Speech by

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PROPERTY LAW AMENDMENT BILL

Mr BEANLAND (Indooroopilly—LP) (9.37 p.m.): This Bill represents a significant legal reform in the area of property law. It will bring a measure of equality to our law and will overcome a long-standing injustice. In spite of all this, it is unfortunate that these important reforms have been overshadowed by the debate on their application to same sex defacto couples.

The Liberal Party has long maintained the tradition that, on moral issues, individuals should maintain the right to hold, express and vote in accordance with their individual views. They should not subordinate their personal opinions simply to conform with the views of the majority.

Approximately 20 years ago in this Parliament, members of the Liberal Party, the National Party and the Labor Party voted together to defeat amendments to strengthen the State's laws on abortion. Members on the other side of the House were opposed by members of their own parties. It was one of those occasions when the Parliament functioned as it was originally intended to function, without the constraints of party discipline. I do not propose that the extension of that practice to all legislation would necessarily be in the best interests of Queenslanders. In more recent times, we have seen a number of conscience votes in the Commonwealth Parliament.

On matters of individual morality, I believe that it is important that members of Parliament should enjoy the same rights as do other members of the community. If members of Parliament are to interpret community morality and translate that into legislation, they should do so unfettered by the demands of the majority. The Liberal Party does not believe that those demands should be pre-eminent in this instance. For that reason, members of the Liberal Party will be voting on this Bill according to their conscience. Furthermore, I have noted that this year's Liberal Party Queensland convention voted in support of extending property rights as contained within this legislation to same sex couples.

It is a matter of regret that this issue has resulted in more heat than light being generated. While there is a place for emotion in any public debate, there is no justification for that debate being the captive of such emotion. The substantive policy issue—extending to same sex couples property rights which are to be enjoyed by opposite sex couples—is quite simple. However, it may be instructive to consider what this Bill does not do.

Firstly, it makes no comment on the institution of marriage. Laws relating to marriage are the sole responsibility of the Commonwealth Parliament. This is set out clearly for all to see in section 51(xxi) of the Constitution of the Commonwealth of Australia. There is no room for the States to legislate in relation to marriage. I should add that I do not believe there is any widespread community support for extending the rights of marriage to same sex couples. However, should any change be contemplated, I would vigorously oppose it.

The second point to note is that this Bill makes no judgment on the merit of particular lifestyles or behaviour. There is no question of punishment or reward in this Bill—all people are being treated equally. I am surprised that some people still believe that others engaging in perfectly legal conduct should be punished by the State by being compelled to engage in costly and time-consuming legal

proceedings to resolve disputes. This is an outdated view more in tune with the social mores of the Middle Ages than with contemporary Australian society.

The third point is that there is no notion of compulsion associated with this legislation. Whatever our personal views on particular lifestyles, this Bill will in no way change the way in which the majority of Queenslanders act or think. The notion that this Bill represents the opening of the floodgates is alarmist, and just plain wrong.

Fourthly, this Bill does not confer on one class of people rights not to be enjoyed by other classes of people. Indeed, the strength of this Bill is its grounding in the view that those in de facto relationships should enjoy equal rights irrespective of their sex or sexual preferences. Those who object to this concept should nail their colours to the mast and seek to outlaw de facto relationships in their entirety rather than working against these moves towards equality. This is what this Bill does not do. Those who rely on these arguments appear to have paid little attention to exactly what is in the legislation.

What this Bill does do is introduce an element of equality into aspects of property law for sound reasons of public policy. I should point out that this legislation is far from radical. It is similar to legislation that has existed in other Australian jurisdictions since the 1980s. It recognises a contemporary reality, that is, a growing significant minority of adult Queenslanders have chosen to enter into de facto relationships. To fail to do this imposes significant social and economic burdens on individuals and the community at large as those individuals seek to secure their legal rights.

The Queensland Law Reform Commission reported on de facto relationships in June 1993 and detailed the legal shortcomings that the existing law imposed. In short, that law compelled a surviving de facto partner to submit himself or herself to a costly and uncertain legal process in an effort to have their property rights protected. While this is unjust and unnecessary in itself, there is a second aspect which should not be ignored. It is simply this: what possible advantage is there for individuals or the community if some people are compelled to go through this process while others have legally enforceable rights which do not require interminable court appearances, expense and delay? The answer is equally simple. There is no good reason in 1999 to make this distinction. Our legal system has enough burdens imposed upon it without having to contend with this sort of pointless and non-productive encumbrance.

Moreover, as the Queensland law Reform Commission noted, the Queensland Anti-Discrimination Act 1991 prohibits, with some exceptions, discrimination against a person on the grounds of lawful sexual activity. Furthermore, homosexual acts in private between consenting adults were legalised in 1990.

I believe it is important to reassure Queenslanders that this legislation is not an open invitation to immorality. No reading of the Bill would encourage the view that it is. However, with so many of these issues few actually read a Bill and therefore become subject to the partisan opinions of those pushing one political barrow or another.

The Bill insists that there be evidence of a long-term relationship before the benefits of the Bill can be relied upon. In fact, a court can make a property order only if—

firstly, the de facto spouses have cohabited for at least two years;

secondly, there is a child of the de facto spouses under 18 years of age; or

thirdly, the applicant has made substantial contributions to the property or financial resources of the de facto spouses or to family welfare and failure to make the order would result in serious injustice to the applicant.

These are totally reasonable provisions and ones which will act in the legitimate interests of all parties. I do not believe they provide any cause for alarm, although I would have preferred to have seen a longer period for cohabitation. I should contrast the inclusive up-front attitude of the Minister for Justice on his matter with the secretive and uncooperative stance of his colleague the Minister for Families, Youth and Community Care and Minister for Disability Services in relation to the Domestic Violence (Family Protection) Amendment Bill one month ago.

In conclusion, I support this Bill. It introduces a needed element of equality. It will benefit individuals, it will reduce the trauma and costs associated with many legal proceedings and will be of value to the entire community.