Commonwealth Powers (De Facto Relationships) Bill.

Second Reading

Mr NEWELL (Tweed—Parliamentary Secretary), on behalf of Mr Debus [10.13 a.m.]: I move:

That this bill be now read a second time.

The Commonwealth Powers (De Facto Relationships) Bill proposes to refer power to the Commonwealth in relation to property and other financial resources on the breakdown of a de facto relationship. The referral has been discussed in the Standing Committee of Attorneys-General [SCAG] for some time, and this bill has been prepared in conjunction with SCAG. Following references of power by all States—except Western Australia, which has a State Family Court—de facto children's issues are now dealt with by courts exercising jurisdiction under the Family Law Act 1975. Without similar references, de facto property issues will remain outside the Commonwealth jurisdiction. This issue has risen in importance since the commencement on the 28 December 2002 of the new Commonwealth superannuation splitting regime, contained in the Family Law Legislation Amendment (Superannuation) Act 2001. This regime enables married couples to divide their superannuation interests in the same way as their other assets upon marriage breakdown.

It is not possible for New South Wales to amend the Property (Relationships) Act to properly regulate the division of superannuation interests of de facto couples along the lines of the provisions made in the Family Law Act without amendments to the Commonwealth superannuation industry supervision legislation. However, the Commonwealth has indicated that it is not prepared to make amendments to the superannuation industry supervision legislation to give effect to State legislation for the division of superannuation interests of de facto couples, either for heterosexual or same-sex couples. The Commonwealth considers that it is preferable for issues concerning the division of superannuation to be dealt with at the Commonwealth level. This will provide uniformity between married and de facto couples in the division of superannuation interests and will ensure that the treatment of de facto couples does not vary between individual States and Territories.

The Commonwealth's view is that the national interest would be best served by all States making suitable references and that referring States should enact their reference legislation in substantially identical form. This is the best way to ensure that the resultant scheme for the property of de facto couples established by Commonwealth legislation will not be vulnerable to challenge on constitutional grounds, and that the scheme operates in a uniform manner across different States. References by States to the Commonwealth would enable the provisions of the Family Law Act to apply in those States to the property of de facto relationships. De facto couples would be able to use federal courts to resolve issues relating to both children and property. Property legislation would thus apply consistently and nationally to both married and de facto couples.

Under the present regime, de facto couples in different States may have their property treated differently for no good reason. Even if States intend to enact and maintain uniform legislation, process delays can result in legislative anomalies. Such an approach would be highly complex, time consuming and impracticable. Success would in any event require a high degree of continuing co-ordination to ensure all necessary amendments to Commonwealth and State legislation were from time to time effected. These difficulties would not arise if States were simply to refer power to the Commonwealth. It should be noted that the referral bill contains separate definitions applying to heterosexual and same-sex de facto couples. This has been done to ensure the validity of any Commonwealth legislation in the face of clear indications from the Commonwealth that it intends to exercise power only in relation to heterosexual de facto couples.

In contrast, under the New South Wales Property (Relationships) Act, same-sex de facto couples have the same rights as heterosexual de facto couples in relation to the division of property on the breakdown of a relationship. Ideally the advantages of superannuation splitting upon the breakdown of a de facto relationship should be provided to same-sex de facto couples. The Commonwealth is not prepared to allow this to happen. This intransigence on the part of the Commonwealth in refusing to legislate in respect of same-sex couples is to be deplored and is clearly discriminatory. In the face of the discriminatory behaviour of the Commonwealth, the majority of States consider that it is desirable to extend the benefit of the family law property provisions to the very many heterosexual de facto couples in their jurisdictions, particularly as de factos will otherwise be denied access to the superannuation splitting arrangements that took effect at the end of December 2002. It is therefore thought preferable that a reference be made even if the Commonwealth refuses to legislate with respect to same-sex de facto couples.

The referral of power would be of obvious benefit to the very many de facto couples in New South Wales, especially those with children. Once the Commonwealth has passed legislation extending the benefits of the family law property provisions to heterosexual de facto couples, they will be able to use federal courts to resolve issues relating to both children and property upon the breakdown of a relationship. The ability to have both children and property issues dealt with by a single court will help minimise the heavy burdens and stresses that accompany the breakdown of any

relationship. The referral will also provide added financial security for the many non-working and lower-income partners in de facto relationships. The majority of such partners are women. As the Australian Institute of Family Studies report *Superannuation and divorce in Australia* points out, entitlements to the wealth represented by superannuation funds is unevenly distributed between the sexes. This is not an issue as long as a relationship lasts to retirement and beyond. However, access to the benefits of superannuation are lost to many women upon the breakdown of a relationship. This has become more of an issue given the Federal government policy of promoting self-support in retirement. This has resulted in superannuation increasingly representing a greater proportion of wealth in Australia, second in importance only to the family home.

In the face of the increasing reliance on superannuation as a form of wealth, allowing superannuation interests to be divided on the breakdown of a relationship will help ensure that the future interest of all parties is taken into account on the breakdown of a relationship. This is especially so, as the Australian Institute of Family Studies report shows, given that many couples whose relationships break down do not consider superannuation among their assets upon their division of property. I commend the bill to the House.
