

## **SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—SUPERANNUATION) BILL 2008 – 4<sup>th</sup> June 2008**

**Mrs VALE** (Hughes) (5:51 PM) —In rising to speak on the [Same-Sex Relationships \(Equal Treatment in Commonwealth Laws—Superannuation\) Bill 2008](#), I am mindful of an old friend and colleague Mr Warren Entsch, the previous member for Leichhardt, who for many years campaigned passionately and diligently for the equal treatment of people in same-sex relationships under our laws, especially our superannuation and taxation laws. In the many times he rose to speak on this subject in our party room or individually with colleagues, or even in private conversations with our previous Prime Minister, his clear advocacy about the unfairness of the discrimination against same-sex couples under our Commonwealth laws that relate to property rights or beneficiary status was understood and accepted by many on our side of the House, as I believe it is by many of my fellow Australians. It is my belief that many fair minded Australians do not accept that the sexual nature of a relationship should have any bearing on the rights to property or the status of beneficiaries under superannuation policies of either of the parties to that relationship.

Having said that, on closer reading of this bill I have some very genuine concerns about other provisions of this legislation, and I support the amendment that has been moved by the Leader of the Opposition. Firstly, it seems to me that this legislation goes far beyond the understanding that I and many reasonable Australians had expected in providing for the property or financial entitlements of people in same-sex relationships under superannuation and taxation legislation. Secondly, I am very concerned about the use of language and the changes to specific definitions in this bill. Thirdly, I am concerned at the speed in which this important legislation is being rushed through this parliament. I am wary of the supposed urgency that forces a bill such as this to be pushed through the House in such inordinate haste. What are the grounds for such urgency? None have been explained. This bill cannot be introduced into the Senate until mid-June and, even then, may be subject to a referral to a Senate committee. If so, the Senate will not be able to debate this bill until the resumption of the Senate on 26 August. This rush of legislation is chaotic in itself. We, as the people's opposition here in this chamber, do not have reasonable and appropriate time to consider the bill, which may in its ultimate impact on the wider Australian community prove to be destructive of one of the fundamental institutions within our Australia and society—and I do refer to the institution of marriage.

Like my old friend Warren Entsch and many fellow Australians, I want to see those in same-sex relationships be treated equitably under our superannuation laws, but none of us here expected that such provision would be at a risk to the special status that we all agree should be accorded of marriage. I have these concerns because of my initial reading of this bill. I am quite frankly alarmed to see that the terms 'husband', 'wife' and 'spouse' are being deleted and replaced with the word 'partner', and the description 'marital relationship' is replaced with the term 'couple relationship'. Many Australians understand and accept that marriage and the family is the foundation institution of our nation. What are these changes to the definitions of such relationships in this bill—which is about superannuation entitlements—if they are not a threat to undermine the special status that marriage has held within our society and culture by homogenising all relationships as couple relationships.

Words are important tools. It is well known that words are the first salvo in any assault of cultural change. Initially, I understood this bill to be about the cause so ardently espoused by my friend Warren Entsch. It does seek to deal with those areas of discrimination in the tax treatment and payment of superannuation benefits for members of same-sex relationships and, also importantly, the children of those individuals. Many Australians may not be aware that currently the same-sex partner of a beneficiary in a Commonwealth defined benefit superannuation scheme and the children of that relationship are not entitled to direct access to reversionary death benefits on the death of the beneficiary partner. This is clearly unjust. By this bill, the government seeks to provide for equality of treatment between same-sex couples and opposite-sex de facto couples. That is fair and far enough. Many understand that opposite-sex de facto couples already have equality of treatment with married couples in Commonwealth laws. However, by this legislation, the government actually proposes to grant equality of treatment between same-sex couples and married couples. On the basis that the government has made clear its commitment to exclude same-sex couples from marrying and thus maintaining the special status and definition of marriage, it is difficult to understand why in this bill dealing with property entitlements the government is changing the definition and special status of marriage to give those in same-sex relationships equal treatment when it is not necessary to do so to achieve the alleged objectives of

this bill—that is, to give equal treatment to same-sex relationships and not a disguised tactic to weaken the status of marriage by diluting it to merely a partner arrangement.

At this point, one can logically ask that, if the objective of this bill is to offer equality of treatment to all relationships other than marriage for superannuation and taxation purposes, why should such relationships depend on a definition that describes the sexual nature of that relationship. At this juncture, one can honestly ask: what has sex got to do with it? There are other kinds of relationships which should also be included in this bill. For example, within many Australian families there may be two sisters or two brothers who live together in economically and socially supportive relationships, and many of us have such relationships within our own families. Here we are talking about reversionary superannuation benefits and tax treatment for families. Why should these relationships also not be included in this bill? For example, in 2004 the previous government made amendments to the Superannuation Industry (Supervision) Act 1993 and provided for interdependency relationships under section 10A of that act that covered relationships that could be identified by a shared, close personal relationship and where one or both persons in the couple provided financial support or where one or both provided the other with domestic and personal care. This amendment also made provisions on the criteria by which such a relationship could be identified. Such a new category of a relationship, an interdependent relationship, may have been a better tool by which the government could provide for equal treatment for same-sex relationships without the distortions caused by the language and definition changes suggested in this bill. By such means, all same-sex relationships would have their reversionary rights under the superannuation law recognised, as this legislation seeks to do, without threatening to undermine, deliberately or inadvertently, the unique relationship of marriage within our society.

The language used in relation to children in this legislation is another grave cause of concern for me. While most Australians will agree that any child dependants within the relationship of a same-sex couple should also be able to benefit from the superannuation benefits of the couple, the bill proposes to redefine a child as a product of a couple relationship where one partner is linked biologically to the child or where one partner is the birth mother of the child. The word 'product' is a highly inappropriate term to apply to a human being because it reduces the person to a commodity. I raised this concern in my speech on the RU486 debate in 2006, in which I expressed concern that in the future a human being would no longer be valued for its intrinsic value as a human life but rather for the use to which it could be put. By the use of this language—by the description of a child as a product rather than an offspring—a child is described as a commodity. Further, this lends weight to the utilitarian view that increasingly is pervading our society. In addition, it is a nonsense to use the term 'product' in relation to same-sex relationships, as it is a biological impossibility for a homosexual couple to produce offspring of their own. It would be better language to describe a child in such a relationship as 'a child born as the result of a couple relationship where one partner is linked biologically to the child or where one partner is the birth mother of the said child'.

I wish to make it quite clear at this point that, while the opposition and the majority of families in my electorate of Hughes accept that people in same-sex relationships are fully entitled to equal treatment under superannuation and taxation laws, as set out in this bill, I remain opposed to gay marriage, gay adoption and gay IVF, because children have a natural right to a mother and a father. I will always uphold the rights of a child against the rights of an adult on any day. My main concern regarding this legislation is that the use of language within the bill represents a revolution in the definition of parent and child under Commonwealth law and I am not sure that this was the intention of the government.

This bill also provides that de facto partners, in opposite-sex as well as same-sex couples, of people with children have a step-parent relationship with their partner's children. My constituents should be aware that at the present time only marriage creates a step-parent and stepchild relationship. This bill is not a good outcome for such families because this bill is fraught with snares for the unwary. Many of us are fully aware of the high attrition rate and shorter duration of non-married relationships. It is not too difficult to imagine a scenario where the biological parent—or indeed both parents—of a child enters into a series of de facto relationships, whether they be opposite- or same-sex couples, and the child accumulates an indefinite number of legally recognised step-parents who could, under this bill, be subject to all the legal ramifications such a status would attract.

Such a recognition at law of a parent-child relationship would, failing explicit statutory provisions to the contrary, survive the break-up of that relationship with the child's biological parent and the new step-parent. This would then have serious implications at family law in that each de facto

step-parent would potentially be able to claim access or even custody of the so-called stepchild. Further—and I would have thought of concern to the de facto step-parent—the biological parent could seek child support under the relevant child support legislation. Clearly, this legislation is ill-formed and poorly drafted. Having a sexual relationship with a child's biological parent should not be a sufficient basis at law for gaining the legal status as a parent of a child and nor should it attract the rights and responsibilities that attend that status under Commonwealth law. I repeat: at the present time a stepchild can only be a child under the care of a subsequent partner who marries the birth parent.

I am sure there would be many de facto couples, including same-sex couples, who will be alarmed at some of the provisions in this bill and the possible consequences. All is not quite what it appears and therefore I do not support what is otherwise a good and welcome piece of legislation. Clearly, while the main objectives of this legislation are welcomed, the language, the complexity and the new definitions that will certainly undermine the institution of marriage cause great concern to me and I believe would certainly cause similar concern to my dear old friend Entchy. However, I support the amendment of the opposition and thank the House for the opportunity to address this legislation.