was the Sexuality and Gender Identity Discrimination Bill 2004. The Australian Labor Party has also consulted recently on draft legislation prohibiting sexual orientation and gender identity discrimination.

We ask the Committee to recommend that such legislation be enacted at the same time as the Bill. That way, the recommendations of the HREOC report can be acted upon in their entirety.

Finally we thank the committee for the consideration of these issues and reiterate the importance of this matter in the daily lives of our members, those that are young, aging, in couples with and without children. Equality before the law cannot and should not even be considered optional/ The HEROC report documents what we have all known for some time, change is required.

Should the Committee have any questions about this submission, please contact us on 03 9827 4999 or at also@also.org.au

Yours sincerely



Lyn Morgain
CEO
The ALSO Foundation