

I have corrected the proofs and will put them in the mail.

The other question the Committee asked is:

Could the difficulties you have identified in relation to property rights if a same sex marriage was to end¹ be overcome if New South Wales transferred its power to make laws concerning property division of a same sex marriage to the Commonwealth Government?

The answer is that the Commonwealth would have to accept the reference of powers and then to give effect to it by amending the Family Law Act. It could not readily treat a same-sex marriage as a marriage for the purposes of the Family Law Act without undermining the policy of the Marriage Act to have one law on marriage for the Commonwealth. So I think what it would have to do is to treat a state same-sex marriage as a de facto relationship for the purposes of legislating on property rights. That would be consistent with how it would have to be treated in other areas of federal law.

So that strategy does not take NSW much further. It would still be in the position that a same-sex marriage at state level is really just a species of de facto relationship at federal level.

Kind regards

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