



# Queensland Law Society

Your Ref: Civil Partnerships Bill 2011

Quote in reply: Direct Advocacy

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23 November 2001

Research Director  
Legal Affairs, Police, Corrective Services and Emergency Services Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: lapcsesc@parliament.qld.gov.au.

Dear Research Director

## CIVIL PARTNERSHIPS BILL 2011

I refer to the letter to the Committee from the Hon. Andrew Fraser dated 16 November 2011.

I **enclose** a copy of the Society's letter to the Hon. Andrew Fraser dated 23 November 2011, for your kind consideration.

Yours faithfully

Bruce Doyle  
President



Law Council  
OF AUSTRALIA

Queensland Law Society is a constituent member of the Law Council of Australia

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Your Ref: Civil Partnerships Bill

Quote in reply: 21000340.58

23 November 2011

The Hon. Andrew Fraser MP  
Mount Coot-tha Electorate Office  
76 MacGregor Terrace  
Bardon QLD 4065

By email: [mount.coot-tha@parliament.qld.gov.au](mailto:mount.coot-tha@parliament.qld.gov.au)

Dear Mr Fraser

## **CIVIL PARTNERSHIPS BILL 2011**

Thank you for your letter inviting the Queensland Law Society to consider two technical amendments proposed by the Queensland Council for Civil Liberties (QCCL). The Society welcomes your letter and is pleased to be involved in this process.

### **The proposed amendments**

The QCCL proposes two changes to section 18 of the *Civil Partnerships Bill 2011*, namely:

1. A section 18(1)(c) should be added, stating that the court will make an order terminating the partnership if it is satisfied that reasonable arrangements have been made for the day-to-day care and welfare of all dependant children to the partnership.
2. A section 18(4) should be added, stating that if the relationship lasts less than 2 years, a conciliation be attempted before seeking termination.

The thrust of the proposed amendments is to add aspects of the *Family Law Act 1975* to the Bill. These proposals attempt to make a civil partnership under the Bill more like a marriage. This is a question that goes to the heart of your intention in proposing the Bill.

At present, same-sex couples are not permitted to marry in Australia. Therefore, a more marriage-like relationship may be attractive to those who would like to marry, but cannot.

However, in many jurisdictions, civil unions are a different type of relationship from marriage. On balance, the Society considers that it is preferable to legislate for a type of relationship that is different to marriage because:

1. This minimises the risk of the legislation being found to be unconstitutional because it could be regarded as an attempt to legislate for marriage when the Commonwealth has the exclusive power to legislate for marriage;
2. For those who are able to marry, it provides them with the option of choosing a different type of committed relationship; and
3. It allows for a type of relationship that corresponds to civil partnerships (or civil unions) in other jurisdictions.

### **Consideration of the proposed amendments**

The Society shares the concerns you raised that the proposed section 18(1) (c) could be regarded as conferring Commonwealth powers to the State. Section 51(xxii) of the *Constitution* confers powers on the Commonwealth parliament to make laws with respect to "...parental rights, and the custody and guardianship of infants." As the proposed section 18(1) (c) requires the District Court to be satisfied reasonable arrangements have been made for all dependent children, it is at risk of being found to be unconstitutional.

Other practical disadvantages of the proposal are that:

1. The District Court (unlike the courts exercising powers under the *Family Law Act 1975*) will be powerless to do anything about unsatisfactory arrangements for children if it finds that arrangements for those children are unsatisfactory.
2. There is a risk that the District Court could adopt a different standard for arrangements for children than the courts exercising jurisdiction under the *Family Law Act 1975*.
3. The obligation to consider such a potentially complex set of circumstances as the arrangements for children would increase costs to litigants and consume additional court resources.

### **Conclusion**

On balance, the Society does not support the amendments proposed by the QCCL for the reasons stated above.

Thank you for the opportunity to consider these issues. Please do not hesitate to contact myself or have a member of your staff contact our Policy Solicitor Louise Pennisi on (07) 3842 5872 or [l.pennisi@qls.com.au](mailto:l.pennisi@qls.com.au) should you wish to discuss these concepts further.

For your information, a copy of this letter will also be provided to the Legal Affairs, Police, Corrective Services and Emergency Services Legislation Committee.

Yours faithfully



Bruce Doyle  
**President**