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PARLIAMENT OF TASMANIA

**JOINT STANDING COMMITTEE ON
COMMUNITY DEVELOPMENT**

REPORT

ON

**THE LEGAL RECOGNITION OF
SIGNIFICANT PERSONAL RELATIONSHIPS**

Membership of the Committee

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In particular the Committee would like to recognise the contributions of the following persons:

Ms Samantha Hardy

Ms Sarah Middleton

Ms Lisa Butler

and the

Committee Secretariat

Terms of Reference

The Attorney-General referred this inquiry to the Joint Standing Committee on Community Development on 22 May 2001 with the following terms of reference:

To inquire into and report upon, issues associated with the legal recognition of significant personal relationships, including but not limited to the inclusion of same sex relationships in the *De Facto Relationship Act 1999*.

The Committee's deliberations are to include, but not be limited to, the legal status of significant personal relationships with respect to their impact upon:

- a) financial issues including property division and maintenance after relationship breakdown,
 - b) employment entitlements and benefits, for example, superannuation, industrial awards etc;
 - c) succession and intestacy legislation;
 - d) rights of next of kin including circumstances of illness or death;
 - e) statutory compensation schemes, for example, *Fatal Accidents Act 1934*, *Workers Rehabilitation and Compensation Act 1988*, *Motor Accidents (Liability and Compensation) Act 1973* etc; and
 - f) any other relevant matter.
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Summary of Findings

1. The Committee found that Tasmanian law in some areas is deficient and inequitable when dealing with parties to non-traditional personal relationships.
 2. The Committee has concluded that current relationships legislation contradicts the precepts of the *Anti-Discrimination Act 1998* and that reform is necessary to address this imbalance.
 3. The Committee found that the denial of legal recognition to non-traditional relationships creates unjustifiable hardship and expense, as claims for entitlements that would automatically flow to married couples or heterosexual de facto partners have to be fought for in court under common law with no certainty of outcome.
 4. The Committee found that discrimination against non-traditional significant personal relationships occurs in many areas of life. For example, hospital policy and guardianship laws based on traditional family criteria restrict access to partners of non-recognised relationships at times of medical emergencies and deny competent partners the right to make decisions for their incapacitated partner.
 5. The Committee believes that legal recognition of non-traditional significant personal relationships will bring relief to individuals suffering hardship and discrimination under current provisions.
 6. The Committee believes that a need for reform has been demonstrated and that ad hoc measures, whilst welcomed in specific cases, are not the comprehensive solution required to provide equality and certainty for individuals in non-traditional relationships.
 7. Whilst legal recognition of de facto relationships has been enacted in Tasmania the absence of sufficiently broad criteria for the recognition of other significant
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personal relationships means that parties involved in non-traditional relationships will continue to experience inequitable treatment before the law.

8. The Committee does not consider marriage as a suitable mechanism for extending legal recognition to non-traditional significant personal relationships. Furthermore the Tasmanian Parliament has no authority to legislate in this area as under the Constitution the power to regulate marriage rests with the Commonwealth.
 9. The Committee concluded that the extension of de facto recognition is a straightforward way to provide legal protection to those in non-traditional relationships and has the potential to protect the economically weaker partner on the breakdown of the relationship.
 10. The Committee found that the registration model could provide a way for people in non-traditional significant personal relationships to prove the validity of their relationship, and that such a measure could be considered subsequent to the primary measure of protection being enacted.
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Summary of Recommendations

1. The Committee recommends the amendment of the *De Facto Relationship Act 1999* to extend its scope to include same sex and other significant personal relationships. In so doing the Committee acknowledges the importance of marriage in our society and recognises the traditional and religious associations which give this relationship its pre-eminence and would not want to see any change to the institution of marriage or the rights and privileges it enjoys.
 2. The Committee suggests that this may be achieved by either:
 - (a) extending the meaning of de facto relationship to cover same sex relationships, or
 - (b) replacing the term ‘de facto relationship’ with an all-encompassing term such as ‘domestic relationship’ or ‘significant personal relationship’ to cover all relevant relationships.
 3. The Committee recommends that a catch-all provision is included in the *De Facto Relationship Act 1999* to ensure that same sex and other significant relationships are captured within the meaning of de facto spouse or partner for the purposes of other relevant Acts such as the *Anti-Discrimination Act 1998*, *Testator’s Family Maintenance Act 1912*, *Administration and Probate Act 1935*, *Duties Act 2000* and statutory compensation Acts.
 4. The Committee recommends that any future legislative reform in this area consider the adoption of an optional system of registration of significant personal relationships.
 5. The Committee recommends the amendment of Tasmanian public sector superannuation schemes to give recognition to same sex relationships.
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Executive Summary

Under Tasmanian law significant personal relationships other than marriage and de facto relationships between heterosexual partners are not recognised. This differential treatment seriously disadvantages people in non-recognised relationships as they share many of the difficulties faced by traditional relationships without the protection of legal rights.

The Committee has concluded that this situation is inequitable and that legislative reform is necessary to address this imbalance.

Evidence before the Committee suggests that changing community attitudes have led to increasing acceptance of non-traditional relationships and this is reflected in ad hoc recognition of such relationships in workplace practices and other forums.

Obligations under international law, the recognition of human rights and the general principle of equality under the law require the comprehensive reform of the law to recognise same sex and other significant personal relationships.

The Committee found that Tasmanian statutes which regulate relationships generally denied access to non-traditional relationships through narrow definitions of 'spouse' and 'de facto partner' to which certain rights are attached.

One of the options for reform considered by the Committee was the extension of the *De Facto Relationship Act 1999* to incorporate same sex and other non-traditional relationships and provide the same rights currently enjoyed by heterosexual de facto couples.

Another option considered was a system of registration that would allow individuals to gain legal recognition through the registration of their relationship. Such a scheme would give instant recognition that was readily verifiable.

The Committee elected to recommend the extension of the *De Facto Relationship Act 1999* as this provides the basic 'safety net' required to deliver equitable treatment under

the law to all significant relationships and because it protects the vulnerable at difficult times of their lives, such as the death of a partner or the breakdown of the relationship.

1. Introduction

1.1 Conduct of the Inquiry

The Joint Standing Committee on Community Development was established by the Tasmanian Parliament on 6 December 2000 to inquire into socially significant issues. The Joint Committee replaced the former House of Assembly Community Development Committee.

Prior to its dissolution the House of Assembly Committee was also conducting an inquiry into the legal recognition of significant personal relationships with similar terms of reference. The evidence from this inquiry was tabled in the House of Assembly on 11 April 2001 and later adopted by the Joint Standing Committee.

The evidence acquired by the Committee included 155 written public submissions, 25 documents and transcripts of oral evidence from 11 witnesses.

The oral evidence included notable contributions from the Anti-Discrimination Commissioner, the Law Society of Tasmania, the Retirement Benefits Fund, the Tasmanian Gay and Lesbian Rights Group, the Carers Association of Tasmania, the Tasmanian Trades and Labor Council and the Department of Justice.

The Joint Standing Committee has subsequently heard further evidence from 10 witnesses and has received a further 2 submissions.

A significant contribution was made by University of Tasmania academics, Ms Samantha Hardy, Ms Sarah Middleton and Ms Lisa Butler, Associate Lecturers in Law, who provided expert and comprehensive evidence in their written and oral submissions.

1.2 Summary of Submissions

The majority of submissions received focused on same sex relationships rather than the broader issue of non-traditional interdependent relationships. Individuals and

organizations identified areas such as inheritance, division of property, next-of-kin rights and superannuation settlements where partners in non-traditional relationships do not receive equitable treatment under the law.

The following extract articulates some of the arguments submitted in favour of legislative reform:

The time has come to remove the hierarchy in our legal system, which denies rights to people who are not married or in a heterosexual de facto relationship. The range of benefits, rights and responsibilities which attach to marriage are also suitable and necessary to a range of other relationships. Further, people are now demanding and expect from government the ability to choose diverse forms of family life and still have those forms accorded equal recognition and respect.¹

Only a small number of submissions referred to carer or other non-traditional relationships which were not of a sexual nature. The Committee recognises that such relationships arise in response to individual circumstances and thus do not readily identify as a cohesive interest group, therefore a lesser response was to be expected from this category.

A large number of submissions were strongly opposed to the legal recognition of same sex relationships on religious and/or moral grounds. These submissions put the view that such a measure would weaken the position of the traditional heterosexual family in society and promote a homosexual lifestyle as the norm. Concerns were also raised about children growing up in single sex households.

A representative view from these submissions follows:

Legalising same-sex relationships will promote a lifestyle that is harmful to both the community and the individuals concerned. As a society we must not formulate, or permit to be formulated, legislation

¹ Submission No. 36, p. 3

promoting any lie, particularly the one in view here that homosexuality is a valid and normal lifestyle choice.²

Whilst the Committee respects the beliefs and values expressed by all contributors, the Committee recognises the tendency for such a debate to become polarised and has been mindful in its deliberations of the need for balance and a just outlook that reflects the values and aspirations of the broader community.

1.3 Background

In seeking legal recognition people in non-traditional personal relationships, such as those involving same sex couples or carer relationships, seek to address the negative imposts of the legal system when the law intervenes in their lives at times of crisis, such as the death of a partner or the breakdown of a relationship.

In cases involving intestacy, superannuation or statutory compensation claims, parties to non-recognised relationships have no legal standing and may find themselves competing with distant relatives and other legally recognised claimants to access ‘partnership assets’ that many would argue are rightfully theirs.

In a modern pluralist society which embraces the principle of equality before the law, discrimination against a section of the community on the basis of personal relationship choice is inequitable and must be reformed.

Traditionally legal recognition and protection has been given to significant personal relationships involving blood relations or marriage. The rights and obligations bestowed by various family law statutes have been developed to protect vulnerable parties to such relationships (usually women) who are seen as dependant on the other party (usually men). Maintenance and intestacy laws, statutory compensation schemes and succession laws evolved to provide financial support to a dependent spouse when the financial provider was unable to continue in that role.

² Submission No. 50

This traditional view of significant personal relationships fails to adequately reflect the reality of our society. It is now widely accepted that relationships such as heterosexual de facto relationships, same sex de facto relationships and non-couple significant relationships (such as those involving kinship, carers or companionship) have equal claim to legal protection.

The catch cry that is often heard, ... that lesbians and gay men are seeking 'special rights' has no foundation. It is simply a case of the law having failed to provide equal protection to which they are entitled by virtue of their essential humanity... The calls for law reform are to end the current harms caused by inequality and the refusal to acknowledge that gay men and lesbians have and do lead family lives that should not be denigrated by legal invisibility.³

In recent years many jurisdictions in Australia have enacted legislation which gives legal recognition to de facto relationships. This reform is a reflection of changing social attitudes and acknowledges that de facto relationships share the same interdependencies which exist between individuals in marital relationships.

Initially these reforms extended only to the recognition of de facto relationships between heterosexual couples. These relationships were seen as 'marriage-like' as they shared all the elements of traditional marriage apart from formal declaration of the relationship.

As society has become more accepting of non-traditional relationships reform has followed. Most recently the ACT, New South Wales, Queensland and Victoria have extended legal recognition to non-traditional personal relationships, including same sex couples and non-sexual domestic relationships involving friends or carers and their patients.

Where such legislation has been enacted the criteria used in defining who is eligible for protection under the law has of necessity moved away from definitions that equate

³Submission No.28, p. 15,16

significant personal relationships with traditional marriage. In New South Wales, for example, the 1984 *De Facto Relationships Act* gave legal recognition to:

A man and a woman living together as husband and wife on a bona fide domestic basis although not legally married.

When amended in 1999 the new Act, renamed the *Property (Relationships) Legislation Amendment Act*, provided a broader definition and gave recognition to:

A relationship between two adult persons, living together as a couple.

Associate Lecturer in Law, at the University of Tasmania, Ms Samantha Hardy, brought to the attention of the Committee the importance of the basis on which relationships are legally recognised, noting that under current Tasmania laws:

... different pieces of legislation [and] in different cases the way a relationship is categorised can be based on lots of different things: it can be based on blood – whether or not they are a blood relative – and that establishes a relationship that should be protected; it can be based on a sexual relationship – so a couple-like relationship; ... it can be based on dependence – whether or not that is emotional dependence or financial dependence; it can be based on cohabitation or it can be based on sharing of property or financial resources ... Quite clearly when you look at the legislation in Tasmania and the state of the law there is need for reform. The basis for this is that people are given different rights depending upon the relationship they are in and yet sometimes the criteria can be, as we have seen, quite arbitrary.

[One needs to determine] what are you trying to protect? Then look at the criteria on which people are entitled to that protection, so they are not entitled to protection [simply] because they are married or because

they are in a same sex marriage-like relationship or because they are financially interdependent.⁴

In Tasmania legal recognition of significant personal relationships has been extended to heterosexual de facto couples through the *De Facto Relationship Act 1999*. Under this statute the definition of a de facto relationship is limited to the relationship between a man and a woman who, although not legally married to each other, live together on a genuine domestic basis as husband and wife.

Finding

Whilst legal recognition of de facto relationships has been enacted in Tasmania the absence of sufficiently broad criteria for the recognition of other significant personal relationships means that parties involved in non-traditional relationships will continue to experience inequitable treatment before the law.

2. Need for Reform

The Committee received evidence from the Law Society of Tasmania, the Anti-Discrimination Commissioner, the Chief Justice of the Family Court of Australia, the Law Council of Australia, the Carers Association of Tasmania and others in support of broadening the *De Facto Relationship Act* definition to include same sex and close personal relationships.

The tenor of their argument is that legal recognition of such relationships does not create new categories of personal relationships or social structures. These relationships currently exist as part of our society and discriminating against those involved by denying them access to property or benefits that are rightfully theirs is a violation of human rights, contrary to the spirit of anti-discrimination legislation and unacceptable in a pluralist and tolerant society. Several witnesses made the point that the recognition sought by those in non-traditional relationships is not to gain special treatment but to be treated equally before the law and to be allowed to access assets over which they have rightful ownership.

Finding

⁴ Transcript, 15/8/01, p. 17

The denial of legal recognition of non-traditional relationships creates unjustifiable hardship and expense, as claims for entitlements that would automatically flow to married or heterosexual de facto partners have to be fought for in court with no certainty of outcome.

2.1 Areas of Discrimination Against Non-Recognised Relationships

Evidence before the Committee identified numerous areas in which non-traditional relationships are discriminated against.

- **Property Disputes** – In the absence of legal recognition property disputes between partners of non-traditional relationships can only be resolved through common law remedies. Such remedies are usually costly and do not provide a definite outcome. There is little protection for vulnerable partners without legal title to property. In contrast married couples and de facto relationships have specific legislation to protect their interests. The *Family Law Act 1975* sets out the entitlements of the parties and the matters which the court must take into consideration, including non-financial contributions to the marriage assets, the welfare of the family and their financial future.
- **Children** – The Committee heard evidence suggesting that 20 to 25 per cent of non-traditional relationships care for and have responsibility for at least one child. The failure to recognise the non-parent partner of the relationship as a co-parent may disadvantage the child. At present only the biological parent is recognised, therefore on the breakdown of the relationship the co-parent will not be liable to pay any child maintenance. A child in a non-traditional family may also be excluded from the estate of a co-parent as traditional kinship ties are given greater significance than the immediate family members of a non-traditional family.
- **Superannuation** – All working Australians are obliged to contribute to a superannuation fund. Some funds provide dividends in the form of a pension at retirement, and in the case of a member in a recognised relationship a joint pension may be payable. However the payment of joint pensions to non-traditional partners is at the discretion of the fund trustees. Superannuation funds also discriminate

against non-traditional relationships in the allocation of death benefits. Legally recognised dependants such as a spouse, de facto spouse or child will automatically receive such benefits. This is in sharp contrast to the surviving partner of a relationship which is not legally recognised, who has to prove dependency to be considered the beneficiary even if the contributor has nominated them as such. The trustees of the fund have the discretion to refuse payment to the partner, choosing instead to pay the benefit to the deceased's estate. This will impose a tax liability on the recipient which is not imposed on a spouse who receives a direct benefit.

- **Employment** – Discrimination against non-traditional relationships also occurs in respect to employment entitlements. These may be financial entitlements that accrue to employees with a legally recognised spouse in recognition of the impost of job pressures on the family. These may include a travel allowance for an accompanying spouse; removal costs that include a spousal allowance when an employee is transferred and optional benefits that may be part of a remuneration package such as family health benefits or school fees for children. Non-financial employment entitlements such as rostering practices that take account of family commitments and leave entitlements based on caring and parenting needs may also exclude non-traditional partners.
 - **Taxation** – The failure to recognise partners in non-traditional relationships as equivalent to spouses in traditional relationships can lead to discriminatory stamp duty imposts when transferring property which do not apply to married or heterosexual de facto partners. This also applies to property willed to a partner in a non-recognised relationship. Same sex relationships are not recognised for dependent spouse or housekeeper rebate.
 - **Intestacy and Maintenance** – Whilst not excluded from applying for benefit under intestacy and maintenance statutes, a partner of a non-traditional relationship must prove that a relationship of dependence has existed for a minimum of 3 years.
 - **Fatal Accidents and Workers Compensation Legislation** – These statutes also discriminate against non-traditional relationships causing partners who do not meet
-

the narrow definition of spouse to prove their claim of dependence through litigation.

- **Health** – A common complaint from people in same sex or other non-recognised relationships is that hospital policy and guardianship laws based on traditional family criteria restrict access to partners at times of medical emergencies and deny competent partners the right to make decisions for their incapacitated partner.

Finding

It is clear from this brief summary of discriminatory practices that Tasmanian law is deficient in dealing equitably with partners of non-recognised personal relationships. The Committee has concluded that such discrimination is not reconcilable with the precepts of the Anti-Discrimination Act and that reform is necessary to address this imbalance.

2.2 Ad Hoc Reform

Evidence before the Committee suggests that there is a growing community acceptance of non-traditional relationships and this is reflected in common law precedents, changing employment practices and other less formal ways. There has also been ad hoc recognition of non-traditional relationships in legislation.

The Tasmanian Gay and Lesbian Rights Group illustrated this point using the example of the *HIV/AIDS Preventative Measures Act 1993* which utilises a gender-neutral definition of ‘partner’ to mean a spouse or a person with whom another person is living in a domestic relationship. This Tasmanian Act, the Committee was informed, was the first statute in any Australian jurisdiction to recognise same sex relationships.

Another Tasmanian precedent in the recognition of same sex relationships noted by the Tasmanian Gay and Lesbian Rights Group involved the payment of compensation by the Tasmanian Government to victims of the 1996 Port Arthur massacre. A bereaved male partner of a man killed in the incident was awarded compensation on the same basis as the heterosexual partners of other victims.

Justice Kirby of the High Court of Australia, also noted some of the ad hoc reforms that have occurred through changes in the legal system and in public policy which he suggests will eventually lead to comprehensive reform. He notes that:

The changes are occurring bit by bit and piece by piece. This is what happened earlier with racial and gender discrimination. It is still happening in those fields. The end of unfair discrimination has not yet been achieved. Australia, like other countries, is on a journey of enlightenment. It has taken important steps; but many more remain to be taken. It seems likely that progress towards the removal of discrimination which cannot be rationally justified, will continue. As a people committed to equal justice for all under the law, I have confidence that the Australian legal system, and those who make the laws in Australia, will, in due course, eradicate unfair discrimination on the basis of sexuality.⁵

Justice Kirby illustrates this point with reference to a recent New South Wales Equal Opportunity Tribunal case involving a male couple with a child who had been denied the concessional family rate for health insurance. The tribunal found that the health fund member's partner was a dependant for the purposes of the eligibility rules of the health fund and that denial of the family rate had contravened the NSW *Anti-Discrimination Act 1977*. The Supreme Court later upheld this decision.

Justice Kirby also cites reforms to workplace practices such as those adopted by Federal government departments which include same sex partners in the official recognition of de facto relationships for the purpose of conditions of service and employment benefits.

A further example of reform is found in the changes to the regulations of the *Migration Act 1958* (Commonwealth) to allow for a proportion of Australia's annual migration program to include a category for people in 'inter-dependent' relationships. This

⁵ Document No 8, p. 9

permits migration to Australia of a person sponsored by his or her partner and includes same sex couples.

Ad hoc recognition of non-traditional relationships through litigation or workplace reforms is indicative of both the need for change and the inevitability of change.

In evidence before the Committee, the Tasmanian Anti-Discrimination Commissioner Dr Jocelyne Scutt made the point that:

It is absolutely necessary for this Parliament to address the question in distinctive legislation. ... [At present] there is a reliance on people bringing claims and complaints and therefore the individual has to bring themselves forward and say 'the law is discriminating against me' ... when this Parliament could speak and bring forward legislation that overcomes that.⁶

Finding

<p>The Committee believes that a need for reform has been demonstrated and that ad hoc measures, whilst welcomed in specific cases, are not the comprehensive solution required to provide equality and certainty for individuals in non-traditional relationships.</p>

2.3 Obligations Under International Law

A further argument for the legal recognition of significant personal relationships put to the Committee is that Australia has obligations under international law to enact legislation that provides equal protection to all significant personal relationships including non-traditional relationships such as same sex relationships.

In evidence given by Mr Wayne Morgan, Lecturer in International Law, ANU, the Committee was informed of a growing body of international law which recognises the rights of gay men and lesbians. Article 26 of the International Covenant on Civil and Political Rights sets forth this principle of equality and Australia, as a signatory to this

⁶ Transcript, 4/5/2000, p.4

convention, is in breach of this treaty by not providing the same sort of relationship rights to lesbians and gay men as it provides to heterosexual people.

In a paper presented at the University of London King's College School of Law, Conference on Legal Recognition of Same Sex Partnerships, the Hon. Justice Michael Kirby made the observation that because Australia has no bill of rights to guarantee personal freedom, reforms on human rights issues will come through State legislation or individual litigation.

He suggests that much of the impetus for such reform will come from standards set by international bodies such as the European Court of Human Rights and the United Nations Human Rights Committee. He illustrates this point with reference to the judgment in the *Toonen v Australia* case:

That decision found that the sodomy laws of Tasmania, the sole Australian State then to retain such laws, imposed an arbitrary interference with Mr Toonen's privacy in respect of his adult, consensual, private sexual relationship with his partner. Following a decision of the High Court of Australia in favour of Mr Toonen and his partner, the Tasmanian Parliament repealed the offending provisions of the *Criminal Code*.⁷

The Committee was also informed that international customary law obligates Australia to recognise the rights of same sex relationships. Customary law is the international equivalent of common law in a national context; as various states around the world extend recognition to non-traditional relationships a new standard of practice is established.

3. Current Legal Status of Relationships

The legal status of a personal relationship will determine the benefits that flow. The Committee was informed that there are as many as 120 separate Tasmanian Acts which recognise various types of significant relationships. The most common type of

⁷ Document No. 8 p. 3.

relationship covered is that of ‘spouse’ or ‘de facto spouse’ which is usually defined to include only married or heterosexual de facto relationships. Statutes dealing with intestacy or compensation will also recognise blood relations as significant and provide appropriate benefits. In most circumstances same sex relationships and non-marriage like relationships do not fit the recognition criteria and are therefore excluded. (See Appendix I, Table of Tasmanian statutes which discriminate against non-traditional relationships.)

3.1 Traditional Relationships – Marriage

Traditionally our society has recognised marriage as the pre-eminent personal relationship. Under the Australian Constitution regulation of marriage rests with the Commonwealth. The *Marriage Act 1961* and *Family Law Act 1975* are the main instruments for the regulation of marriage and the breakdown of marriage.

The *Marriage Act* sets out the requirements for a legal marriage ceremony and defines who is eligible to be married. In describing marriage as a union between a man and a woman the Act only permits the marriage of opposite sex couples.

The *Family Law Act 1975* provides a comprehensive regime for the resolution of property disputes and maintenance issues which may arise on the breakdown of a marriage. The Act empowers the Family Court of Australia to determine the division of property between spouses on a fair and equitable basis. This involves the apportionment of property and responsibility for debt to each party on the basis of financial and non-financial contributions to the marital assets. In making such determinations the court takes into consideration the future needs of a dependant spouse and the welfare of any children. This approach ensures that unpaid work such as childcare and housework is not devalued and that non-financial contributors have equal entitlement to the ‘partnership’ assets. The Act also provides for mediation and counselling to help disputing parties to resolve their differences.

3.2 Non-Traditional Relationships

In our modern pluralist society the traditional family is but one of many different family types, all sharing similar values and confronting the same difficulties as traditional families. Non-traditional families may consist of couples that choose to live

in ‘marriage like’ relationships without being married or may involve individuals in non-sexual relationships who share their lives in a mutually supportive relationship involving emotional and economic interdependence. In Tasmania the law does not recognise such partnerships so those involved do not have access to legal protection at difficult times in their lives.

Jenni Millbank, Lecturer in Law, University of Sydney notes that:

Laws about families exercise an enormous influence over us at times of greatest crisis in our lives (such as death and relationship break-up) and that influence is most felt by those whom the law excludes.⁸

3.3 De Facto Relationships

Prior to December 1999 marriage was the only significant personal relationship to be legally recognised in Tasmania. The introduction of the *De Facto Relationship Act 1999* brought Tasmanian law in line with mainland jurisdictions in recognising that an increasing number of people are choosing to live in non-traditional family structures and that the denial of equitable treatment before the law was no longer tenable.

In introducing the *De Facto Relationship Bill* to Parliament the Attorney-General noted that:

The current law is deficient and capable of inflicting unjustifiable hardship and injustice ... The current law treats persons in a de facto relationship as second-class citizens, denying them just resolution of their disputes. This bill will give those persons access to a comprehensive and modern system of resolving disputes which will enable them to survive the breakdown of relationships with as much dignity and justice as possible and will contribute to the future wellbeing of them and their children.⁹

⁸ Document 21, p. 61

⁹ Document No. 28 p.1

The *De Facto Relationship Act 1999* recognises the existence of a significant personal relationship between a man and a woman when they have lived together in a de facto relationship for 2 years.

In recognising the relationship of de facto couples this Act provides for the resolution of property disputes in a manner similar to that available to legally married couples under the *Family Law Act*. In making a determination on the division of property a court must take into consideration more than the financial contributions each party has made towards partnership assets. The court may vary or adjust property entitlements to produce an equitable division of partnership assets which reflects the circumstances of the relationship and takes into account both the financial and non-financial contributions of the partners.

These provisions give de facto couples in Tasmania essentially the same legal protection available to married couples. Furthermore de facto couples have the choice of marriage if they want full equivalence with their married counterparts.

3.4 Same Sex Relationships

Same sex couples cannot marry and the definitions of ‘de facto partner’ or ‘spouse’ in relevant statutes governing relationship rights in Tasmania do not include same sex relationships, thus same sex relationships are denied any legal recognition.

In his submission the Hon. Alastair Nicholson, Chief Justice of the Family Court of Australia, suggests that:

...the real effect of refusing to acknowledge and provide protections to same-sex relationships ... smacks of society punishing otherwise law-abiding members for sexual orientation that is, in and of itself, lawful.¹⁰

The recognition of significant personal relationships is not a matter of extending rights and obligations to sections of the community that meet certain criteria, it is a necessary

¹⁰ Submission No. 28 p. 15

consequence of acknowledging the equality of all personal relationships. Justice Nicholson further suggests that:

Without the recognition of all family relationships, equality - the cornerstone of democratic society – is missing; and a public acknowledgment of private affections, commitments, interdependencies and identities is denied. ...

Denying someone the right to be known as a committed partner to a relationship, simply on the basis of gender, is no different from apartheid.¹¹

Finding

The Committee believes that legal recognition of non-traditional significant personal relationships will bring relief to individuals suffering hardship and discrimination under current provisions.

3.5 Non-couple Significant Relationships

Like same sex couples those in non-marriage like relationships are disadvantaged in areas of property rights, intestacy and other entitlements. These relationships which may include carer and companion relationships have been recognised in the ACT, NSW and Victoria. However they do not receive the full range of rights afforded to non-traditional relationships based on sexual association.

The lack of recognition under Tasmanian law for non-couple significant relationships stems from the narrowly defined eligibility criteria for benefits and entitlements which centre on blood ties or marriage relationships. In evidence before the Committee the Anti-Discrimination Commissioner questioned the differential treatment of non-couple relationships and stated that:

It seems to me that if you have two elderly people ... living together for a great length of time in companionship ... who have supported

¹¹ Submission No. 28 p. 13

and been reliant upon each other they have no doubt made contributions to the property that has been accumulated in the course of the relationship. Even if they have separate bank accounts, the very fact that people are living together means that very often they are contributing, whether it is in psychologically-supportive ways or monetary ways or in non-monetary ways, to whatever property is accumulated. It seems, to me at least, wrong that simply because they cannot bring themselves within the term de facto relationship or within the term same sex relationship based on a sexual relationship as well as a companionate relationship ... their rights to property or other appurtenances of that sort of relationship are ignored.¹²

The Committee recognises that there is need for reform for the recognition of significant relationships other than same sex relationships.

4. Main Areas of Concern

4.1 Division of property

Evidence presented to the Committee suggests one of the most pressing needs for reform stems from the lack of a mechanism to provide a just and equitable settlement of property disputes between parties of non-recognised relationships.

Upon the breakdown of a relationship same sex couples and couples in other non-recognised relationships do not have legal standing to utilise the family law statutes that provide protection to married and de facto couples. Non-traditional couples are limited to the use of common law remedies which do not take into account the intimate nature of the relationship and treat the individuals concerned as strangers.

The Victorian Equal Opportunity Commission inquiry into same sex relationships and the law found that:

Property may be held by partners either as ‘tenants in common’ or as ‘joint tenants’. In the former case partners have specific shares in the

¹² Transcript 4/5/2000 p. 6

land. If the relationship ends each has a defined interest. On either person's death, their share remains part of the estate and is dealt with pursuant to the terms of the will. In the case of intestacy (person dying without leaving a will) property passes to the 'next of kin' who may not be the partner. If property is held by two people as joint tenants and one dies, the survivor is automatically entitled to the whole property (the property does not pass pursuant to inheritance law).¹³

This exposes those in unrecognised relationships to serious financial loss and, due to the vagaries of common law remedies, costly and protracted litigation that may not produce a satisfactory outcome.

In introducing reform legislation into the Queensland Parliament for the recognition of de facto and same sex relationships the Attorney-General recognised the inequity in the use of common law to resolve relationship issues, noting that:

Relief must be sought under the law of contracts or trust doctrines of unjust enrichment or unconscionable conduct, equitable lien estoppel or other obscure legal remedies. This causes injustice to the person whose title equity would be recognised if given the opportunity. There is no predictable outcome and lawyers complain of difficulty advising clients, which results in a tendency to plead a case under every conceivable head of relief [leading to] longer court hearings and greater costs ... Consequent uncertainty [leads] many parties to forgo pursuing just claims.¹⁴

In Tasmania determinations on the property rights of recognised relationships are provided for under the provisions of the *Family Law Act 1975* in the case of married couples and the *De Facto Relationship Act 1999* where de facto couples are concerned. The *Family Law Act 1975* gives the Court a broad jurisdiction to determine what is just and equitable. The Court can make orders as it considers appropriate altering the interests of the parties in the property to take account of direct and indirect financial

¹³ Document No.5b. p. 16

¹⁴ Document No. 27 p. 2

contributions and non-financial contributions including contributions made in the capacity of homemaker or parent. De facto couples are protected by similar provisions and also have the option of entering into cohabitation and separation agreements which will be upheld by the Court.

4.2 Stamp Duty

The Tasmanian *Duties Act 2001* provides that no duty is payable on the transfer of property between married couples in relation to the marital home. As well no duty is payable on the transfer of property between spouses as a result of marriage breakdown under the direction of the *Family Law Act 1975* or an order of a court under the Act. Similar provision is made which exempts de facto partners from payment of duty when partnership property is transferred to either of them or to a child of the de facto partners. In the case of relationship breakdown, property transferred in accordance with an order made under the *De Facto Relationship Act* is also exempt from duty. Same sex and non-couple relationships are not recognised under the definitions which apply and are therefore excluded from these benefits.

4.3 Superannuation

Superannuation has become a compulsory savings scheme for Australian workers to ensure their financial security in retirement. Although same sex couples contribute to superannuation schemes in the same way as their heterosexual counterparts, same sex couples are discriminated against in the allocation of death benefits and other entitlements.

When same sex partners plan their financial future they cannot be sure that their superannuation entitlements will be paid to their nominated beneficiary, as is the case for married or de facto relationships. This differential treatment stems from the narrow definitions of 'spouse' and 'dependant' in governing legislation which does not recognise same sex and other non-traditional relationships.

The Tasmanian Gay and Lesbian Rights Group highlighted the discrimination faced by gay and lesbian people in respect to superannuation benefits on the death or retirement of a contributor who is party to a same sex relationship:

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- At retirement there is a refusal to pay joint pension to the lesbian or gay contributor and his or her same sex partner, whereas joint pension is paid in respect to heterosexual spouses.
 - At retirement there is a refusal to pay lump sum amount in respect of a same sex partner, whereas such payment is made in respect of a heterosexual partner.
 - Upon death of the contributor there is a refusal to pay death benefit to a same sex partner, either by way of reversionary pension or lump sum benefit, whereas such payment is made to a heterosexual partner.
 - Upon death of the contributor there is a failure to investigate or acknowledge the claim to dependency of a child of a lesbian or gay relationship, where the contributor is not the biological parent of the child.
 - Upon death of the contributor death benefits are paid to the contributor's estate rather than to the same sex partner as dependant or spouse.¹⁵

The superannuation industry is regulated by the Commonwealth through legislation enacted under its old age pension and corporate powers. The *Superannuation Industry (Supervision) Act 1993* (SIS Act) is the Commonwealth's main instrument for ensuring prudential management of the industry. Private sector regulated funds must comply with the provisions of the SIS Act. Non-compliance has serious tax implications for all members of the fund as investment earnings on non-complying funds incur the highest marginal tax rate.

Although public sector schemes are exempt from compliance with the SIS Act due to prudential management provisions in their own establishing Acts, they are generally deemed to be complying schemes as compliance with SIS Act provisions is necessary for a fund to qualify for concessional tax treatment and for access to superannuation guarantee funds.

¹⁵ Submission No. 34 p. 5

Section 62 of *Superannuation Industry (Supervision) Act 1993* requires the trustees to maintain the fund solely for one or more of a number of listed purposes. These include:

the provision of benefits in respect of each member of the fund on or after the member's death, if ... the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or both.

Section 10(1) of the SIS Act defines 'dependant' as:

'dependant,' in relation to any person, includes the spouse and child of the person.

Spouse is defined as:

'spouse', in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.

The use of 'husband' and 'wife' in the definition gives spouse a gender specific meaning which includes heterosexual de facto relationships but excludes same sex couples from automatically qualifying as dependants.

Consequently a surviving partner of a same sex couple would have to establish financial dependence at the time of their partner's death to qualify for their partner's superannuation death benefit, even if they are named as beneficiary.

In evidence before the Committee Ms Lynne Fitzgerald, Secretary, Tasmanian Trades and Labor Council noted that:

If a member has made a nomination the trustees must take that into account but we are not bound by that nomination if the trust deed gives us some discretion. In fact it would be a breach of trust to automatically follow a member's nomination. If we do follow the member's nomination the trustee must ensure that each person nominated falls

within the description of the kind of person to whom trustees are empowered to make payments under the trust deed.¹⁶

Evidence given to the Senate Select Committee on the Provisions of the Superannuation (Entitlements of Same Sex Couples) Bill 2000 suggests that some funds do recognise dependency between same sex couples and benefits are being paid to nominated beneficiaries.

Generally if two persons regardless of sex are cohabiting at least partial financial dependency can be established and a benefit paid. This financial dependence must be established to the trustee's satisfaction. In AMP Superannuation Limited's experience this has been able to be achieved in all cases where they have been aware that there has been a same sex relationship.¹⁷

In Tasmania public sector superannuation funds are established under the following statutes:

- *Governor of Tasmania Act 1982*
- *Judges' Contributory Pensions Act 1968*
- *Parliamentary Retiring Benefits Act 1985*
- *Parliamentary Superannuation Act 1973*
- *Parliamentary Salaries, Superannuation and Allowances Act 1973*
- *Retirement Benefits Act 1993, and*
- *Solicitor-General Act 1983*

These schemes generally provide payment of benefit upon the death of a fund member to either the member's personal legal representative or a spouse. The definition of

¹⁶ Transcript, 16/6/00 p. 2

¹⁷ Document No. 20 p. 14

spouse includes de facto spouse. As in the case of the Commonwealth SIS Act however Tasmanian public sector superannuation schemes limit the definition of de facto spouse to heterosexual relationships.

Despite these discriminatory practices a same sex partner may receive a superannuation death benefit if the fund trustee determines that there are no dependants and pays the benefit to the estate of the deceased. If the same sex partner is named in the will and the will is not contested then the benefit would flow to the partner. This approach however attracts a tax liability that does not occur when death benefits are paid directly to the recognised partner.

Finding

<p>The denial of equitable treatment to same sex couples in respect to superannuation benefits is a concern voiced in the findings of numerous inquiries which have recommended reform to the provisions of the SIS Act to overcome this discrimination.</p>

To date no reform has been enacted although several attempts have been made through the introduction of private member's Bills in the Federal Parliament. Mr A. Albanese MP has on several occasions introduced the *Superannuation (Entitlements of Same Sex Couples) Bill*, which seeks to amend the SIS Act to define de facto relationships as 'couples that live together on a genuine domestic basis, regardless of their sexuality'. This would capture same sex partners in the definition of dependant and would provide automatic recognition as a beneficiary.

University of Tasmania, Law School, Associate Lecturer, Ms Lisa Butler, advised the Committee that:

Although the State has constitutional capacity to legislate in respect to superannuation ... the State entered into a Heads of Government Agreement with the Commonwealth in 1996...[which confirms the exempt status of State public schemes, but requires that]... the exempted schemes will conform to the principles of the Commonwealth's retirement incomes policy ... Should the State breach one of its

undertakings, pursuant to the Agreement, the Commonwealth could revoke the exemption status. The consequences that follow such a revocation are twofold. First, the compulsory employer contributions required to be made by the *Superannuation Guarantee (Administration) Act 1992* (Cth) could no longer be made to the Tasmanian superannuation schemes established pursuant to the relevant Acts. Secondly, those schemes would lose the concessional taxation treatment granted by the *Income Tax Assessment Act 1939* (Cth) in respect of their income.¹⁸

Ms Butler further advises that if reform is to be enacted consultation with the Commonwealth is necessary to avoid penalising the members of public sector funds.

To undertake reform ... for the division of superannuation entitlements without Commonwealth support exposes the State public sector superannuation schemes to serious financial consequences ... the advice and agreement of the Commonwealth must be sought to avoid these consequences.¹⁹

The New South Wales Parliament recently passed the *Superannuation Legislation Amendment (Same Sex Partners) Act 2000* which amends public sector superannuation legislation to give same sex partners equal recognition as dependant with traditional relationships in respect to superannuation benefits. The Commonwealth was consulted and did not object to these measures.

The Committee would advise that similar consultation be undertaken in respect to the Tasmanian public sector superannuation schemes to ameliorate at least some of the discrimination faced by those in non-traditional relationships in Tasmania.

4.4 Employment Entitlements

It is increasingly common for employees to receive remuneration in the form of employment packages that include a base salary and additional benefits. These benefits are usually provided in recognition of the impost of work pressures on the families.

¹⁸ Submission No. 157 p.16

¹⁹ Submission No. 157 p.17

Benefits to employees may include travel allowance which includes expenses for an accompanying spouse on work related-travel, removal costs which take into account the spouse of an employee upon transfer, health insurance or the payment of school fees for dependant children. Employees with same sex partners and others whose family circumstances are not recognised in law are discriminated against in the provision of such benefits and therefore receive a lesser reward for the same work as their colleagues. Other general workplace entitlements such as carers leave, bereavement leave and parenting leave may be provided to employees in certain circumstance involving family members. The criteria used to define eligibility however usually rest on traditional definitions of 'family' and ignore same sex and other personal relationships.

The *Anti-Discrimination Act 1998* amongst other things prohibits discrimination against individuals on the grounds of marital status, sexual orientation, lawful sexual activity and family responsibilities. These provisions however do not assist parties in same sex or other non-traditional family types to access family entitlements from employers, as the Act defines 'spouse' and 'de facto spouse' in terms of partners of opposite sex and 'immediate family member' as:

- (a) a spouse of the person; and
- (b) an adult offspring, a child, parent, grandparent, grandchild, or sibling of the person or of a spouse of the person ...

As with other Tasmanian relationship legislation the *Anti-Discrimination Act* fails to provide equal protection to all families in our community.

The Committee heard evidence that, despite a lack of formal recognition, industrial awards and workplace policies were increasingly sensitive to the needs of same sex and other personal relationships.

State Service employees, for instance, are covered by the provisions of the *State Service Act 2000* which provides guiding principles for conditions of employment which include the following:

-
- The State Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the community it serves.
 - The State Service provides a fair, flexible, safe and rewarding workplace; and
 - The State Service promotes equality in employment.²⁰

The State Service Commissioner, Mr Greg Vines, assured the Committee that the principles enunciated in the Act allow the widest possible interpretation and thus the broadest application. On this basis it was argued most circumstances could be catered for, including same sex relationships.

Firstly, leave on account of special circumstances is a general provision for leave that is a discretionary leave that heads of agency are able to give to employees for a range of special circumstances, going to such things as serious illness of a relative of the employee, other pressing necessity relating to the employee, or to enable the employee to participate in a sporting or cultural event at a national or international level.

The State Service regulations define 'relative' in relation to an employee and that definition includes the husband or wife of an employee. But also ... includes a person with whom the employee has cohabited for substantially the whole of the period of 12 months immediately preceding that person's illness or death. ... That meaning quite clearly includes de facto relationships and whilst it isn't explicitly stated it would also be taken to include same sex couples.

As far as bereavement leave goes, there is a similar provision for bereavement that again the head of agency has discretion to grant ... Similarly with carers' leave ... an employee may apply for leave to

²⁰ Document No. 156 p. 3

enable the employee to care for an ill person who is a member of the employee's immediate family or household.²¹

Whilst in practical terms these provisions seem to meet the needs of all State Service employees it was brought to the attention of the Committee that these provisions remain discriminatory and problematic. In their submission University of Tasmania academics, Hardy, Middleton and Butler, noted that:

It seems rather strange that, if the person who is seriously ill does not fit within one of the categories of 'traditional' family members, the criteria on which the status of relative is granted is that of cohabitation. It seems more appropriate that the status be based on criteria more relevant to the benefit being granted, such as a close emotional relationship. It is also noted that people who fit within the specified relationship do not have to show the additional criteria of cohabitation, which is discriminatory ... the discretionary basis of the grant of leave and the fact that other types of significant personal relationships are not specifically listed does leave this somewhat less than certain.²²

It is evident that even with the best intentions employees who are in non-recognised relationships will continue to face discrimination in relation to employee entitlements. Without legal recognition an employee who is party to a non-traditional relationship has no ability to enforce his or her rights and receive the same treatment as other employees.

4.5 Succession and Intestacy

Family Provision

Under current Tasmanian legislative provisions the *Testator's Family Maintenance Act 1912* gives an avenue of redress for recognised dependants who have not been adequately provided for by a person who dies intestate or a deceased person who has

²¹ Transcript 15/8/2001 p. 10

²² Submission No.157 p. 24

not made adequate provision in their will. When making a claim for maintenance against the estate of a deceased person, section 3 of the Act provides that:

- (1) If a person dies, whether testate or intestate, and in terms of his will or as a result of his intestacy any person by whom or on whose behalf application for provision out of his estate may be made under this Act is left without adequate provision for his proper maintenance and support thereafter, the Court or a judge may, in its or his discretion, on application made by or on behalf of the last-mentioned person, order that such provision as the Court or judge, having regard to all the circumstances of the case, thinks proper shall be made out of the estate of the deceased person for all or any of the persons by whom or on whose behalf such an application may be made, and may make such other order in the matter, including an order as to costs, as the Court or judge thinks fit.

Whilst this provision seems to allow for liberal interpretations by the judiciary of deserving cases it is important to note that the court cannot go beyond the actual scope of the legislation. Under section 3A the Act provides a list of eligible claimants:

- (a) The widow of the deceased person;
- (b) The children of the deceased person;
- (c) The parents of the deceased person, if the deceased person dies without leaving a widow or any children;
- (d) A person whose marriage to the deceased person has been dissolved or annulled and who at the date of the death of the deceased person was receiving or entitled to receive maintenance from the deceased person whether pursuant to an order of a court, or to an agreement or otherwise; and
- (e) A person who was a de facto spouse of the deceased person at the date of the deceased person's death.

Under section 2, a de facto spouse is defined as a person:

- (a) who cohabited with another person of the opposite sex as the spouse of that other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and
-

-
- (b) who was principally dependent on that other person for financial support at the time of the death of that other person ...

The narrow definition of de facto spouse under this Act excludes same sex partners as eligible claimants.

Intestacy

When a person dies without leaving a will the person is said to have died intestate. Under Tasmanian law distribution of an intestate's property is determined by the provisions of the *Administration and Probate Act 1935*. As in the case of the *Testator's Family Maintenance Act* this act only recognises married and de facto relationships of opposite sex:

"de facto relationship" means the relationship between a man and a woman who, although not legally married to each other, live together as husband and wife on a genuine domestic basis;

"de facto wife" means a woman who, at the time of death of a man –

- (a) was the sole partner in a de facto relationship with the man; and
- (b) was not a partner in any other de facto relationship;

"husband" includes a de facto husband;

"wife" includes a de facto wife.

The gender-specific definition of de facto relationships excludes same sex partners from being recognised under this legislation.

4.6 Rights of Next of Kin

The Committee received numerous submissions expressing concern over the limitations imposed upon same sex partners in making decisions for their partner in situations involving sickness or death. A number of submissions also indicated that hospital visitation rights were denied to same sex partners. When a patient is considered to be in a serious condition, hospital policy usually allows only 'close family' to attend. This is usually determined on the basis of blood relations.

The Tasmania Gay and Lesbian Rights Group provided the Committee with the following case study to illustrate this point:

In June 1998 the female partner of Alice Johnson (not her real name) had a stroke at work and was rushed to a private hospital in the north of the state. When Alice went to see her incapacitated partner she was told by the hospital administration that she could not see her and could have no say over her treatment. The directive had been issued by the biological family of Alice's partner. This was despite the fact that Alice and her partner had been together for 25 years, and the partner's biological family had refused to have any contact with Alice's partner in all that time.²³

Whilst the Committee was informed that such practices are not based on legislation but rather are a matter of hospital policy, it is apparent that the criteria of blood and marriage ties are not always appropriate in identifying 'close family'.

To avoid the circumstances described in the case study, enduring powers of attorney, advanced medical directives or enduring guardianships can be prepared by individuals in advance of any incapacity so that they can direct who shall control their legal, medical and financial affairs. As with wills however, not everyone has the foresight or the inclination to prepare such documents and the right to equal treatment should not be contingent upon such preparations.

In circumstances where a patient is incapacitated and no advance directive exists medical practitioners may not administer any treatment other than emergency lifesaving measures without consent. In such circumstances consent may be given by a 'person responsible' in accordance with the provisions of the *Guardianship and Administration Act 1995*. The Act provides a list of persons who may assume the role of 'person responsible' in order of priority and such a person may give consent to the

²³ Submission No. 34 p. 9

carrying out of medical treatment if he or she is satisfied that it is in the best interest of the incapacitated patient. The term 'person responsible' is defined as:

- (a) where the other person is under 18 years and has a spouse, the spouse; or
- (b) where the other person is under 18 years and has no spouse, his or her parents; or
- (c) where the other person is of or over the age of 18 years, one of the following persons in order of priority:
 - (i) his or her guardian;
 - (ii) his or her spouse;
 - (iii) the person having the care of the other person ;
 - (iv) a close friend or relative of the other person.

Whilst same sex and other non-traditional partners are not entirely excluded from this regime as they may qualify as carer or close friend, the lack of recognition of their significant relationship means that they are lower in order of priority than blood relatives and therefore will have less influence in decisions made about their partner. Similar limitations apply in relation to decision making on behalf of a deceased partner in matters concerning organ donation and autopsies. Same sex partners or partners of other non-recognised relationships have limited input to such decisions as traditionally legislation dealing with such matters requires the senior next of kin to make such decisions.

4.5 Statutory Compensation Schemes

Statutory compensation schemes generally represent the community's interest in protecting families and dependants. In Tasmania the *Fatal Accidents Act 1934*, the *Workers Rehabilitation and Compensation Act 1988* and the *Motor Accidents (Liability and Compensation) Act 1973* provide compensation to the dependants of persons who are killed or injured in their workplace or by other misadventure. Generally these acts recognise traditional family relationships and heterosexual de facto relationships with limited scope for non-traditional family members to make claims for compensation.

Fatal Accidents Act

The *Fatal Accidents Act 1934* provides for compensation for the ‘members of the family’ whenever the death of a person is caused by wrongful act, neglect or default. The Act defines ‘member of the family’ as:

- (a) spouse, de facto spouse, parent, stepparent, grandparent, child, stepchild or grandchild; or
- (b) brother, sister, half-brother or half-sister.

‘De facto spouse’ is defined in the Act as a person:

- (a) who cohabited with another person of the opposite sex as the spouse of that other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and
- (b) who was principally dependent on that other person for financial support at the time when a wrongful act, neglect or default occurred in respect of that other person.

The use of the term ‘opposite sex’ in the definition of de facto spouse restricts the ability of same sex partners to make claims for compensation under this legislation. Similarly the emphasis on financial dependency on the deceased also limits the scope for non-traditional partners to access entitlements.

Workers Compensation Act

The *Workers’ Rehabilitation and Compensation Act 1988* provides compensation and rehabilitation for people injured in the workplace and compensation for the members of the family and dependents of people killed in workplace accidents. The Act defines ‘dependants’ as such members of the family of the worker in relation to whom the term is used as -

- (a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death; or
- (b) would have been so dependent but for the incapacity due to the injury.

‘Member of the family’, in relation to a worker, is defined as:

-
- (a) the wife or husband, de facto spouse, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker; or
 - (b) a person to whom the worker stood in *loco parentis*.

As in the previous Act the narrow definition of family members and the emphasis on financial dependency limit the access people in same sex or other types of significant relationships from receiving compensation under this Act.

Motor Accidents (Liabilities and Compensation) Act

Motor Accidents (Liabilities and Compensation) Act 1973 makes provision for the payment of compensation to the family and dependants of persons injured or killed in motor vehicle accidents. Under Schedule 1 of the *Motor Accidents (Liabilities and Compensation) Regulations 2000* a list of ‘persons to whom death benefits are payable’ is provided.

Although de facto relationships are included, the definition of de facto spouse is restricted to mean a person who -

- (a) has cohabited with another person of the opposite sex as the spouse of that other person although not legally married to that other person for at least 3 years immediately before the time of an accident; and
- (b) at the time of the accident, was wholly, mainly or partly dependent on that other person for financial support.

Given that partners of same sex relationships and other significant personal relationships are equally exposed to the dangers of motor accidents as those in traditional relationships the denial of access to compensation for non-traditional relationships is clearly inequitable.

5. OPTIONS FOR REFORM

5.1 Approaches in Other Jurisdictions

Australian Capital Territory

The Australian Capital Territory was the first jurisdiction in Australia to introduce legislation that recognises both same sex and opposite sex de facto relationships. The *Domestic Relationships Act 1994* replaces the concept of de facto relationship with 'domestic relationship' which is defined as a personal relationship (other than a legal marriage) between two adults, in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other and includes a de facto marriage. This broad definition, based on financial and emotional interdependence, also extends recognition to non-marriage like relationships such as carer relationships and does not require cohabitation as a prerequisite.

On breakdown of the relationship a person who has been in a domestic relationship for 2 years and has spent at least a third of the period of the relationship resident in the ACT may apply to the court for property rights based on the applicant's contribution to that property. Maintenance orders may also be applied for.

New South Wales

The *Property (Relationships) Legislation Amendment Act 1999* recognises de facto relationships in gender-neutral terms and non-couple relationships under the umbrella term of 'domestic relationship'.

'De facto relationship' has been redefined to mean a relationship where two people live together as a couple and are not married to one another or related by family. This would include both heterosexual and homosexual relationships. A category of 'close personal relationship' is established which recognises partners who live together and one or each of the partners provides the other with domestic support and personal care, usually of a frequent and ongoing nature. An example would be a daughter or son caring for an aged parent in his or her own home.

To protect the welfare of children if a domestic relationship breaks down, the definition of child has been extended to include a child for whose long term welfare both parties have parental responsibility.

Parties must have been in the relationship for a period of two years or there must be a child of the relationship, or other special circumstances before parties are entitled to

seek redress from the courts for a division of property or maintenance in certain circumstances.

Queensland

The *Property Law Amendment Act 1999* applies to de facto couples of the same or opposite sex. A de facto spouse is defined as either one of two persons, whether of the same or opposite sex, who are living or have lived together as a couple. Two persons are a couple if they have lived together on a genuine domestic basis in a relationship based on intimacy, trust and personal commitment to each other.

Requirements to be met before applying for a property adjustment order include: cohabitation for at least two years; or there is a child under 18 years of age; or the applicant has made substantial contributions to the property or financial resources, or the welfare of the family. The Act also makes provisions relating to contributions to property or financial resources or family welfare which substantially correspond with the provisions of the Commonwealth *Family Law Act 1975*.

Victoria

The *Statute Law Amendment (Relationships) Act 2001* defines the term 'domestic partner' in two ways. In the principal definition a 'domestic partner' is a person with whom a person is living as a couple on a genuine domestic basis irrespective of gender. Cohabitation is assumed, but this can be interpreted reasonably. As well a broad definition of 'domestic partner' recognises relationships where people may not live together but are mutually committed to an intimate personal relationship and shared life as a couple. This definition applies specifically to health-related legislation and consumer and business legislation.

The act amends over 40 acts covering property-related benefits, compensation schemes, superannuation schemes, health-related legislation, criminal law legislation, and consumer and business legislation. The Equal Opportunity Act is also amended to prohibit discrimination on the basis of same sex relationships.

5.2 Extending Marriage to Same Sex Couples

The Netherlands has recently become the first jurisdiction in the world to allow the marriage of same sex couples with equivalent rights to those of traditional marriages.

The Committee acknowledges the importance of marriage in our society and recognises the traditional and religious associations which give this relationship its pre-eminence. The Committee would not want to see any change to the institution of marriage or the rights and privileges it enjoys.

The use of marriage as a vehicle for extending legal recognition to non-traditional relationships has limited utility as it would only apply to same sex relationships and non-couple significant relationships would not benefit.

Furthermore the Committee was informed by the Tasmanian Gay and Lesbian Rights Group that:

There is much less interest in issues like ... ceremonies or marriage [in the gay community]... there is much more profound concern when it comes to the day to day issues... of personal finances, health, issues relating to death and accidents, maintenance of children, guardianship and those kinds of things.²⁴

Finding

The Committee does not consider marriage as a suitable mechanism for extending legal recognition to non-traditional significant personal relationships. Furthermore the Tasmanian Parliament has no authority to legislate in this area as under the Constitution the power to regulate marriage rests with the Commonwealth.

5.3 De Facto Recognition Model

The terms of reference ask the Committee to consider the option of including same-sex couples in the *De Facto Relationship Act 1999*.

²⁴ Transcript, 26/7/01 p. 19

This option would have the benefit of utilising an existing and tested model which would provide equal treatment with unmarried heterosexual relationships and cannot be seen as a challenge to traditional marriage. Whilst the term 'de facto' may seem incongruous when used in respect to non-couple relationships, the presumptive model of recognition can be utilised to recognise relationships which are not 'marriage-like'. De facto recognition provides automatic recognition to the relationship when nominated criteria are satisfied, such as a period of cohabitation.

A criticism of this option is that it can be both over- and under-inclusive. Individuals that may have deliberately chosen not to formalise their relationship may find that by simply cohabiting for a specified period they attract certain rights and responsibilities. It is also argued that presumptive recognition can be under-inclusive, as many non-traditional relationships do not necessarily involve cohabitation. This is especially so in the case of carer relationships, which may involve a high degree of interdependence but do not necessarily involve cohabitation.

To some extent the criticism that de facto recognition may be over-inclusive has been taken into account in the provisions of the Tasmanian *De Facto Relationship Act* which allows for cohabitation and separation agreements. Thus, whilst the Act may provide a safety net with benefits and responsibilities similar to those accruing to married couples, de facto partners may determine their own terms for cohabitation and separation and under section 38 the court cannot make an order which is inconsistent with the terms of a valid agreement.

The option of de facto recognition received some criticism in evidence presented to the Committee. The Anti-Discrimination Commissioner noted that:

It would be a pity if Parliament simply takes the approach of extending de facto relationships legislation over to same sex relationships. ... What is important is to look at the fact that a significant relationship exists ... Their rights should not be bound by whether they are prepared to come forward and say, 'we have lived in a particular sexual relationship'. They should be able to come forward and say, 'we have had a

significant relationship ... and therefore we see ourselves as entitled to make use of the law'.²⁵

This view was also echoed by the spokesperson for the Tasmanian Gay and Lesbian Rights Group:

There was very little support for simply extending existing de facto relationships laws to include same sex couples ... Just because one is gay or lesbian does not necessarily mean one is in a sexual or domestic relationship ... people feel that they need to be able to identify their relationship, not necessarily as same sex relationship, but simply as a relationship.²⁶

This issue may be addressed by following the example of other jurisdictions that have adopted umbrella terms such as 'domestic relationship' which can include all types of cohabiting relationships without the use of sexual labelling.

Finding

The Committee concluded that de facto recognition has the potential to protect the economically weaker partner in a relationship who would share in the partnership assets on the breakdown of the relationship even when they did not hold legal title to such property.

5.4 Registration Model

Registration of significant personal relationships is a voluntary system that gives recognition to a relationship through a certificate of registration to which certain rights and responsibilities are attached.

A positive aspect of registered relationship recognition is that it is up to the individuals involved to determine the status of their relationship, rather than having the law

²⁵ Transcript, 4/5/00 p. 4

²⁶ Transcript, 4/5/00 p. 2

presume its significance based on arbitrary criteria such as 2 years of cohabitation. Under a registration model there are no specific criteria to be satisfied in order to establish a significant relationship. A registered relationship does not have to be a sexual relationship, nor do the partners need to cohabit. A registered relationship may involve same sex couples, heterosexual couples or non-couple relationships. It may even be possible for individuals to have more than one registered significant relationship each based on different criteria. Unlike de facto or presumptive recognition for registered relationships, legal consequences flow simply by choosing to nominate a particular relationship as significant.

A disadvantage of a registered relationship system is that it may create difficulties for those who do not register their relationships. Some individuals would not want to register their relationship due to privacy concerns and may find when they try to assert their claims for equal treatment they are rejected as their relationship is not considered as significant as a registered relationship.

Finding

The Committee found that the registration model provides a straightforward way for people to prove their relationship without the need for incidental evidence such as joint bank accounts and mortgages.

5.5 Significant Relationships Bill (No.2) 1998

The *Significant Relationships Bill (No.2) 1998* was a private member's Bill introduced into the Tasmanian Parliament on several occasions by the Tasmanian Greens, and referred to the House of Assembly Community Development Committee to be considered as an option for reform in the recognition of significant personal relationships.

The Bill provides for the legal recognition of two kinds of relationship:

- (a) A 'recognised relationship', where two people register their relationship in a way similar to marriage: and
- (b) A 'domestic relationship', which involves two people who may or may not live together, but share their lives together.

The Bill provides that both ‘recognised’ and ‘domestic relationships’ irrespective of the sex of the partners be granted the same rights and obligations as de facto relationships. In combining both the presumptive model of recognition and the registration model this approach provides maximum flexibility and protection to a wide variety of people and circumstances.

The definition of significant personal relationship utilised in this Bill is broad and centres on factors such as emotional interdependence, mutual fellowship and mutual commitment to the continuance of the relationship. This provides for a range of different relationships which may not be based on cohabitation, a sexual association or financial interdependence.

The evidence before the Committee suggests however that the provisions of this Bill are problematic and contain many inconsistencies.

Furthermore Jenni Millbank suggests that support for registration among the gay and lesbian community would be limited as:

Homophobia, discrimination and homophobic violence remain pervasive in Australian society and are a powerful disincentive to widespread use of a registration system. Moreover, Australian has extensive recognition of heterosexual couples though presumptive laws for the very reason that declining numbers of people were ‘registering’ their relationships through marriage ... Although in many European jurisdictions registered partnerships are the dominant mechanism of relationship recognition, their usage rates are in fact very low.²⁷

The Committee feels that whilst a registration system for relationship recognition has merit and may be appropriate in future reforms in this area, it is not vital for the delivery of equal recognition to non-traditional personal relationships and that an approach which provides a ‘safety net’ which gives security and equality to all significant relationships is an appropriate starting point for reform.

²⁷ Document No.23 p. 198, 199

5.6 Conclusion

In evaluating the above options for reform the Committee has concluded that the extension of the *De Facto Relationship Act 1999* to include same sex and other significant relationships is the most appropriate approach to provide equal rights and obligations to significant personal relationships.

The Committee believes that this approach will not only provide a safety net for all parties to significant relationships, but will also ensure that the more vulnerable partners in such relationships are protected.

The Committee recognises that the *De Facto Relationship Act 1999* is primarily concerned with property and maintenance entitlements and therefore recommends that a catch-all provision be included to ensure that same sex and other significant relationships are captured within the meaning of de facto spouse or partner for the¹ purposes of other relevant Acts such as the *Anti-Discrimination Act 1998*, *Testator's Family Maintenance Act 1912*, *Administration and Probate Act 1935*, *Duties Act 2000* and statutory compensation Acts.

The Committee sees the adoption of a presumptive recognition model as desirable in terms of consistency with approaches taken in other Australian jurisdictions, but the Committee is not opposed to the possibility of future reform to incorporate an optional registration provision.

The Committee believes that with the use of appropriate criteria the *De Facto Relationship Act 1999* can provide recognition for an extensive range of significant personal relationships that need not be restricted to traditional concepts of cohabitation and financial interdependence.

The primary concern of the Committee is to ensure that all individuals in significant personal relationships regardless of gender or sexual association are treated equally before the law. People in non-traditional personal relationships should not be denied access to equitable property division upon the breakdown of a relationship, and in

dealing with matters of illness and death same sex partners should have equal rights and access as traditional partners.

The Committee believes that discrimination against non-traditional relationships is contrary to the intent of the *Anti-Discriminations Act 1998* and inconsistent with the principle of equality before the law. It is important therefore that in the first instance the Committee recommends measures to mitigate these anomalies in the law and provide equal protection to all significant relationships.

Parliament House
Hobart
19 December, 2001

The Hon. F. M. Bladel, MHA
Chairperson

APPENDIX I

**EXTRACTS FROM TASMANIAN LEGISLATION
ILLUSTRATING DISCRIMINATION AGAINST
NON-TRADITIONAL RELATIONSHIPS**

Administration and Probate Act 1935

Succession on intestacy

44.

(1) The residuary estate of an intestate shall be distributed in the manner, or be held on the trusts, set forth in this section.

(2) If –

(a) the net value of the residuary estate does not exceed \$50 000; or

(b) the intestate leave no issue –

the residuary estate shall be held upon trust for the surviving husband or wife absolutely.

(3) If the net value of the residuary estate exceeds \$50 000, and the intestate leaves issue, the residuary estate shall, subject to the provisions of [subsection \(4\)](#), stand charged with the payment to the surviving husband or wife of the sum of \$50 000 with interest thereon at the rate of 4 per cent per annum from the date of the death until paid or appropriated, and subject to providing for such sum and interest, where payable, the residuary estate shall be held –

(a) as to one-third of the balance upon trust for the surviving husband or wife;
and

(b) as to the remaining two-thirds thereof on the statutory trusts for the issue of the intestate.

(3A) Notwithstanding [subsections \(2\)](#) and [\(3\)](#), if the intestate leaves a husband or wife and a de facto husband or de facto wife, the whole or any part of the residuary estate of

the intestate required to be held in trust for the husband or wife of the intestate is to be held in trust for –

- (a) the de facto husband or de facto wife who was the de facto husband or de facto wife for a continuous period of not less than 2 years immediately before the death of the intestate if the intestate during the whole or any part of that period of 2 years did not live with the husband or wife; or
- (b) in any other case, the husband or wife.

(3B) Notwithstanding [subsection \(3\)](#), if the intestate leaves a de facto husband or de facto wife and issue but no husband or wife, the whole or any part of the residuary estate of the intestate that would have been required to be held in trust for the husband or wife is to be held in trust for –

- (a) the de facto husband or de facto wife if the de facto husband or de facto wife was the de facto husband or de facto wife for a continuous period of not less than 2 years immediately before the death of the intestate; or
- (b) in any other case –
 - (i) subject to [subparagraph \(ii\)](#), the issue; or
 - (ii) the de facto husband or de facto wife if the intestate leaves no children or leaves children of the intestate who are also children of the de facto husband or de facto wife.

(4) If the intestacy is partial only any benefit to which the surviving husband or wife is entitled under the will of the intestate shall, subject to any contrary intention expressed in the will, be taken as being given in or towards satisfaction of the interest of the surviving husband or wife under [subsection \(2\)\(a\)](#) or of the charge of \$50 000 provided by [subsection \(3\)](#), as the case may be; and such interest or charge shall take effect, and the payment thereof be made, only if the surviving husband or wife brings such benefit into account at a valuation to be made as at the death of the intestate, in accordance with the requirements of the personal representative.

(5) If the intestate leaves issue, but no husband or wife, the residuary estate shall be held on the statutory trusts for the issue of the intestate.

(6) If the intestate leaves no husband or wife, and no issue but one or both parents, the residuary estate of the intestate shall be held in trust for such parent, or for both in equal shares, as the case may be.

(7) If the intestate leaves no husband or wife, and no issue or parent, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate and in the following order, namely:

- (a) First on the statutory trusts for the brothers and sisters of the intestate, whether to the whole blood or the half blood;

(b) Secondly, if no person takes an absolutely vested interest under [paragraph \(a\)](#), for the grandparents of the intestate, and, if more than one survive the intestate, in equal shares;

(c) Thirdly, if no person takes an absolutely vested interest under [paragraph \(a\)](#) or [paragraph \(b\)](#), on the statutory trusts for the uncles and aunts of the intestate (whether brothers or sisters of a parent of the intestate of the whole blood or the half blood) –

and, if no person takes an absolutely vested interest under any of the foregoing paragraphs, the residuary estate shall be held in trust for the next-of-kin of the intestate according to the civil law; but there shall be no representation in relation to persons entitled under this last provision.

(8) A husband and wife are to be treated as separate persons for the purpose of distribution or division under this section.

(9) In this section , unless the context otherwise requires –

"de facto husband" means a man who, at the time of death of a woman –

(a) was the sole partner in a de facto relationship with the woman; and

(b) was not a partner in any other de facto relationship;

"de facto relationship" means the relationship between a man and a woman who, although not legally married to each other, live together as husband and wife on a genuine domestic basis;

"de facto wife" means a woman who, at the time of death of a man –

(a) was the sole partner in a de facto relationship with the man; and

(b) was not a partner in any other de facto relationship;

"husband" includes a de facto husband;

"wife" includes a de facto wife.

Administration and Probate Amendment Act 1999

Application of Act

5. The amendments made to section 44 of the Administration and Probate Act 1935 by this Act do not apply in respect of the estate of a person who dies wholly or partially intestate before the commencement of the De Facto Relationship Act 1999.

Adoption Act 1988

20. (1) An order for the adoption of a child may be made in favour of a man and a woman who are married to each other and have been so married for not less than 3 years before the date on which the order is made.

(2) The period of 3 years referred to in subsection (1) may include a period during which a man and a woman resided together in a stable continuous de facto relationship immediately before their marriage.

Alcohol and Drug Dependency Act 1968

2. (1) In this Act, unless the contrary intention appears –

"**relative**", in relation to a patient, has the same meaning as it has for the purposes of the [Mental Health Act 1963](#);

Admission applications

23.(1) A patient may be admitted to a treatment centre, and there detained in accordance with this Act, in pursuance of an application (in this Act referred to as an admission application) made in accordance with this Act.

(2) An admission application may be made by the patient himself or by a relative of his or by a welfare officer, and an admission application made by the patient himself is in this Act referred to as a personal application.

Ambulance Service Act 1982

Regulations

42. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting [subsection \(1\)](#), the regulations may –

(d) provide for the establishment and management of a provident fund and the benefits payable out of that fund to –

(i) an officer of the Ambulance Service; and

(ii) a person who has been an officer of the Ambulance Service; and

(iii) a person who is or has been a spouse or dependant of a person referred to in [subparagraph \(i\)](#) or [\(ii\)](#);

-

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Anatomy Act 1964

12. (1) No person –

(a) being the person who is lawfully in possession of the body of a deceased person, shall –

(i) in pursuance of [section 9\(2\)](#), authorize a person to make an anatomical examination of the body;

(ii) in pursuance of [section 10 \(2\)](#), authorize the use of the body or the removal and use of any part thereof for any purpose mentioned in that subsection; or

(iii) in pursuance of [section 11\(2\)](#), authorize the post-mortem examination of the body –

if the first-mentioned person has reason to believe that –

(iv) the deceased person had expressed an objection to his body being so dealt with after his death; or

(v) within 6 hours after the time of the deceased person's death, the surviving spouse of the deceased person, or his nearest relative, or any one or more of his nearest relatives (being kin in the same degree), objects or object to the body being so dealt with;

Anti-Discrimination Act 1998

Interpretation

3. In this Act –

"de facto spouse" means a person who lives with another person of the opposite sex as the spouse of that other person although not legally married to that other person;

"family responsibilities" means responsibilities to care for or support –

(a) a child who is wholly or substantially dependent; or

(b) any other immediate family member who is in need of that care or support;

"immediate family member", in relation to a person, includes –

(a) a spouse of the person; and

(b) an adult offspring, a child, parent, grandparent, grandchild or sibling of the person or of a spouse of the person;

"marital status" means the status of being –

(a) single; or

(b) married; or

(c) married but living separately and apart from one's spouse; or

(d) married to a particular person; or

(e) divorced; or

(f) widowed;

"**sexual activity**" includes not engaging in, or refusing to engage in, sexual activity;

"**sexual harassment**" means conduct referred to in [section 17\(3\)](#);

"**sexual orientation**" means –

(a) heterosexuality; or

(b) homosexuality; or

(c) bisexuality; or

(d) transsexuality;

"**spouse**" includes a former spouse, a de facto spouse and a former de facto spouse;

Auctioneers and Real Estate Agents Act 1991

Conflict of interest

64. (1) A principal auctioneer, a real estate agent or a person engaged by a principal auctioneer or a real estate agent, shall not acquire, directly or indirectly, an interest in property the auctioneer or agent is instructed to sell unless he or she has obtained the written approval of the owner of the property to do so.

(7) Without prejudice to the generality of [subsections \(1\), \(2\), \(3\) and \(4\)](#) a person acquires an interest in property for the purposes of any of those subsections if an interest in that property is acquired by or on behalf of a relative of the person acquiring the interest.

Beauty Point Landslip Act 1970

Application of special compensation in certain cases

13. (1) Where the Treasurer is satisfied, on a recommendation made to him by the committee, that, in relation to any special compensation to which an owner has or may become entitled in respect of the acquisition of land under [section 8](#) –

(a) a dwelling-house that was erected on the land was used as a dwelling by the owner or his spouse;

(b) it is just and reasonable that the special compensation should be applied in the provision of accommodation for a person referred to in [paragraph \(a\)](#) (in this section referred to as "the selected person"); and

(c) it is reasonable to expect that, if the special compensation is paid to the person who would otherwise be entitled to receive payment thereof, it will not or may not be applied in the provision of accommodation that will be reasonably available for the use of the selected person as a dwelling –

the Treasurer may make a direction under this section requiring the special compensation to be applied in the provision of accommodation for the selected person, and such a direction is referred to in this section as a direction in respect of the special compensation made in favour of that person.

Child Care Act 1960

"relative", when used in relation to an infant, means a parent or legal guardian of the infant, or any person who is a grandparent, brother, sister, uncle, or aunt of the infant, whether by consanguinity or affinity, or in consequence of adoption;

-

Children, Young Persons and Their Families Act 1997

(2) For the purposes of this Act, a person is married to another person if -

(a) he or she is legally married; or

(b) he or she is generally recognised as the de facto husband or wife of the other person although not legally married to that other person.

Closer Settlement Act 1957

Eligible persons

25. (1) A person is incapable of taking a lease under this Part if –

(a) he is under the age of 18 years; or

(b) he and his spouse jointly or severally, or either of them, hold or holds in their or his own right rural land which in the opinion of TDR provides, or is sufficient to provide, a reasonable living for him and his family when farmed in a good and husbandlike manner.

(2) A person is not capable of taking a lease under this Part if he or his spouse is the holder of another lease under this Part unless TDR is satisfied that the land subject to

the other lease is insufficient to provide a reasonable living for that person and his family.

(3) For the purposes of this section –

(a) if a person holds land jointly with another person not his spouse he shall be regarded as the holder in severalty of such proportion of the land so held as represents his personal interest therein;

(b) the holder of a lease for a term of not less than 3 years still to run shall be regarded as the holder of the land subject thereto; and

(c) a proprietary company shall be regarded as an unincorporated partnership.

Constitution Act 1934

"member of the family", used in relation to a Member or other person, means -

(a) the spouse of that Member or person; and

(b) a child or stepchild (whether legitimate or illegitimate) of that Member or person:

Co-operative Housing Societies Act 1963

Liability of members

22. (1) A member is liable to the society for the amount, if any, unpaid on the shares held by him, together with any charges and other moneys payable by him to the society as prescribed by this Act or the rules of the society.

(2) Where –

(a) under or in relation to a contract or policy of life insurance, or accident insurance, or sickness insurance, or a similar contract, in a form approved by the Registrar after consideration of a report thereon from an actuary; or

(b) by virtue of any legal or equitable assignment of or trust created in respect of any such contract or policy or pursuant to any scheme relating to life insurance, or accident insurance, or sickness insurance approved by the Registrar after consideration of such a report –

provision is made whereby, in the event of the death of, or of any accident to or sickness of, a member of a society or of the death of, or of any accident to or sickness of, the spouse of any such member (being a member to whom the contract, policy, or scheme applies) moneys will be available for or towards the discharge of the member's liability to the society, the society may –

(c) receive from the member, at such times as are agreed upon between the member and the society, the amount of each periodical premium or contribution payable by him in respect of the contract or policy, or pursuant to the scheme;

(d) pay or otherwise deal with any such amount in such manner as the contract, policy, or scheme requires or allows; and

(e) if the member makes default in payment of any such amount at the agreed time –

(i) make such payment thereof pursuant to the contract, policy, or scheme on his behalf or take such other action as the contract, policy, or scheme requires or allows; and

(ii) recover from the member any amount in respect of which the member has so made default –

and any amount so recoverable is, until paid, a debt due to the society from the member, and the provisions of this Act apply to and in relation to it accordingly.

(3) A society may, either by itself or in conjunction with any other society or societies, enter into or make any contract or arrangement relating to or connected with the carrying into effect of [subsection \(2\)](#), and may carry out any such contract or arrangement.

–

Cooperatives Act 1999

Notice in respect of bonus shares

154. Notice of the meeting or postal ballot at which a resolution is to be proposed as a special resolution for the purpose of approving a bonus share issue must be accompanied by –

(a) a statement of the value of the assets concerned as disclosed in the books of the cooperative before the sale or revaluation; and

(b) if the issue arises from, or partly from, a sale of assets, a statement of the price for which the assets were sold; and

(c) if the issue arises from, or partly from, a revaluation of assets, a certificate of value of the assets, being a certificate furnished in respect of a valuation made not more than 12 months before the date of the notice by a prescribed person or a person having prescribed qualifications; and

(d) particulars of acquisitions of shares in the cooperative made during the 3 years immediately preceding the date of the notice by or on behalf of each of its directors and his or her spouse and the father, mother, children, brothers and sisters of each such director and spouse; and

(e) a certificate signed by 2 directors of the cooperative stating that to the best of their knowledge and belief the issue of bonus shares would not be imprudent

and that no circumstances are known to them as to why the issue should not take place.

Financial accommodation to directors and associates

231. (1) In this section,

"**associate**", of a director, means –

- (a) the director's spouse; or
- (b) a person when acting in the capacity of trustee of a trust under which –
 - (i) the director or director's spouse has a beneficial interest; or
 - (ii) a body corporate mentioned in [paragraph \(c\)](#) has a beneficial interest; or
- (c) a body corporate if –
 - (i) the director or director's spouse has a material interest in shares in the body corporate; and
 - (ii) the nominal value of the shares is not less than 10% of the nominal value of the issued share capital of the body corporate.

277. (1) A cooperative must not do any of the following things except as approved by special resolution by means of a special postal ballot:

- (a) sell or lease as a going concern, the undertaking of the cooperative or a part of the undertaking that relates to its primary activities the value of which represents 5% or more of the total value of the undertaking;
- (b) acquire from or dispose to a director or employee of the cooperative, or a relative (within the meaning of the Corporations Act) of such a director or employee or of the spouse of such a director or employee, any property the value of which represents 5% or more of the total value of all the assets of the cooperative that relate to its primary activities;

Cooperatives Regulations 2000

Definitions

1. In this Schedule -

"internal creditor" means -

- (a) a creditor who is a member of the cooperative; or
 - (b) a relative or spouse of a member; or
-

-
- (c) a relative of the spouse of a member;
-

Coroners Act 1995

"**senior next of kin**", in relation to a deceased person, means –

- (a) if a person was, immediately before the death of the deceased person, the spouse of that deceased person, the spouse; or
- (b) if there is no spouse of the deceased person or if the spouse is not available, the deceased person's son or daughter of or over 18 years; or
- (c) if the spouse or son or daughter of or over 18 years is not available, the deceased person's parent; or
- (d) if the spouse, son or daughter of or over 18 years or parent is not available, the deceased person's brother or sister of or over 18 years; or
- (e) if the spouse, son or daughter of or over 18 years, parent or brother or sister of or over 18 years is not available, an executor named in the will of the deceased person or a person who, immediately before the death, was a personal representative of the deceased person; or
- (f) if the person is an Aborigine, a person who, according to the customs and tradition of the community or group to which the person belongs, is an appropriate person;

"**spouse**" includes a person's de facto partner;

Corrections Act 1997

Leave permits

42. (1) The Director may grant to a prisoner or detainee a leave permit authorising the prisoner or detainee to be absent from a prison for any of the following purposes:

- (a) to visit a near relative or a person with whom the prisoner or detainee has had a longstanding relationship if that relative or person is seriously ill or in acute personal need;
- (b) to attend the funeral of a near relative or a person with whom the prisoner or detainee has had a longstanding relationship;

(2) For the purposes of [subsection \(1\)\(a\)](#) and [\(b\)](#), the question whether a person is a near relative of a prisoner or detainee and has had a longstanding relationship with the prisoner or detainee is to be determined by the Director.

Cremation Regulations 1999

"**senior next of kin**", in relation to a deceased person, means –

- (a) a person who, immediately before the death of the deceased person, was the spouse of that deceased person; or
- (b) if there is no spouse of the deceased person or if the spouse is not available, the deceased person's eldest son or eldest daughter of or over 18 years; or
- (c) if a person referred to in [paragraph \(a\)](#) or [\(b\)](#) is not available, the deceased person's next eldest son or next eldest daughter of or over 18 years; or
- (d) if a person referred to in [paragraph \(a\)](#) or [\(b\)](#), or any son or daughter of or over 18 years, is not available, the deceased person's parent; or
- (e) if a person referred to in [paragraphs \(a\)](#) to [\(d\)](#) is not available, the deceased person's eldest brother or eldest sister of or over 18 years; or
- (f) if a person referred to in [paragraphs \(a\)](#) to [\(e\)](#) is not available, the next eldest brother or next eldest sister of or over 18 years; or
- (g) if a person referred to in [paragraphs \(a\)](#) to [\(e\)](#), or any brother or sister of or over 18 years, is not available, an executor or the personal representative of the deceased person; or
- (h) if the person is an Aboriginal person, a person who, according to the customs and tradition of the community or group to which the person belongs, is an appropriate person;

"**spouse**" includes a person's de facto partner.

Criminal Code Act 1924

Accessories after the fact: When wives and husbands not so

6. (1) A person who receives or assists another who is, to his knowledge, guilty of a crime, in order to enable him to escape punishment, is said to become an accessory after the fact to such crime.

(2) A married woman does not become an accessory after the fact to a crime of which her husband is guilty, by receiving or assisting him in order to enable him to escape punishment; nor by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of a crime in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become accessory after the fact to a crime of which his wife is guilty by

receiving or assisting her in order to enable her to escape punishment. Liability of husband and wife for offences committed by either with respect to the other's property.

54. (1) Except as provided in [subsection \(2\)](#), no married person shall be convicted of any offence alleged to have been committed by him or her during cohabitation with respect to the property of the other spouse.

(2) Every such person as aforesaid shall be criminally responsible for any offence committed with respect to any such property when leaving or deserting or about to leave or desert the other spouse; and for any offence committed with intent to defraud any person other than such spouse.

—

Criminal Justice (Mental Impairment) Act 1999

Interpretation

3. In this Act, unless the contrary intention appears –

"immediate family", in relation to a deceased victim, includes –

- (a) the spouse of the deceased victim; and
- (b) a parent, guardian or step-parent of the deceased victim; and
- (c) a child or stepchild of the deceased victim; and
- (d) a brother, sister, stepbrother or stepsister of the deceased victim;

"next of kin" of a person means a person's spouse, parents, children, any other person who is the primary carer of the person or any other class of person prescribed by the regulations as the next of kin of a person;

"spouse" includes a person who is cohabiting with another person of the opposite sex as the spouse of that other person, although not legally married to him or her;

De Facto Relationship Act 1999

Interpretation

3. In this Act –

"de facto partner" means a person who lives or has lived in a de facto relationship;

"de facto relationship" means the relationship between a man and a woman who, although not legally married to each other, live together on a genuine domestic basis as husband and wife;

Director of Public Prosecutions Act 1973

"**widow**" of a deceased man includes a woman who, at the time of his death –

- (a) was living with him; and
- (b) was generally recognised as his *de facto* wife –

although not legally married to him at that time;

"**widower**" of a deceased woman includes a man who, at the time of her death –

- (a) was living with her; and
- (b) was generally recognised as her *de facto* husband –

although not legally married to her at that time.

Duties Act 2001

"**de facto partner**" means a de facto partner as determined in the [De Facto Relationship Act 1999](#);

"**de facto relationship**" means the relationship between a man and a woman who, although not legally married to each other, live together on a genuine domestic basis as husband and wife;

"**related person**" means a person who is related to another person in accordance with any of the following provisions:

- (a) natural persons are related persons if –
 - (i) one is the spouse or de facto partner of the other; or
 - (ii) the relationship between them is that of a parent and child, brothers, sisters, or brother and sister;
 - (b) [Section 3 Amended by No. 42 of 2001, Sched. 1, Applied:15 Jul 2001] private companies are related persons if they are related bodies corporate within the meaning of the Corporations Act;
 - (c) [Section 3 Amended by No. 42 of 2001, Sched. 1, Applied:15 Jul 2001] a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the Corporations Act;
 - (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
-

(e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

"relationship property", in relation to a de facto relationship, means property of the parties to the de facto relationship or of either of them;

"relative" means a person referred to in [section 225\(3\)](#);

Evidence Act 1910

PART IV - WITNESSES GENERALLY

Division 1 - Competency and compellability of witnesses

Evidence of party, or of wife or husband of party, in civil cases

84. (1) In any civil proceeding the parties thereto, and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

(2) In this section, the expression **"civil proceeding"** includes any complaint made to justices upon which they have authority by law to make an order on any person for the payment of money, or for doing or refraining from doing any other act.

Evidence in criminal proceedings

85. (1) This section applies to all legal proceedings in which a person is charged with having committed an offence.

(2) For the purposes of this section –

"criminal proceedings" means legal proceedings to which this section applies;

"defendant" means a person charged as referred to in [subsection \(1\)](#).

(3) In this section, a reference to the spouse of the defendant is a reference to a person who is the husband or wife of the defendant by virtue of a lawfully celebrated marriage ceremony –

(a) at the time the defendant is alleged to have committed the offence with which he is charged and at the time when he is tried for that offence; or

(b) at the time when the defendant is tried for the offence with which he is charged but not at the time when the defendant is alleged to have committed the offence.

(3A) A person who was the husband or wife of the defendant by virtue of a lawfully celebrated marriage ceremony at the time when the defendant is alleged to have committed the offence with which he is charged but not at the time when the defendant is tried for that offence may be compelled to give evidence in any criminal proceedings against the defendant and against any person jointly charged with the defendant.

(4) In criminal proceedings, the defendant has a right to give evidence on his own behalf and on behalf of any person who is jointly charged with him if that person requests him to do so, but in no circumstance may the defendant be compelled to give evidence in the proceedings.

(5) [Subsection \(4\)](#) has effect notwithstanding that the defendant is the spouse of a person who is jointly charged with the defendant.

(6) In criminal proceedings, the spouse of the defendant may –

(a) at the request of the prosecutor, give evidence for the prosecution;

(b) at the request of the defendant, give evidence for the defendant; and

(c) at the request of any person who is jointly charged with the defendant, give evidence for that person –

but, except as provided in [subsection \(7\)](#) and in [section 86](#), that spouse may not be compelled to give evidence in the proceedings, whether for the prosecution, the defendant, or any person jointly charged with the defendant.

(7) Subject to [subsections \(4\)](#) and [\(5\)](#), in criminal proceedings, the spouse of the defendant may be compelled to give evidence against the defendant and against any person jointly charged with the defendant where –

(a) the defendant is charged with having committed incest; or

(b) the defendant is charged with having committed a crime under [section 124](#), [125](#), [125A](#), [126](#), [127](#), [127A](#), [128](#) or [129 of the Criminal Code](#) or under any provision of [Chapter XIX](#) or [XX of that Code](#) against a person who, at the time of the alleged crime, had not attained the age of 16 years; or

(b) the defendant is charged with having committed an offence under the [Police Offences Act 1935](#) involving an assault on, or the threat of violence to, a person who, at the time of the alleged offence, had not attained the age of 16 years; or

(c) the defendant is charged with having committed assault against, or any other offence involving violence or the threat of violence to, the spouse; or

(d) the proceedings were instituted as the result of a complaint by that spouse against the defendant for an offence alleged to have been committed by the defendant against or in relation to the property of that spouse.

(8) The prosecutor shall not, in any criminal proceedings, comment on the failure of the defendant to give evidence in the proceedings, but he may comment on the failure of any other person, including the spouse of the defendant, to give evidence in the proceedings.

(9) Where in criminal proceedings the spouse of the defendant proposes to give in the proceedings evidence which the spouse is competent to give but may not be compelled to give, it is the duty of the judge or other person presiding over the proceedings to explain to the spouse, in the absence of the jury (if any), that the spouse is not obliged to give that evidence if the spouse does not wish to do so.

Fatal Accidents Act 1934

"An Act to consolidate and amend the law as to compensating the families of persons killed by accidents"

Interpretation

3. (1) In this Act, unless the contrary intention appears –

"**de facto spouse**" means a person –

(a) who cohabited with another person of the opposite sex as the spouse of that other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and

(b) who was principally dependent on that other person for financial support at the time when a wrongful act, neglect or default occurred in respect of that other person;

"**member of the family**", in relation to a person, means that person's –

(a) spouse, de facto spouse, parent, stepparent, grandparent, child, stepchild or grandchild; or

(b) brother, sister, half-brother or half-sister;

"**wrongful act, neglect or default**" means a wrongful act, neglect or default referred to in [section 4](#).

Persons treated as de facto spouses

3A.

(1) In this section, "**court**" means a court in which an action for damages may be brought in respect of the death of a person caused by wrongful act, neglect or default.

(2) A person may apply to a court to be treated as the de facto spouse of a deceased person if that person would have been the de facto spouse of the deceased person but for the period during which the persons cohabited.

(3) The executor or administrator of a deceased person may apply to a court for a determination that a person referred to in [subsection \(2\)](#) is to be treated as the de facto spouse of the deceased person.

(4) A court may determine that a person is to be treated as the de facto spouse of another person if satisfied that, taking into account the circumstances of the case, it is proper to do so.

Action to be maintainable notwithstanding the death of the person injured

4. Whenever the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a crime.

Action to be for the benefit of certain relations

5. Every such action shall be for the benefit of the members of the family of the persons whose death shall have been so caused, and, subject to this Act, shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the parties aforesaid in such shares as the jury by their verdicts shall find and direct.

First Home Owner Grant Act 2000

Spouses

6. (1) A person is the spouse of another if –

(a) they are legally married; or

(b) the Commissioner is satisfied that they are cohabiting on a genuine domestic basis in a relationship of de facto marriage.

(2) If the Commissioner is satisfied that, at the time of deciding an application for a first home owner grant, an applicant –

(a) is legally married but not cohabiting with the person to whom the applicant is legally married; and

(b) has no intention of resuming cohabitation –

the person to whom the applicant is legally married is not to be regarded as the applicant's spouse.

-

Gaming Control Act 1993

"relative" means spouse (including de facto spouse), parent, child or sibling (whether of the full or half blood);

Government Business Enterprises Act 1995

"relative" means –

- (a) the spouse of a person; and
- (b) the parent or remoter linear ancestor of a person; and
- (c) the child or remoter issue of a person; and
- (d) the brother or sister of a person;

"spouse" includes a person who is generally recognised as the de facto husband or wife of another person although not legally married to that other person;

Governor of Tasmania Act

"**widow**" of a deceased man includes a woman who, at the time of his death –

- (a) was living with him; and
- (b) was generally recognised as his *de facto* wife –

although not legally married to him at that time;

"**widower**" of a deceased woman includes a man who, at the time of her death

–

- (a) was living with her; and
- (b) was generally recognised as her *de facto* husband –

although not legally married to her at that time.

—

Guardianship and Administration Act 1995

Interpretation

3. (1) In this Act, unless the contrary intention appears –

"spouse" includes a person who is cohabiting with another person of the opposite sex as the spouse of that other person, although not legally married to him or her;

Meaning of "person responsible"

4. (1) In this Act, "person responsible" for another person means –

- (a) where the other person is under the age of 18 years and has a spouse, the spouse; or
- (b) where the other person is under the age of 18 years and has no spouse, his or her parent; or
- (c) where the other person is of or over the age of 18 years, one of the following persons, in order of priority:
 - (i) his or her guardian;
 - (ii) his or her spouse;
 - (iii) the person having the care of the other person;
 - (iv) a close friend or relative of the other person.

(2) If a person is a ward of the State, the Director for Community Welfare is, notwithstanding [subsection \(1\)](#), taken to be the person responsible for him or her.

(3) The circumstances in which a person is to be regarded as having the care of another person include, but are not limited to, the case where the person, otherwise than for remuneration (whether from the other person or any other source), regularly –

- (a) provides domestic services and support to the other person; or
- (b) arranges for the other person to be provided with domestic services and support.

(4) A person who resides in a hospital, nursing home, group home, boarding-house or hostel or any other similar facility at which he or she is cared for by some other person is not, by reason only of that fact, taken to be in the care of that other person and is taken to remain in the care of the person in whose care he or she was immediately before residing in the facility.

(5) For the purposes of this section –

- (a) a reference to a spouse is to be read as a reference to a spouse who is not under guardianship and with whom the relevant person has a close and continuing relationship; and
 - (b) a person is taken to be a close friend or relative of another person if the person maintains both a close personal relationship with the other person through frequent personal contact and a personal interest in the other person's welfare; and
 - (c) a person is taken not to be a close friend or relative if the person is receiving remuneration (whether from the person or some other source) for any
-

services that he or she performs for the other person in relation to the person's care; and

(d) a reference to remuneration is to be read as not including a reference to a carer's pension; and

(e) the President may issue guidelines, not inconsistent with this section, specifying the circumstances in which a person is to be regarded as a close friend or relative of another person.

Consent by persons responsible

43. (1) A person responsible for a person to whom this Part applies may consent to the carrying out of medical or dental treatment which is not special treatment if he or she is satisfied that –

(a) the relevant person is incapable of giving consent; and

(b) the medical or dental treatment would be in the best interests of that person.

(2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, matters to be taken into account by the person responsible include –

(a) the wishes of that person, so far as they can be ascertained; and

(b) the consequences to that person if the proposed treatment is not carried out; and

(c) any alternative treatment available to that person; and

(d) the nature and degree of any significant risks associated with the proposed treatment or any alternative treatment; and

(e) that the treatment is to be carried out only to promote and maintain the health and wellbeing of that person; and

(f) any other matters prescribed by the regulations.

HIV/AIDS Prevention Measures Act 1993

"An Act to provide measures for the prevention and containment of HIV/AIDS and for the protection and promotion of public health and for appropriate treatment, counselling and care of persons infected with HIV/AIDS or at risk of HIV/AIDS infection."

3. In this Act, unless the contrary intention is shown -...

"**partner**" means a spouse, a de facto spouse or a person with whom another person is living in a domestic relationship;...

—

Human Tissue Act 1985

"**senior available next of kin**" means –

(a) in relation to a deceased child –

- (i) where a parent of the child is available – a parent of the child;
- (ii) where a parent of the child is not available – a brother or sister of the child who has attained the age of 18 years and is available; or
- (iii) where no person referred to in [subparagraph \(i\)](#) or [\(ii\)](#) is available – a person who was the guardian of the child immediately before the death of the child and is available; and

(b) in relation to any other deceased person –

- (i) where the person, immediately before his death, was married and the person who was then his spouse is available – the person who was his spouse;
- (ii) where the person, immediately before his death, was not married or, if he was married, his spouse is not available – a son or daughter of the person who has attained the age of 18 years and is available;
- (iii) where no person referred to in [subparagraph \(i\)](#) or [\(ii\)](#) is available but a parent of the person is available – that parent; or
- (iv) where no person referred to in [subparagraph \(i\)](#), [\(ii\)](#), or [\(iii\)](#) is available – a brother or sister of the person who has attained the age of 18 years and is available;

Judges' Contributory Pensions Act 1968

"**widow**" of a deceased man includes a woman who, at the time of his death -

- (a) was living with him; and
- (b) was generally recognised as his de facto wife - although not legally married to him at that time;

"**widower**" of a deceased woman includes a man who, at the time of her death -

- (a) was living with her; and
 - (b) was generally recognised as her de facto husband - although not legally married to her at that time.
-
-
-

Land Tax Act 2000

"related person", in relation to an owner, means –

- (a) the spouse or former spouse of the owner; or
- (b) a beneficiary of the estate of the owner; or
- (c) a beneficiary of a trust appointed by a court; or
- (d) a shareholder of a home-unit company or a spouse or former spouse of the shareholder; or
- (e) a person with an exclusive right to occupy a flat owned by a retirement village or a spouse or former spouse of that person;

–

Legal Aid Commission Act 1990

Circumstances in which legal aid may be provided

19. (1) The Commission may provide legal aid to a person only if –

- (a) the person is unable to afford the cost of obtaining from private legal practitioners the legal assistance or legal services in respect of which legal aid is sought; or
- (b) it is reasonable in all the circumstances to provide the legal aid.

(2) In making a decision whether a person should be provided with legal aid, the Commission shall have regard to all relevant matters, including –

- (a) the income of the person and of each person associated with the person; and
 - (b) the cash that is readily available to the person or can be made so available; and
 - (c) the debts, liabilities and other financial obligations of the person; and
 - (d) the cost of living; and
 - (e) the cost of obtaining legal assistance or legal services from a private legal practitioner; and
 - (f) any other matter affecting the ability of the person to meet the cost of obtaining legal assistance or legal services from a private legal practitioner; and
 - (g) the nature and extent of a benefit that may accrue to the person or to the public from the provision of legal aid; and
-

(h) the nature and extent of any detriment that may be suffered by the person or by the public if legal aid is not provided; and

(i) in the case of legal aid relating to a proceeding in a court – whether the proceeding is likely to terminate in a manner favourable to the person.

(3) Legal aid shall not be provided to a person who is not ordinarily resident in the State except if the legal aid relates to –

(a) a proceeding in a court in the State; or

(b) a matter arising under a law in force in the State.

(4) A reference in [subsection \(2\)\(a\)](#) to a person who is associated with a person is a reference to –

(a) the spouse or de facto partner of the person; or

(b) a person who is financially responsible for, or who provides financial support to, that person.

–

Local Government Act 1993

"**de facto spouse**" means a person who lives with another person of the opposite sex as his or her spouse on a genuine domestic basis although not legally married to that other person;

Close associate

51. For the purposes of this Part, a person is a close associate of a councillor if that person is –

(a) a body corporate of which the councillor is a director or a member of the governing body; or

(b) a proprietary company in which the councillor is a shareholder; or

(c) a public company in which the councillor is directly or indirectly a substantial shareholder; or

(d) a beneficiary under a trust or an object of a discretionary trust of which the councillor is a trustee; or

(e) a partner of the councillor; or

(f) the employer or an employee of the councillor; or

(g) a person from whom the councillor has received, or might reasonably be expected to receive, a fee, commission or other reward for providing

professional or other services in relation to a matter being dealt with or to be dealt with by the council; or

(h) the spouse or de facto spouse of the councillor or of the councillor's son or daughter; or

(i) the son, daughter, brother, sister, mother or father of the councillor or their spouse or de facto spouse.

Division 8 - Farm rating relief

Interpretation of Division 8

112. In this Division –

"de facto spouse" means a person who lives with another person of the opposite sex as his or her spouse on a genuine domestic basis although not legally married to that person for a period of at least 3 years immediately before the date of sale or conveyance of the land;

"member of an owner's family" means –

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant, adopted child or stepchild of the owner or owner's spouse or de facto spouse; or

(b) the spouse or de facto spouse of the owner or of any other person specified in [paragraph \(a\)](#);

Mental Health Act 1963

Division 4 - Relatives and nearest relatives of patients Interpretation of relative and nearest relative

s.38(1) In this Act, in relation to a patient, "relative" means any of the following persons, namely:

- (a) The husband or wife of the patient;
 - (b) A son or daughter of the patient;
 - (c) The father of the patient;
 - (d) The mother of the patient;
 - (e) A brother or sister of the patient;
 - (f) A grandparent of the patient;
 - (g) A grandchild of the patient;
 - (h) An uncle or aunt of the patient; and
 - (i) A nephew or niece of the patient.
-

(2) In deducing relationships for the purposes of this section, an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and, subject to this subsection, a relationship of the half-blood shall be treated as a relationship of the whole blood.

(3) For the purposes of this section, a relative of a patient specified in any one of the paragraphs of subsection (1) is a nearer relative than any of the relatives specified in any of the succeeding paragraphs of that subsection and, subject to this section, a person is, for the purposes of this Act, the nearest relative of a patient if that patient has no nearer relatives for the time being surviving.

(4) For the purposes of subsection (3) a relative of the whole blood specified in any one of the paragraphs of subsection (1) shall be deemed to be a nearer relative than a relative of the half-blood specified in that paragraph.

(5) Where under subsection (3) there would, apart from this subsection, be two or more persons who are the nearest relatives of a patient the elder or eldest of those persons, regardless of sex, shall be deemed to be the nearest relative of the patient.

(6) Where the person who, under the foregoing provisions of this section, would be the nearest relative of a patient -

(a) is not ordinarily resident in the State;

(b) being the husband or wife of the patient, is permanently separated from the patient, either by agreement or under an order of a court (whether or not that court is a court having jurisdiction in the State), or has deserted or has been deserted by the patient for a period that has not come to an end; or

(c) not being the husband, wife, father, or mother of the patient, has not attained the age of 21 years -

the nearest relative of the patient shall be ascertained as if that person were dead.

(7) In this section, "husband" or "wife" includes a person who is living with the patient as the patient's husband or wife, as the case may be, or, if the patient is for the time being an in-patient, was so living until the patient last became an in-patient, and has been or had been so living for a period of not less than 6 months; but a person shall not be treated by virtue of this subsection as the nearest relative of a married patient unless the husband or wife of the patient is disregarded by virtue of paragraph (b) of subsection (6).

Mental Health Act 1996

Meaning of "person responsible"

5. (1) In this Act, "**person responsible**" for another person means -

(a) where the other person is under 18 years and has a spouse, the spouse; or

(b) where the other person is under 18 years and has no spouse, his or her parent; or

(c) where the other person is of or over the age of 18 years, one of the following persons in order of priority:

- (i) his or her guardian;
- (ii) his or her spouse;
- (iii) the person having the care of the other person;
- (iv) a close friend or relative of the other person.

(2) Despite [subsection \(1\)](#), if there is in force a care and protection order under the [Children, Young Persons and Their Families Act 1997](#) placing a person under the guardianship of the Secretary, within the meaning of that Act, or another person, the "person responsible" for that first-mentioned person means the Secretary or that other person under whose guardianship that first-mentioned person is placed by the order.

(3) The circumstances in which a person is to be regarded as having the care of another person include, but are not limited to, the case where the person, otherwise than for remuneration, whether from the other person or any other source, regularly –

- (a) provides domestic services and support to the other person; or
- (b) arranges for the other person to be provided with domestic services and support.

(4) A person who resides in a hospital, nursing home, group home, boarding house or hostel or any other similar facility at which he or she is cared for by some other person is not, by reason only of that fact, taken to be in the care of that other person and is taken to remain in the care of the person in whose care he or she was immediately before residing in such a facility.

(5) For the purposes of this section –

- (a) a reference to a spouse is to be read as a reference to a spouse who is not under guardianship and with whom the relevant person has a close and continuing relationship; and
 - (b) a person is taken to be a close friend or relative of another person if the person maintains both a close personal relationship with the other person through frequent personal contact and a personal interest in the other person's welfare; and
 - (c) a person is taken not to be a close friend or relative of another person if the person is receiving remuneration (whether from the other person or some other source) for any services that he or she performs for the other person in respect of the other person's care; and
 - (d) a reference to remuneration is taken as not including a reference to a carer's pension; and
-

(e) a person is taken to be a close friend or relative of another person in circumstances specified by the President of the Board in guidelines issued under [section 4 \(5\) \(e\) of the *Guardianship and Administration Act 1995*](#).

Motor Accidents (Liabilities and Compensation) Regulations 2000

SCHEDULE 1 - SCHEDULED BENEFITS

PART 1 - PERSONS TO WHOM DEATH BENEFITS ARE PAYABLE

Interpretation

1. In this Schedule –

"**de facto relationship**" means the relationship between 2 persons who are the de facto spouses of each other;

"**de facto spouse**" means a person who –

(a) has cohabited with another person of the opposite sex as the spouse of that other person although not legally married to that other person for at least 3 years immediately before the time of an accident; and

(b) at the time of the accident, was wholly, mainly or partly dependent on that other person for financial support;

"**dependant**", in relation to a person who is injured or dies, means a person who would, but for that injury or death, be wholly, mainly or partly dependent on that person for financial support;

"**single person**" means a person who, at the time of the accident, was not in a subsisting marriage or de facto relationship.

Person treated as de facto spouse

7. (1) A person may apply to the Board to be treated as a de facto spouse of another person if the person would have been the de facto spouse of that other person had they been cohabiting for 3 years.

(2) The Board may determine that an applicant is to be treated as the de facto spouse of another person if the Board is satisfied that, taking into account the circumstances of the case, it is proper to do so.

Parliamentary Retiring Benefits Act 1985

"**spouse**" of a person includes another person who although not legally married to the person

(a) lives with the person; and

(b) is generally recognised as the de facto husband or wife of the person;

—

Parliamentary Superannuation Act 1973

"**spouse**" of a person includes another person who although not legally married to the person-

- (a) lives with the person; and
 - (b) is generally recognised as the de facto husband or wife of the person;
-

—

Retirement Benefits Regulations 1994

Recognition of de facto relationships

80. (1) If, immediately preceding the death of a contributor or pensioner, a person of the opposite sex had been living as man and wife with that contributor or pensioner, that person has the same rights as if he or she had been married to that contributor or pensioner at the time of death.

(2) If a contributor or a pensioner dies leaving a surviving spouse, a pension is not payable under this regulation if a pension or benefit is payable to that spouse under [regulation 79](#) or, if a complaint is made under [regulation 79\(4\)](#) until the proceedings of that complaint have been determined.

(3) A person who is aggrieved by a refusal of the Board to make any payment of pension or benefit under this regulation may take proceedings against the Board by complaint under the [Justices Act 1959](#), and, on the hearing of the complaint a magistrate, on being satisfied that the complainant is entitled to a pension or benefit under these regulations and that no other person is entitled to, or in receipt of, a pension or benefit under [regulation 79](#) consequent on the death of the contributor or a pensioner, may make an order directing the pension to be paid to the complainant as provided by these regulations.

—

Solicitor-General Act 1983

"**widow**" of a deceased man includes a woman who, at the time of his death –

- (a) was living with him; and
 - (b) was generally recognised as his *de facto* wife –
although not legally married to him at that time;
-

"widower" of a deceased woman includes a man who, at the time of her death

–

- (a) was living with her; and
- (b) was generally recognised as her *de facto* husband – although not legally married to her at that time.

—

State Service Act 2000

State Service Principles

7. (1) The State Service Principles are as follows:

- (a) the State Service is apolitical, performing its functions in an impartial, ethical and professional manner;
 - (b) the State Service is a public service in which employment decisions are based on merit;
 - (c) the State Service provides a workplace that is free from discrimination and recognises and utilises the diversity of the community it serves;
 - (d) the State Service is accountable for its actions and performance, within the framework of Ministerial responsibility, to the Government, the Parliament and the community;
 - (e) the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
 - (f) the State Service delivers services fairly and impartially to the community;
 - (g) the State Service develops leadership of the highest quality;
 - (h) the State Service establishes workplace practices that encourage communication, consultation, cooperation and input from employees on matters that affect their work and workplace;
 - (i) the State Service provides a fair, flexible, safe and rewarding workplace;
 - (j) the State Service focuses on managing its performance and achieving results;
 - (k) the State Service promotes equity in employment;
 - (l) the State Service provides a reasonable opportunity to members of the community to apply for State Service employment;
 - (m) the State Service provides a fair system of review of decisions taken in respect of employees.
-

(2) For the purposes of [subsection \(1\)\(b\)](#), a decision relating to appointment or promotion is based on merit if –

- (a) an assessment is made of the relative suitability of the candidates for the duties; and
- (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
- (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) the assessment is the primary consideration in making the decision.

The State Service Code of Conduct

9. (1) An employee must behave honestly and with integrity in the course of State Service employment.

(2) An employee must act with care and diligence in the course of State Service employment.

(3) An employee, when acting in the course of State Service employment, must treat everyone with respect and without harassment, victimisation or discrimination.

(4) An employee, when acting in the course of State Service employment, must comply with all applicable Australian law.

(5) For the purpose of [subsection \(4\)](#),

"Australian law" means –

- (a) any Act (including this Act) or any instrument made under an Act; or
- (b) any law of the Commonwealth or a State or Territory, including any instrument made under such a law.

(6) An employee must comply with any standing orders made under [section 34\(2\)](#) and with any lawful and reasonable direction given by a person having authority to give the direction.

(7) An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment.

(8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.

(9) An employee must use Tasmanian Government resources in a proper manner.

(10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.

(11) An employee must not make improper use of –

(a) information gained in the course of his or her employment; or

(b) the employee's duties, status, power or authority –

in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.

(12) An employee who receives a gift in the course of his or her employment or in relation to his or her employment must declare that gift as prescribed by the regulations.

(13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.

(14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.

(15) An employee must comply with any other conduct requirement that is prescribed by the regulations.

(16) For the purposes of this section, a reference to an employee includes a reference to an officer and a reference to State Service employment includes a reference to an appointment as an officer and an arrangement made under [section 46\(1\)\(a\)](#).

State Service Regulations 2001

Interpretation

3. (1) In these regulations, unless the contrary intention appears –

"**the Act**" means the [State Service Act 2000](#);

"**dependant**", in relation to an employee, means –

(a) in the case of a relative of the employee, a person who normally resides with the employee; and

(b) in any other case, a person who has resided with the employee for a period of at least 12 months –

and who is wholly or substantially dependent on the employee for financial support;

"**relative**", in relation to an employee, means –

- (a) the husband or wife of the employee; and
- (b) a person with whom the employee has cohabited for substantially the whole of the period of 12 months immediately preceding that person's illness or death; and
- (c) the parent or step-parent of the employee; and
- (d) the father-in-law or mother-in-law of the employee; and
- (e) a child or stepchild of the employee; and
- (f) a brother or sister, or stepbrother or stepsister, of the employee; and
- (g) a grandparent of the employee;

Displacement allowance

16. (1) If an employee is assigned duties at another location, either as a result of promotion or otherwise not at the employee's request, and as a result of –

- (a) the early retirement on the grounds of health or redundancy of the employee; or
- (b) the death of the employee –

there has developed a hardship that can only be alleviated if the employee or surviving dependant of the employee changes accommodation, the employee or surviving dependant is, subject to the approval of the relevant Head of Agency, entitled to an allowance (called "a displacement allowance").

(2) The displacement allowance is to be a sum determined by the Minister and is to be in the form of reimbursement to the retired employee or the surviving dependant of that employee of –

- (a) removal expenses associated with moving the furniture and personal belongings of the employee and his or her dependants; and
- (b) expenses associated with the storage of that furniture and those personal belongings; and
- (c) the cost of any interim accommodation that may be required by the employee or his or her dependants; and
- (d) the cost of the conveyance of the employee and his or her dependants.

Relocation expenses

18. (1) If an employee is assigned duties at another location, either as a result of promotion or otherwise not at the employee's request, the employee is entitled to be reimbursed –

- (a) the relocation cost involved in –

-
- (i) the conveyance of the employee and his or her dependants to the new locality; and
- (ii) the removal of necessary household furniture and effects (not including livestock) to the new locality; and
- (b) the premium in respect of a policy of insurance for a sum determined by the Minister against loss or damage in the removal of the employee's household furniture and effects.
- (2) If an employee is assigned duties at another location at his or her request –
- (a) the employee may be reimbursed the costs specified in [subregulation \(1\)\(a\)](#); or
- (b) it may be made a condition of the assignment of duties that the employee receive none, or a proportion only, of those costs.
- (3) If a person who is appointed as an employee resides at a distance exceeding 16 kilometres from the place at which that person is to be located, the person may, at the discretion of the Minister, receive the reimbursement of the relocation costs specified in [subregulation \(1\)\(a\)](#) or such proportion of those costs as is determined from time to time by the Minister.
- (4) An employee or a person appointed as an employee, before undertaking a conveyance and removal under this regulation, is to obtain offers from at least 2 carriers in respect of the conveyance and removal and is to submit those offers to the relevant Head of Agency who may authorise the acceptance of the offer which, in the opinion of the Head of Agency, is the most suitable.
- (5) An employee or a person appointed as an employee is to submit all documentation in respect of any amounts expended by that employee or person in respect of the costs specified in [subregulation \(1\)](#) to the relevant Head of Agency for certification.
- (6) An employee or a person appointed as an employee is to be reimbursed any amounts certified under [subregulation \(5\)](#) by the Agency in which the employee is employed or to which the person has been appointed.
- (7) If a dependant of an employee is an employee, the dependant and the employee are each entitled to the reimbursements specified in this regulation and each may, with the consent of the relevant Heads of Agency, elect to treat any of his or her dependants –
- (a) as being a dependant of either the dependant or the employee; or
- (b) as being a dependant of both the dependant and the employee.

Leave on account of special circumstances

25. (1) The relevant Head of Agency may, subject to any Ministerial Direction, grant to an employee special leave of absence with pay –

- (a) in the event of the serious illness of a relative of the employee; or
 - (b) in the case of other pressing necessity relating to the employee; or
 - (c) to enable the employee to participate in a sporting or cultural event at a national or international level.
-

Testator's Family Maintenance Act 1912

Interpretation

2. (1) In this Act -

"de facto spouse" means a person -

- (a) who cohabited with another person of the opposite sex as the spouse of that other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and
- (b) who was principally dependent on that other person for financial support at the time of the death of that other person - and includes a person who is to be treated as having been a de facto spouse by virtue of an order of the Court made under subsection (5);

Persons entitled to claim under this Act

3A. An application under subsection (1) of section three for provision out of the estate of a deceased person may be made by or on behalf of all or any of the following persons, that is to say:

- (a) The widow of the deceased person;
 - (b) The children of the deceased person;
 - (c) The parents of the deceased person, if the deceased person dies without leaving a widow or any children;
 - (d) A person whose marriage to the deceased person has been dissolved or annulled and who at the date of the death of the deceased person was receiving or entitled to receive maintenance from the deceased person whether pursuant to an order of a court, or to an agreement or otherwise; and
-

(e) A person who was a de facto spouse of the deceased person at the date of the deceased person's death.

Urban Farming Land Taxation Act 1970

Definition of family

5. (1) The following persons are a family for the purposes of this Act:

- (a) An ancestor (in this section called "the common ancestor") and his descendants to the fourth degree (in this section called the "near kin");
- (b) A spouse of the common ancestor or one of the near kin; and
- (c) Persons included by reason of [subsection \(2\)](#) of this section.

(2) For the purposes of [paragraph \(c\)](#) of [subsection \(1\)](#) of this section –

- (a) *de facto* spouses shall be deemed to be *de jure*, but only if there has been no separation between them that was voluntary on the part of one of them;
- (b) illegitimate children shall be deemed to be legitimate if accepted and brought up as the children of one of their parents in the parent's household;
- (c) children taken into the household of the common ancestor or one of the near kin and brought up therein like children by blood shall be deemed to be legitimate children of that ancestor or one of the near kin; and
- (d) strangers taken into the household of the common ancestor or one of the near kin who have for twenty years resided therein and been wholly or partly dependent on the household for the needs of life shall be deemed to be children of the head of the household.

(3) For the purposes of this section –

- (a) the executor or administrator of the estate of a member of a family shall be deemed to be a member of that family; and
 - (b) the members of a permanent household consisting of a man, his *de facto* wife, and a foster child brought up as their own child may constitute a family of which the man shall be deemed to be the ancestor.
-

(4) The principle of [paragraph \(b\)](#) of [subsection \(3\)](#) of this section shall be applied to other cases to which it is applicable.

Vocational Education and Training Act 1994

Declaration of interest

71. (1) A member of the Training Authority or any committee who has any direct or indirect pecuniary interest in any matter being considered by the Training Authority or that committee –

- (a) must declare that interest to the Training Authority; and
- (b) must not participate at any meeting while the matter is being considered.

(2) A member has an interest in a matter if the person or a member of that person's family would receive, or would have a reasonable expectation of receiving, a direct or indirect pecuniary benefit or detriment if the matter were decided in a particular manner.

(3) In this section –

"committee" means –

- (a) the Training Agreements Committee; and
- (b) the Accreditation and Recognition Committee; and
- (c) any advisory committee established under [section 20](#);

"member of a person's family" means –

- (a) spouse, de facto spouse, parent, stepparent, grandparent, child, stepchild or grandchild; or
- (b) brother, sister, half-brother or half-sister.

Wills Act 1992

Revocation of will by marriage

18. A will is revoked by a marriage of the testator unless the will is made in exercise of a power of appointment when the real or personal estate appointed in the will would not, in default of that appointment, pass to the executor or administrator of the testator.

Workers Rehabilitation and Compensation Act 1988

An Act to provide for the rehabilitation and compensation of workers in respect of occupational injuries suffered by workers, to repeal the Workers' Compensation Act 1927, and for the purposes and to amend the Evidence Act 1910 and the Magistrates Act 1987

Interpretation

In this Act, unless the contrary intention appears -

applicant" means a person who has referred a claim for compensation to the Tribunal under this Act or an agent of that person;

"de facto spouse" means a person who cohabited with a worker of the opposite sex as the spouse of that worker, although not legally married to that worker, for at least 3 years immediately before that worker died or suffered an injury;

"dependants" means such members of the family of the worker in relation to whom the term is used as –

(a) were dependent, wholly or in part, upon the earnings of that worker at the time of his death; or

(b) would have been so dependent but for the incapacity due to the injury;

"member of the family", in relation to a worker, means –

(a) the wife or husband, de facto spouse, father, step-father, grandfather, mother, step-mother, grandmother, son, grandson, daughter, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister of that worker; or

(b) a person to whom the worker stood *in loco parentis*;

"worker" means –

(a) any person who has entered into, or works under, a contract of service or training agreement with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, or is oral or in writing; and

(b) any person or class of persons taken to be a worker for the purposes of this Act –

and when used in relation to a person who has been injured and is dead, includes the legal personal representatives or dependants of that person or other person to whom or for whose benefit compensation is payable;

Persons treated as de facto spouses

68A. A person who cohabited with a worker of the opposite sex as the spouse of that worker, although not legally married to that worker, for a period of less than 3 years immediately before that worker died or suffered an injury, may apply to the Tribunal to be treated as the de facto spouse of that worker.

(2) The Tribunal may declare that an applicant is to be treated as the de facto spouse of a person if satisfied that, taking into account the circumstances of the case, it is proper to do so.

APPENDIX II

**SUBMISSIONS RECEIVED
AND TAKEN INTO EVIDENCE**

1. Mr. Malcolm W. Barnett, 10 Cuthberts Road,
Bruny Island. 7150
Submission received 11 November, 1999.
 2. Ms. Petula Broad, on behalf of Council for Single
Mothers and Their Children, PO Box 369, Moonah 7009
Submission dated 17 November, 1999
 3. Mr. A. H. Stacey, 27 Rowan Avenue, Elphin, 7250
submission dated 19 November, 1999.
 4. Ms. Robyn Brake, 1A Wentworth Street, South Hobart 7004
submission dated 14 November, 1999
 5. Ms. Vicky Nicholson, 1A Wentworth Street, South Hobart 7004
Submission dated 15 November, 1999
 6. Ms. Josephine Grace, GPO Box 421, Hobart 7001
Submission dated 17 November, 1999
 7. Mr. Iain Twemlow, 15 Grandview Place, Norwood 7250
Submission dated 17 November, 1999
 8. Carol & Dougald D. McLean, 12 Derwent Waters, Claremont 7011
Submission dated 18 November, 1999
 9. Mr. Nigel Roberts, 193 Bathurst Street, Hobart 7000
Submission dated 17 November, 1999
 10. Mr. Gregory Shelton, 170 Narrows Road, Strathblane 7117
Submission received 23 November, 1999
 11. Mr. Philip Emery, Narrows Road, Strathblane 7117
Submission received 23 November, 1999
 12. Mr. Paul Ashley, PO Box 1547, Launceston 7250
Submission received 19 November, 1999
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13. Mr. David S. Wiggett, 50 Morrisby Road, Old Beach 7017
Submission dated 15 November, 1999
 14. Mr. Stephen Cousens, 29 McKellar Street, South Hobart 7004
Submission dated 16 November, 1999
 15. K. M. Moolenschot, PO Box 81, Riverside 7250
Submission dated 18 November, 1999
 16. L. K. Wilson, 46 Gravelly Beach Road, Blackwall 7275
Submission dated 18 November, 1999
 17. Steven Wade, 50 Morrisby Road, Old Beach 7017
Submission dated 15 November, 1999
 18. Ms. Robyn Hopcroft, 122A Channel Highway, Taroona 7053
Submission received 7th December, 1999
 19. Ms. Michelle Rattenbury, 212 Clarence Street, Howrah 7018
Submission received 2nd February, 2000
 20. Ms. Debbie Hendricks, 4/19 Princes Street, Sandy Bay 7005
Submission received 3rd February, 2000
 21. S. De Jonge, 323 Nelson Road, Mount Nelson 7007
Submission received 21 February, 2000
 22. Ms. Maria Nikakis, 25 Monash Avenue, Lenah Valley 7008
Submission received 21 February 2000
 23. Ms. Stephanie Pinnington, 4 Lisa Court, Lenah Valley 7008
Submission received 21 February 2000
 24. Ms. Tracey Smith, 81 Tottenham Road, Gagebrook 7030
Submission received 21 February, 2000
 25. M. Wilton, PO Box 208, New Norfolk 7140
Submission received 21 February, 2000
 26. Mr. Aaron Myers, 8/13-15 Regent Street, Sandy Bay 7005
Submission received 21 February, 2000
 27. H. A. Davis, 104 Collins Street, Hobart 7000
Submission received 21 February, 2000
 28. The Hon. Alastair Nicholson, AO, RFD, Chief Justice,
Family Court of Australia, 305 William Street, Melbourne 3000
Submission dated 11 February, 2000
 29. Mr. Danny Sandor, President, Defence for Children International,
-

Australia, GPO Box 3131, Canberra 2061
Submission dated 14 February, 2000

30. Mr. Peter R. Dowde, 15 Welman Street, Launceston 7250
Submission dated 28 February, 2000

RE-ADVERTISED - SATURDAY 8 APRIL, 2000

31. Craig and Rachele Hawkins, 2/217 Cormiston Road,
Riverside 7250
Submission dated 8 April, 2000
32. R. G. A. Johnston, 31 Hawthorn Street, Norwood 7250
Submission dated 16 April, 2000
33. Mr. Paul Duncombe, Executive Director, Family Planning
Tasmania Inc., PO Box 77, North Hobart 7002
Submission dated 20 April, 2000
34. Tasmanian Gay & Lesbian Rights Group, GPO Box 1733,
Hobart 7001
Submission tabled at hearings on 4th May, 2000
35. Gail May, email address: gail_may@hotmail.com
Submission dated 10 May, 2000
36. Wayne Morgan, BA LLB (Hons), LLM, Barrister &
Solicitor of the Supreme Courts of Victoria and the
Northern Territory, Lecturer in Law, Flinders
University of South Australia, GPO Box 2100, Adelaide, 5001
Submission dated 8 June, 2000
37. Ms. Sue Ritchie, 2/58 Crystal Downs Drive,
Blackmans Bay 7052
Submission received 9 June, 2000
38. Archbishop Adrian L. Doyle, Archbishop of Hobart
GPO Box 62, Hobart, 7001 - on behalf of the
Catholic Church.
Submission dated 16 June, 2000
39. Hobart Community Legal Service Inc.,
166 Macquarie Street, Hobart. 7000
Submission received 3 July, 2000
40. Pastor Clinton Wardle, Ministry Team Leader,
Hobart City Church of Christ - Email Address:
crwardle@trump.net.au
Submission dated 20 July, 2000
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41. Mrs. Fay Lincoln - Email Address: lincj@trump.net.au
Submission dated 23 July, 2000
 42. Mr. John Lincoln - Email Address: lincj@trump.net.au
Submission dated 23 July, 2000
 43. Captain Gordon Kenworthy-Neale, ADC, RD*, PhD, MA, BD, FRINA, RNR
Rt. Email Address: kn@vision.net.au
Submission dated 21 July, 2000
 44. Mr. Stuart N. McDonald, PO Box 332, East Devonport
Submission received 24 July, 2000
 45. Mr. James. Tadman Email Address: jeembob@hotmail.com
Submission dated 24 July, 2000
 46. Mr. Paul Kelly. Email Address: kelly_p@scholar.don.tased.edu.au
Submission dated 24 July, 2000.
 47. Mrs. Alison Wishaw, PO Box 180, Ulverstone 7315
Submission dated 20 July, 2000
 48. Mr. Norman Garwood, 3 Maple Court, Ulverstone 7315
Submission dated 20 July, 2000
 49. Mrs. A. Combridge, 14 Amber Court, Ulverstone 7315
Submission dated 21 July, 2000.
 50. Mr. D. Combridge, 14 Amber Court, Ulverstone 7315
Submission dated 21 July, 2000
 51. Mrs. A. Hope, 13 Kingsley Avenue, Burnie 7320
Submission dated 23 July, 2000
 52. Mrs. S. Latta, 105 Payne Street, Burnie 7320
Submission dated 25 July, 2000
 53. Mrs. Rosina Phillips, 114 Kindred Road, Kindred 7310
Submission dated 25 July, 2000
 54. Mr. Danny Sandor: Email Address: dannysan@oxemail.com.au
Submission dated 26 July, 2000
 55. Mr. John MacKenzie, PO Box 857, Ulverstone 7315
Submission dated 23 July, 2000
 56. Ms. Radiel Harvey-Fuller, 9 Wedgetail Street,
Primrose Sands 7173
Submission dated 27 July, 2000
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57. Mrs. Rose Turner, 360 Tranmere Road, Howrah 7018
Submission dated 25 July, 2000
 58. J. A. Hughes, 90 Molle Street, Hobart
Submission received 31 July, 2000
 59. Miss. Peggy Shaw, 9 Honora Court, Nichols Street,
Ulverstone 7315.
Submission dated 23 July, 2000
 60. Mrs. Loris Garwood, 3 Maple Court, Ulverstone 7315
Submission dated 27 July, 2000
 61. Mrs. J. M. Hingston, 1461 Castra Road, Sprent 7315
Submission dated 28 July, 2000
 62. Mr. Harry Diers, 434 Leslie Road, Kingston 7050
Submission dated 27 July, 2000
 63. Mrs. Louise Bugg, 1/20 Abbott Street, Burnie 7320
Submission dated 27 July, 2000
 64. Mr. & Mrs. P. & J. Austin, 12 Pattison Court,
Romaine Park, Burnie 7320
Submission dated 29 July, 2000
 65. Mr. J. Ekhouthe, Unit 3, 49 Tanundal Street, Howrah 7018
Submission received 31 July, 2000
 66. Ms. Bronwyn Peatling, 10 Addison Street, Rosetta 7010
Submission dated 28 July, 2000
 67. Damian and Shelley Thompson, 4 Quiggins Grove,
Ulverstone 7315
Submission dated 30 July, 2000
 68. Rev. Patrick O'Neal - Email Address:
antiochministries@bigpond.com
Submission dated 30 July, 2000
 69. Ms. A. I. Howe, 4 Cann Street, Penguin 7316
Submission dated 29 July, 2000
 70. Mrs. J. Coates, Unit 8, 28 John Street, Ulverstone 7315
Submission received 1 August, 2000
 71. Mr. David de Bomford, PO Box 925, Forth 7310
Submission dated 30 July, 2000
 72. Mrs. I. Scolyer, 25 Ocean Drive, Ulverstone 7315
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- Submission dated 31 July, 2000
73. Mr. & Mrs. P. & J. Stutter, 2-48 Barossa Road,
Glenorchy 7010
Submission dated 1 August, 2000
74. S. A. McCall, 9 Amy Street, West Ulverstone 7315
Submission dated 30 July, 2000
75. Mrs. M. J. McCall, 9 Amy Street, West Ulverstone 7315
Submission dated 29 July, 2000
76. Mr. A. Scolyer, 25 Ocean Drive, Ulverstone 7315
Submission dated 31 July, 2000
77. Mrs. Janice Walker, PO Box 150, Penguin 7316
Submission dated 31 July, 2000
78. Mrs. Laura Ludbey, 10 Flinders Avenue, Ulverstone 7315
Submission dated 31 July, 2000
79. Mrs. Mavis Wall, PO Box 193, Penguin 7316
Submission dated 2 August, 2000
80. Ms. Kristina Jessup. Email address:
k.jessup@postoffice.newstead.tased.edu.au
Submission dated 1 August, 2000
81. Mrs. Enid McBain, 15 Home Avenue,
Blackmans Bay 7052
Submission dated 1 August, 2000
82. Ms. Nancy Ling, 38 Westridge Road, Penguin 7316
Submission received 3 August, 2000
83. Mr. Frank Ling, 38 Westridge Road, Penguin 7316
Submission dated 31 July, 2000
84. Mr. & Mrs. K. C. and V. P. Sharman,
39 McCulloch Street, Ulverstone, 7315
Submission dated 31 July, 2000
85. Ms. Heather Geater, 3 Meredith Crescent,
South Launceston 7250
Submission dated 1 August, 2000
86. R. J. Harris, 334 Castra Road, Ulverstone 7315
Submission dated 1 August, 2000
87. Ms. Prue Power, 18 Clementina Street, Launceston 7250
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- Submission received 3 August, 2000
88. Anne Carr, 51a Elphin Road, Launceston 7250
Submission dated 2 August, 2000
89. Mr. Brian Beswick, State Director (Tasmania)
Australian Christian Coalition, PO Box 388,
Huonville 7109
Submission dated 3 August, 2000
- (b) Correction to submission received by email dated
14 August, 2000
90. L. Moore, 8 Helenwood Grove, Newnham 7248
Submission received 4 August, 2000
91. Mr. Richard Thorne, 46 Ernest Street, Kings Meadows 7249
Submission received 4 August, 2000
92. Mr. Gary Thorne, 46 Ernest Street, Kings Meadows 7249
Submission received 4 August, 2000
93. Mrs. Margaret Thorne, 46 Ernest Street, Kings Meadows 7249
Submission received 4 August, 2000
94. Mr. & Mrs. B. & B. Archer, 19 Bayview Road, Lauderdale 7021
Submission received 4 August, 2000
95. Ms. Elizabeth Crosby, 51A Elphin Road, Launceston 7250
Submission dated 31 July, 2000
96. E. A. Carr, 51A Elphin Road, Launceston, 7250
Submission dated 2 August, 2000
97. Ms. Kylie Robinson, 20 Brisbane Street, Launceston 7250
Submission dated 3 August, 2000
98. Mrs. B. J. Archer, 31 Mary Street, East Launceston 7250
Submission dated 2 August, 2000
99. A. Carr, 51A Elphin Road, Launceston, 7250
Submission dated 2 August, 2000
100. Mr. Noel Jacobson Email Address: noeljac@netspace.net.au
Submission dated 3 August, 2000
101. Mr. & Mrs. Keith & Lyn Popowski: Email Address:
popowskikeith@hotmail.com
Submission dated 4 August, 2000
-

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102. Mr. & Mrs. Ian and Jan Howard: Email Address:
ianhoward@bigpond.com
Submission dated 5 August, 2000
 103. Ms. Pauline R. Beasley: Email Address:
paulinesland@start.com.au
Submission dated 4 August, 2000
 104. Mr. Neville Viney, 18 Wilson Place, Ulverstone 7315
Submission dated 4 August, 2000
 105. Mr. G. D. Ropata, 50 Devon Hills Road, Launceston 7250
Submission received 7 August, 2000
 106. Mr. M. R. Jessup, 58 Queechy Road, Norwood 7250
Submission dated 2 August, 2000
 107. Mrs. J. M. Rowlands, 20 Wilson Place, Ulverstone 7315
Submission dated 3 August, 2000
 108. Mr. & Mrs. Peter and Judy Gross: Email Address:
grossp@globalfreeway.com.au
Submission dated 8 August, 2000
 109. Mr. & Mrs. K. and B. Miles, 394 Gaunts Road, Nietta 7315
Submission dated 7 August, 2000
 110. Mr. Rodney Chilcott, PO Box 744, Ulverstone 7315
Submission dated 7 August, 2000
 111. Mr. Russell Shewan, 14 Horsham Street, Ulverstone 7315
Submission dated 4 August, 2000
 112. Ms. Betty Murray, 7 Seaside Crescent, Penguin 7316
Submission received 8 August, 2000
 113. Mr. Brian Cameron, 9 Quiggins Grove, Ulverstone 7315
Submission received 8 August, 2000
 114. Revd. Eric Smith, Uniting Church in Australia, Hobart
City Centre Congregation, 58 Melville Street, Hobart 7000
Submission dated 4 August, 2000
 115. Mr. E. J. Holmes, 1 Nansen Court, Margate 7054
Submission dated 6 August, 2000 - = 22 signatories to
letter to Rev. Robert Meischke
 116. Rev. James Anderson, Christ Church Baptist,
Launceston 7250: Email address jsander@vision.net.au
Submission dated 8 August, 2000
-

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117. Mr. & Mrs. C. & I Haberle, 1 Flowers Grove, Ulverstone 7315
Submission dated 8 August, 2000
 118. Mr. & Mrs. T. & J. Gray, 111 Alanvale Road, Newnham 7248
Email Address: thgray@tassie.net.au
Submission dated 8 August, 2000
 119. Mr. & Mrs. B. & W. Jones, 8 Hazel Court, Ulverstone 7315
Submission dated 8 August, 2000
 120. Mr. John Carter, 24 McGowans Road, Nierinna 7150
Email Address: jonjo@telstra.easymail.com.au
Submission dated 10 August, 2000
 121. Martin Kern. Email Address: mkern@worldview.edu.au
41 Station Road, St. Leonards 7250
Submission dated 13 August, 2000
 122. Mr. Peter Bosker. Email Address: pbosker@yahoo.com
8 Barwing Crescent, Riverside 7250
Submission dated 13 August, 2000
 123. Mr. Rob Baker. Email Address, RBaker@stihl.com.au
14 Georgina Court, West Launceston 7250
Submission dated 14 August, 2000
 124. Mr. J. C. Stewart, LLB (Hons) BA, Barrister & Solicitor,
5 Avonbury Court, Launceston 7250
Submission dated 14 August, 2000
 125. Mr. and Mrs. K. & G. Hingston. Email address:
mhingston@bigpond.com
Submission dated 14 August, 2000
 126. Mrs. Bronwyn Baker, 14 Georgina Court, Launceston 7250
Email Address: robaker@trump.net.au
Submission dated 14 August, 2000
 127. Mr. Joshua Armstrong, 1-2 Morely Road. West Riverside 7250
Email Address: jogemo@telstra.easymail.com.au
Submission dated 14 August, 2000
 128. Mr. Ashley Baker, 14 Georgina Court, Launceston 7250
Submission dated 14 August, 2000
 129. Ms. Wendy Janine Hargreaves, 23 Fryett Street, Waverley 7250
Submission dated 14 August, 2000
 130. Mr. David Barker, 62 Tompsons Lane, Newnham 7248
-

Submission dated 14 August, 2000

131. Mr. & Mrs. J. & C. Dykman, 400 West Tamar Road, Riverside 7250
Submission dated 14 August, 2000
132. Ms. Melanie Baker, 14 Georgina Court, West Launceston 7250
Submission dated 15 August, 2000
133. Ms. Julieanne Richards, 2/36 Olive Street, Newstead 7250
Submission dated 18 August, 2000
134. Mr. Clem Adams, PO Box 273, Ulverstone 7315
Submission dated 28 August, 2000

Submissions received after report has begun to be written

135. Ms. Julianne Campbell, 615 Huon Road, South Hobart. 7004
Submission received 20 October, 2000
 136. Ms. Amy Poprawski, 135 Bowen Road, Lutana 7009
Submission received 20 October, 2000
 137. Ms. Lise Plunkett, 408 Strickland Avenue, South Hobart 7004
Submission received 20 October, 2000
 138. Ms. Monika Kurkiewicz, 59 Lansdowne Crescent, West Hobart 7000
Submission received 20 October, 2000
 139. Ms. Rachel Cuthbert, 23 Oldham Avenue, New Town 7008
Submission received 20 October, 2000
 140. Ms. Lisa Storchheim, 1 Kunzea Road, Taroona 7053
Submission received 20 October, 2000
 141. Ms. Brooke Innis, 14 Wariga Road, Glenorchy 7010
Submission received 20 October, 2000
 142. Mr. Jason Rostant, 9 Scott Street, Glebe 7000
Submission received 20 October, 2000
 143. Ms. Tania Winzenberg, 408 Strickland Avenue, South Hobart 7004
Submission received 20 October, 2000
 144. Ms. Margaret Hall, C/- P.O. Dodges Ferry 7173
Submission received 20 October, 2000
 145. Ms. Victoria Rich, 27 Cato Avenue, West Hobart. 7000
Submission received 20 October, 2000
 146. Ms. Kate Fitzpatrick, 19 Viola Crescent, Gagebrook 7030
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- Submission received 23 October, 2000
147. Ms. Madge Lowestoft, 11 Moorina Crescent, Chigwell 7011
Submission received 23 October, 2000
148. Ms. Lee Tulip, 13 Telopea Crescent, Gagebrook 7030
Submission received 23 October, 2000
149. Ms. Cassandra Stran, 43 Powell Road, Blackmans Bay 7052
Submission received 23 October, 2000
150. Ms. Gail Close, 17 Weerona Ave, Mt. Stuart 7000
Submission received 23 October, 2000
151. Ms. Viki Rutter, 17 Weerona Avenue, Mt. Stuart 7000
Submission received 23 October, 2000
152. Ms. Ronelle Brossard, 12/54 Edge Avenue, Lenah Valley 7008
Submission received 23 October, 2000
153. C. Needham, 20 Powell Street, Sandy Bay 7005
Submission received 23 October, 2000
154. Ms. Helen Davies, 271 Main Road, Windermere 7252
Submission received 25 October, 2000
155. Mr. Wayne Morgan, BA, LLB (hons), LLM (Colum),
Barrister and Solicitor, Lecturer in Law, Flinders University
GPO Box 2100, Adelaide 5001
- JSC 156 Mr. Greg Vines, State Service Commissioner, Department of
Premier and Cabinet, GPO Box 621, Hobart 7001
Notes used when making Submission at hearings on 15 August, 2001
- JSC 157 Ms. Sarah Middleton, Samantha Hardy and Lisa Butler
Associate Lecturers, Law Faculty, University of Tasmania
Submission tabled at meeting of Committee on 5 October, 2001
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APPENDIX III

**DOCUMENTS RECEIVED
AND TAKEN INTO EVIDENCE**

1. **De Facto and Other Significant Relationships - Possible Tasmanian Directions for Reform by Sarah Middleton and Dr. Margaret Otlowski: Australian Family Lawyer; Pages 25 - 29**
 2. **Cruelty against 'Concubines' - Maintenance for De Facto Wives in Tasmania - Sarah Middleton: Australian Journal of Family Law 13 - 1999; pages 141 - 169**
 3. **Legally recognising same sex relationships. Tasmanian Campaign Updates (Oct 1996) - obtained from Internet**
http://www.tased.edu.au/tasonline/tasqueer/updates/updt9_2.html
 4. **Submission to the Equal Opportunity Commission Victoria: Same Sex Relationships and the Law by Wayne Morgan, Lecturer in Law, University of Melbourne.**
 5. (a) **Same Sex Relationships and the Law - Discussion paper: Equal Opportunity Commission Victoria: May 1997**
(b) **Same Sex Relationships Booklet - Equal Opportunity Commission of Victoria: March 1998**
 6. **Same-Sex Relationships and the Law - Kris Walker: Alternative Law Journal, Vol 22, No. 6, December, 1997 pages 293 - 296**
 7. **Homophobia as an Issue of Sex Discrimination: Lesbian and Gay Equality and the Systemic Effects of Forced Invisibility: Christopher N. Kendall, BA (Hons), LLB (Queen's), LLM (Michigan, Lecturer in Law, Murdoch University, Perth, Western Australia. E Law - Murdoch University Electronic Journal of Law, Vol. 3, No. 3 (September 1996)**
 8. **University of London, King's College School of Law, Conference on Legal Recognition of Same-Sex Partnerships, London, 3 July, 1999 - Same-Sex Relationships - Some Australian Legal Developments:**
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The Hon. Justice Michael Kirby AC CMG: High Court of Australia.

9. **Articles: If Australian Law Opened its Eyes to Lesbian and Gay Families, What Would it See?, Jenni Millbank: Australian Journal of Family Law 12 (1998) Pages 99 - 139.**
 10. **"Which, then, would be the 'husband' and which the 'wife?": Some Introductory Thoughts on Contesting 'the Family' in Court, Jenni Millbank, lecturer in Law, University of Sydney, Australia E Law - Murdoch University Electronic Journal of Law, Vol. 3, No. 3 (September 1996)**
 11. **The Changing Concept of Family: The Significance of Recognition and Protection, The Hon, Justice Alastair Nicholson AO RFD, Chief Justice of the Family Court of Australia. E Law - Murdoch University Electronic Journal of Law, Vol. 3, No. 3 (September 1996)**
 12. **Property (Relationships) Legislation Bill: 1 June 1999, Second Reading Speech: Clover Moore, N.S.W. Parliament**
 13. **Legal recognition of same-sex relationships by Rachel Simpson and Marie Swain - Briefing Paper No. 12/99 NSW Parliamentary Library Research Service:**
 14. **Domestic Relationships: Issues for Reform. Inquiry into De Facto Relationships Legislation: Legislative Council Standing Committee on Social Issues, Report No. 20, December, 1999**
 15. **Property (Relationships) Legislation Amendment Bill Hansard Extract - NSW House of Assembly 26 May, 1999**
 16. **Property (Relationships) Legislation Amendment Bill Hansard Extract - NSW Legislative Council, 13 May, 1999**
 17. **New South Wales Property (Relationships) Legislation Amendment Act 1999 No. 4**
 18. **Received from Mr. Fletcher, R.B.F.**
 - (a) **Australian Superannuation Law Bulletin - August 1999 Volume 11. No. 1, pages 1, 3-5**
 - (b) **Analysis - "Divorce Bill creates more work for trustees" by Kate Perry**
 19. **Law Council of Australia - Submission to the Standing Committee of Attorneys-General on Model de Facto Relationships Legislation - January 1998**
 20. **The Parliament of the Commonwealth of Australia - Report on the Provisions of the Superannuation**
-

**(Entitlements of Same Sex Couples) Bill 2000 -
Senate Select Committee on Superannuation and
Financial Services - April 2000**

21. **"Legal recognition of gay and lesbian families"- OPINION -
Australian Institute of Family Studies Magazine -
Family Matters No. 55 - Autumn 2000**

 22. **Copies of documents supplied by Ms. Lynne Fitzgerald, Secretary,
Tasmanian Trades and Labor Council -**
 - (a) **Extract from TasPlan Superannuation Scheme**

 - (b) **Retirement Benefits Fund - Tasmanian
Accumulation Scheme - Trust Deed**

 - (c) **Industrial Relations Act 1984 In The Tasmanian
Industrial Commission (Matter No. T8017 of 1998)
Community Services Award, No. 2 of 1999 (Consolidated)**

 23. **"A Bride in Her Every-Day Clothes: Same Sex Relationship
Recognition in NSW" - Jenni Millbank and Kathy Sant
Sydney Law Review: Vol. 22: 181 2000.**

 24. **"Reducing Discrimination Against Same Sex Couples"
Discussion Paper: Victorian Attorney-General's Advisory Committee on
Gay, Lesbian and Transgender Issues: July 2000**

 25. **(a) Statute Law Amendment (Relationships) Bill 2000 - Victoria**
(b) Second Reading Speech

 26. **2 Folders of Acts and Legislation received from Mr. Jarrod
Bryan, Barrister and Solicitor, representing the Tasmanian Gay and
Lesbian Group (on file for Committee Members to peruse)**

 27. **Property Law Amendment Bill 1999 (Qld)
Second Reading Speech
Hon. M. J. Foley, Attorney-General, Queensland Parliament**

 28. **Defacto Relationships Bill 1999
Second Reading Speech
Hon. P. Patmore, Attorney-General**
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APPENDIX IV

WITNESSES

**Mr Rodney Croome,
Tasmanian Gay and Lesbian Rights Group**

**Mr Wayne Morgan,
Lecturer in Law,
Australian National University**

**Mr Dougald McLean,
Parents and Friends of Lesbians and Gays**

**Mrs Carol McLean,
Parents and Friends of Lesbians and Gays**

**Mrs Judith Thirkell,
Parents and Friends of Lesbians and Gays**

**Mr Greg Vines,
State Service Commissioner**

**Mr Chris Smyth,
Director,
Office of the State Service Commissioner**

**Ms Samantha Hardy,
Associate Lecturer,
School of Law,
University of Tasmania.**

Ms Sarah Middleton,
Associate Lecturer,
School of Law,
University of Tasmania.

Ms Lisa Butler,
Associate Lecturer,
School of Law,
University of Tasmania

APPENDIX V

**TRANSCRIPTS OF EVIDENCE
RECEIVED FROM
THE HOUSE OF ASSEMBLY COMMUNITY
DEVELOPMENT COMMITTEE**

Dr. Jocelyne Scutt,
Anti-Discrimination Commissioner

Ms Sharon Newman,
Anti-Discrimination Commission

Mr Rodney Croome,
Tasmanian Gay and Lesbian Rights Group

Ms Judy Armstrong,
Spokesperson for the Carers Association of Tasmania

Mr Garry Fletcher,
Secretary, Retirements Benefits Fund

Ms Glenys Clark,
Executive Manager Trustee Services,
Retirement Benefits Fund

Mr Fabian Dixon,
Law Society of Tasmania
(Family Law Practitioner)

Ms Lynne Fitzgerald,
Secretary,
Tasmanian Trades and Labor Council

Mr Wayne Morgan,
Lecturer in Law,
Flinders University,
South Australia

Mr Jarrod Bryan,
Barrister and Solicitor,
representing the Tasmanian Gay and Lesbian Rights Group

Mr Peter Maloney,
Director - Legislation,
Corporate Services Unit,
Department of Justice and Industrial Relations
