



# VICTORIAN GAY & LESBIAN RIGHTS LOBBY

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By email: [senator.allison@aph.gov.au](mailto:senator.allison@aph.gov.au)

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

Dear Senator

## Ad hoc Senate Committee

### Inquiry into the Provisions of the Same-Sex: Same Entitlements Bill 2007

The Victorian Gay and Lesbian Rights Lobby (**VGLRL**) welcomes the opportunity to comment to the ad hoc Senate Committee (the **Committee**) considering the Same Sex: Same Entitlements Bill 2007 (the **Bill**). The comments in this submission are supported by the ALSO Foundation.

The VGLRL 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 VGLRL

The VGLRL aims to achieve equality and social justice for lesbians and gay men. We do this by working with the media, undertaking and supporting research, conducting community education and directly lobbying politicians across all levels of government. We have a financial membership of over 300 people, a network of over 1300 people, and are an incorporated association in Victoria. The VGLRL Committee is designed to ensure representation of both gay men and lesbians, while still allowing space for members who do not identify as either gay or lesbian. The VGLRL focuses on key issues of relevance to the lesbian and gay communities by continually canvassing community needs and assessing the political landscape.

## Previous submission

Attached is VGLRL's original submission to the HREOC inquiry. The VGLRL spent significant time and effort preparing evidence for HREOC about the discrimination that same-sex couples endure under federal laws. Rather than duplicate that work, we attach those submission to demonstrate that evidence.

## Definition of de facto relationship

The VGLRL 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, the VGLRL recommends 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 VGLRL 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 VGLRL 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 VGLRL 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 VGLRL 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 VGLRL 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 in various guises 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.

Should the Committee have any questions about this submission, please contact us on 0417 484 438 or at [info@vglrl.org.au](mailto:info@vglrl.org.au).

Yours sincerely

**VICTORIAN GAY AND LESBIAN RIGHTS LOBBY**

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