

STATUTES AMENDMENT (DOMESTIC PARTNERS) BILLWednesday, 6th December 2006

Adjourned debate on second reading.

(Continued from 5 December.)

The Hon. A.L. EVANS: The Statutes Amendment (Domestic Partners) Bill goes to the core definition of family and relationships, which is very important to Family First. Let's Get Equal wants the bill passed this year. The Hon. Sandra Kanck has suggested a raft of amendments that could blow this bill out well into next year. I am not here to stall the debate. The gay community have said that they do not want amendments, and I will not delay this bill. I believe that I come at this with traditional old-fashioned values. I value marriage between a man and a woman to be the cornerstone of our society.

Intolerance has often stirred debate. It comes from both sides of the argument, but I call for it to stop. I have tried never to get involved in throwing stones but, in the same breath, I stand my ground in defence of family values and I do so quite firmly. We have been told openly by gay leaders that this bill is a stepping stone. On ABC Radio on 16 October, Matthew Loader was asked what would happen after this bill passed, and he said:

... we're talking about parenting stuff and we're talking about civil unions. . . we certainly don't think that those issues should be ruled out for a future agenda.

In respect of his co-sponsored same sex bill, the Hon. Mark Parnell has stated:

The Greens. . . support equal access for lesbian, gay, bisexual, transgender and intersex people to adoption, fostering, artificial insemination, sperm donation programs and in-vitro fertilisation procedures.

I do not think that ordinary South Australians want those sorts of things and I do not think that this bill is necessary. Most rights for gay and other couples can easily be accrued by drawing up a will or other legal documents such as power of guardianship but, if automatic rights are demanded, the Family First

response is reasonable. We respond by saying that, of course, if a couple has decided to share their lives together then we recognise that the law must deem that they have shared legal rights and responsibilities.

I think that there are good and bad aspects of this bill. For a start, this is a vast improvement compared to the bill before us last year. Earlier versions of this bill took a real hit at traditional marriage. Gay relationships were defined as de facto marriages. In a lot of acts the term 'marriage' is defined as including de facto relationships—giving approval to the concept of gay marriage. I am glad that this bill keeps marriage between a man and woman as separate, and that is thanks to Family First's insistence. However, in our view, the bill is nowhere near ideal in that marriage-like rights are extended to an ever-expanding group of people.

Both Dennis Hood and I have campaigned tirelessly to have marriage retain its rightful elevated position in the law and preserved as something special. This version of the bill makes it clear that a spouse is someone who is legally married under the commonwealth definition—being exclusive marriage between one man and one woman.

As the Hon. Ms Redmond quite rightly said in another place, 'A lot of our legislation up until now has provided that 'married' means married or de facto; whereas we have now lifted out 'married' and said that 'married' means only legally married and, thereafter, everybody else is a domestic partner'.

I strongly believe that marriage is special. As the Lutheran submission to the Human Rights and Equal Opportunities Commission inquiry into same-sex relations noted:

For about 5 000 years societies have valued marriage between a man and a woman as the social nucleus in which children are best born and raised. Our reading indicates that respect for traditional marriage is a value shared by all major religions and all enduring societies around the world.

Article 16 of the Universal Declaration of Human Rights, after defining marriage as between a man and a wife, reads:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

As an aside, I note that article 3 of the Convention of the Rights for the Child states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration.

This bill does not include provision for gay adoption or IVF treatment, for which we are grateful. Further, the old definition of 'de facto partner' relied on whether or not the couple is engaged in sexual relations. In this bill's definition, sexual relations are expressly excluded from consideration. I applaud this bill for removing sexual relations as a defining characteristic of a domestic relationship, again as a result of Family First's lobbying. With these references removed, the bill is no longer about gay rights. In fact, apart from the superannuation provisions, which were already decided in 2003, this bill does not talk about or expressly recognise homosexual relationships. That factor alone tones down the heat of the debate.

This bill is much fairer and broader than just the gay rights bill, giving rights under one test to all couples who have agreed to share their lives together and are living together on a genuine domestic basis. It is a solution that the Let's Get Equal campaign can live with. I acknowledge the work of the Attorney-General and his tireless Chief of Staff, Peter Louca, for trying so diligently to find a solution that is workable for everyone. It is, of course, invalid to make sexual relations a touchstone in the definition of a valid domestic relationship.

The Hon. Sandra Kanck's amendment draws a divide between domestic co-dependent and de facto partners. How do we tell the difference between members of both groups? When does someone go from being a domestic co-dependent to a de facto? There is no clear definition or distinction in her amendment. When we boil down all the arguments, the Hon. Sandra Kanck proposes a line drawn between couples who are having sex with each other and couples who are not having sex with each other. When the Hon. Sandra Kanck's distinction meets the cold light of reason, we find we are talking about something that is arbitrary and discriminatory. Such a distinction discriminates against couples who cannot engage in sexual relations and who decide to live a platonic lifestyle. Many disabled couples find themselves unable to perform sexual acts due to their physical limitations. Their relationships, however, are no less special, and their inability to have sex should not make it more difficult for the relationship to be classified as a domestic partnership. Should they be discriminated against, placed on a different footing and forced to sign an opt-in register, simply because their relationship is not sexual?

The difficulties faced by impotent couples clearly show the absurdity of a sexual relationship test. I am told that impotence affects something like 10 to 15 per cent of all men. Should these couples have to opt in just because they cannot have sex? That is nonsense. How demeaning would it be for someone to have to explain that he has to register his relationship just because he is unable to have sexual intercourse? Many people, including elderly couples, are together not for sex but for companionship. I agree with the member for Giles in another place who said:

It makes me laugh when people define their relationship in terms of sex, because I would like to know how many married couples do not have sex. There are many marriages out there where sex is a dim memory of the past.

The member for Light in another place said:

To reduce the breadth of human experience to sexual behaviour diminishes our humanity.

Quite correct. Sex is a poor public test for the validity of domestic partnerships because sexual relationships are generally a private matter. Due to sometimes hostile community attitudes, many gay partners will not admit to a sexual de facto relationship with their partner. On 23 November in *The Messenger* Matthew Loader estimates that while there are 30 000 gays and lesbians in South Australia, the 2001 census found only 1 062 gays and 1 237 lesbians prepared to admit that they were in the same sexual relationship, with the data showing 556 same-sex male families and 634 same-sex female families. The Australian Bureau of Statistics 2005 Yearbook recognises that:

Examination of same-sex data from the census may have some limitations, including reluctance to identify as being in a same-sex de facto marriage.

Obviously if gay couples are unwilling to publicly admit they are in a sexual relationship with their partner, again, sexual relationships are shown to be a poor litmus test. Mr Kris Hanna in another place has said:

There is ground for differentiating between sexual and non-sexual couples. There is actually a big difference; there is a big difference in community expectations.

I respectfully say that the honourable member is out of touch, as is the Hon. Sandra Kanck by repeating the same old failed arguments. Perhaps in the past sexual relations were something guarded and special but, sadly, that is less and less the case. There are the days of one night stands, multiple sexual partners and 'hook ups' through telephone dating services. These days there are some very shallow relationships involving sex and there are some very deep and caring relationships that do not include sex. The government has gone so far to recognise gay sexual relationships, let us not now discriminate against couples who are in non-sexual relationships by putting them in a third category with different rules. I strongly encourage members to vote against the Hon. Sandra Kanck's amendment to this bill. I am glad that the bill, as it stands, grants rights to this group that is not engaged in sexual relationships. This group has become known as domestic co-dependants. They are sometimes called platonic de facto or platonic life partners.

The 21st report of the Social Development Committee recommended that any bill dealing with legal rights for the gay community should also grant rights to this group. Who are they? Perhaps they are homosexual couples who have agreed for religious or medical reasons not to engage in sex with each other. Perhaps one of them is caring for another while he battles the scourge of AIDS and sexual relations would be unwise. Perhaps they are a couple, as previously described, who cannot have sexual relations for medical reasons. Perhaps they are two spinsters who have lived together for 30 years. Indigenous Australians form deep kinship bonds one with another which may fall within the definition. During the deliberation of the Social Development Committee I introduced a domestic co-dependant couple with the following description:

. . . Mary. . . and Janet (whose names have been changed). . . have been friends since 1962 and have lived together on and off for many years whilst they worked as officers in the Salvation Army.

Since retiring they have been living together for 17 years continuously and hope to continue that way into the future. They shop together for most things and generally share the household chores. Mary tends to do more of the cooking whilst Janet tends to do more of the gardening in their home. All of their living expenses such as groceries, utility bills and rates are shared equally between them. They eat together at all meals of the day and only seldom go out separately. Mary is legally blind and now relies on Janet's help and support in any social or other outings, especially in regard to such activities as driving. They are close companions and their friends and family generally expect them to attend functions or social engagements as a couple.

Non-sexual but romantic partnerships were apparently common up until the second half of the 19th century. They were often called 'Boston marriages'. However, they declined as open expressions of intimacy between non-sexual partners began to be treated with some anxiety.

So, let us run through the figures. How many domestic co-dependents are there in South Australia? According to the Australian Social Trends 2000 data, there were 7.186 million total households, 1.739 million lone person households and 5.056 million total families. Therefore, there are 391 000 'other households', the total households identifying at about 2 per cent same sex and 3.4 per cent

being an 'other' domestic partnership. The ABS tells us that the way the data was used in the select committee report is not optimal, because Treasury officials who prepared the data mistakenly used different data sets from different surveys. Nevertheless, the numbers are clearly significant.

So, we pressed the Attorney-General for this definition that removed sexual relations and stressed a commitment to a shared life. It is a commitment between two people to an enduring or lifelong relationship. That excludes people such as house mates: they do not make that commitment to each other. Mrs Isobel Redmond in another place talked about her son, who lives with flatmates, having nothing to fear. No doubt her son would have an expectation to one day meet someone special and move out. Moreover, he would not be holding himself out to the world as being a 'couple' with his flatmate, and they might have had some, but definitely not the majority, of their property in common. These are all factors in the definition. Family First encourages enduring and exclusive commitments in a relationship, because we see these factors as good for the family.

While I have this opportunity, I would also like to address the laws in some of Australia's jurisdictions, as the interstate experience can teach us some valuable lessons. In New South Wales, the Property (Relationships) Act 1984 (previously the De Facto Relationships Act) was amended in 2002 to redefine a de facto relationship as 'a relationship between two adult persons'. Gay couples, however, were expressly excluded from adoptions.

New South Wales was one of the first jurisdictions to acknowledge domestic co-dependent relationships. In 1999, under the Property (Relationships) Legislation Amendment Act 1999, New South Wales granted recognition for people whom we might call 'domestic co-dependents' in eight separate acts or regulations. Very few cases have been brought to the New South Wales courts by people claiming to be in these domestic co-dependent relationships. In most cases, applicants have applied to be recognised as being in a close personal relationship only after their application to be recognised as a de facto partner had failed. There were in the New South Wales Supreme Court the cases of

Dridi v Filmore (a 2001 case), Devonshire v Hyde (a 2002 case) and Woodland v Rodriguez (a 2004 case). The court took a restrictive view on all three cases, and the claims all failed.

The argument was successful in the Jurd v Public Trustee (another 2001 Supreme Court case). The plaintiff had sought a declaration that he had been in a close but non-sexual, caring relationship with a man who had subsequently deceased. The plaintiff in that case basically put his life on hold for many years, cooking, grooming and caring for the deceased.

The conditions in that case were met. Basically, from New South Wales we have a few cases sensibly decided—and no floodgate of litigation. In Tasmania, the Relationships Act 2003 and the Relationships (Consequential Amendments) Act 2003 dealt with issues similar to those with which we are dealing today. The most significant difference between Tasmania and the other jurisdictions is its opt-in registration—which, by the way, has been an abject failure, as I will explain in more detail shortly. Similar to New South Wales, Tasmania includes legal recognition of non-sexual 'caring relationships' between two adults. Some 34 Tasmanian acts recognise caring relationships without requiring registration, but a further nine require the relationship to be registered. The legal entitlements that require registration mostly relate to property rights, and registration will void a person's will.

The difficulty of course is that life, being as busy as it is, and people's knowledge of their legal rights and obligations being finite, and given human nature to procrastinate, as at 2005 (two years after the legislation) not one person had registered a caring relationship and only 39 same-sex couples had registered. I hear anecdotally that there are few registered caring relationships in Tasmania, but the figures are obviously appalling. No-one opts in because these provisions are generally only discovered by citizens after consulting with a lawyer after the death of a partner or during a messy separation. The Tasmanian experience is clear that an opt-in model, as proposed in another place by the Hon. Kris Hanna and in this place by the Hon. Sandra Kanck, is a complete and utter failure and a deceptive attempt to discriminate in substance

against domestic co-dependants. From Tasmania we have learnt that the opt-in system does not work.

While this bill may be a significant improvement on last year's relationships bill it will still undermine marriage. This is especially so in the superannuation clauses (sections 160, 175, 197, 207, and so on) where the bill discriminates against domestic co-dependent couples and describes homosexual relationships as marriage-like—a precedent-setting description. This is of course a carryover from the wording of the 2003 Superannuation Act. If domestic co-dependants are recognised in other sections they should also be recognised for superannuation. Further, the concept of consortium—the legal term for the duties and rights with marriage—is expanded in the amendment to the Civil Liability Act.

Finally, the bill gives equal rights to a domestic partner in cases where a person is both married and in a domestic partnership. This occurs in the Transplantation and Anatomy Act, Administration and Probate Act, Civil Liability Act and Judges Pension Act. I applaud the stand by the Hon. Graham Gunn in the other place; and I struggle with the bill in the same way as the member for Waite (Mr Martin Hamilton-Smith) has indicated. This bill is coming to us, in one form or another, like a steaming locomotive. It is not a bill we all like. However, if this bill is not passed we fear that something far worse will manifest itself. I reiterate Matthew Loader's comments on Radio Adelaide some weeks back. Let's Get Equal wants this version of the bill passed without delay. They know that amendments may delay this bill well into next year. Matthew Loader said:

. . . the more amendments or changes that are put forward, the more extended the debate will become and that will mean the bill won't pass and one of the things I'd ask all parliamentarians is to very seriously consider whether it's necessary to make any changes at this stage. The government's obviously gone through this issue with some detail to pick up all of the issues that were raised last time round. . .

Amendments will make this bill worse and introduce discrimination against domestic co-dependants. They will be refused by the government and they will

delay this debate into next year—which is something no-one wants. I will try not to make a final decision before hearing the entire debate. The Hon. Dennis Hood and I will listen carefully to debate to confirm the final shape of this bill before we reach a final conclusion on how we will vote.