



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 9 December 1999

PROPERTY LAW AMENDMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (10.49 p.m.), in reply: This Bill affirms the principle of equality before the law. It reforms the law affecting the property rights of more than 180,000 Queenslanders who live in de facto relationships. This Bill will be of great benefit in particular to women. Assisted by this legislation will be women who have made a significant contribution to a de facto relationship over many years, for example, raising children, and who then find themselves out in the cold when the relationship ends because the house, car and bank accounts are in the other partner's name. This Bill sets up a framework of law and provides access to the courts to remedy those injustices.

This Bill is inclusive. It allows access to the law for all persons in de facto relationships, whether of the opposite or the same sex. People who live in same sex relationships are not monsters to be vilified and demonised. They are human beings. They are part of our community. They are entitled to the protection of the law and to be treated with dignity and respect. I acknowledge in the public gallery tonight members of the gay and lesbian community. In particular, I acknowledge their long struggle for equality before the law.

Let me turn to the contributions of honourable members in the course of the debate tonight and, in so doing, let me thank all honourable members for their contribution. Let me in particular acknowledge the contributions of the members for Indooroopilly, Caloundra, Nerang and Noosa. I welcome their support for the Bill. The member for Warwick dealt with a number of matters, in particular with the issue of the contribution and position of children. This was a matter raised in the course of the Scrutiny of Legislation Committee's examination of the Bill. That committee expressed concern about the impact of the Bill on the rights of children of de facto spouses and whether the Bill significantly enlarges the rights of children of de facto relationships. It may be useful if I deal with that matter in some detail.

In my response referred to in Alert Digest No. 16 of 1999, I advised that under the common law and the laws of equity there is no restriction on the age or status of the person who may potentially seek relief in the courts. Under the common law, if a child has made a contribution to property such that a case of unjust enrichment or constructive or resulting trust can be made out, the fact that the claimant is a child would not in any way preclude the seeking of equitable relief.

I advised the committee that, to a great extent, the Property Law Amendment Bill 1999 is based on the common law and simply extends the existing equitable remedies to the child of a de facto spouse who has made a substantial contribution. Under proposed section 286 of the Bill, a court may make any order that it considers just and equitable about the property of either or both of the de facto spouses, adjusting the interests of the de facto spouses or a child of the de facto spouses in the property. Under proposed sections 291 and 292, the child's non-financial contribution to property, financial resources or family welfare must be considered by the court in determining a just and equitable distribution only if the child's contributions are substantial. The requirement for a substantial contribution to property, non-financial resources or family welfare in proposed sections 291(2) and 292(2) is the only limitation in this Bill on the court's ability to make a property adjustment order that it considers just and equitable in favour of a child of a de facto spouse. This limitation does not restrict the court's ability to make an order in favour of a de facto spouse as opposed to a child which takes into

account whether either de facto spouse has the care of a child who is under 18 years, as set out in section 299.

The honourable member for Indooroopilly correctly identified some of the attitudes in opposition to reform in this area as being the attitudes of the Middle Ages. The honourable members for Caloundra, Nerang and Noosa set out the case in favour of the Bill based in part on their Liberal philosophy, and I welcome their support for the Bill.

Let me turn to the fine speech of the honourable member for Kurwongbah. Her powerful speech tonight reminds all of us of how far we have to go. Her candid expression of disappointment about how much further we should be going with respect to the law in this area is a sober reminder of the limitations imposed by the Federal system of Government under which we operate. The honourable member made a telling point in observing that, upon the breakdown of a de facto relationship, a couple may find themselves in the position where the custody of the children is determined in the Family Court, where the child maintenance is determined through the child support regime of the Commonwealth and where their property interests are determined in a court of State jurisdiction. One does look forward to the day when there could be a uniform system. This would entail the Commonwealth being willing to legislate in a manner which would be inclusive of de facto relationships, whether of the opposite or the same sex, and the honourable member's forthright and analytic contribution was a most important contribution to the debate.

It is worthy of note that in an hour's time it will be International Human Rights Day—the 51st anniversary of the Universal Declaration of Human Rights. It is a fitting time for Parliament to affirm its support for human rights and, accordingly, I commend the Bill to the House.
