



**Submission to the
Inquiry into the Marriage Equality
Amendment Bill 2010**

02 April 2012

Acknowledgements

The National LGBTI Health Alliance is the national peak health organisation for a range of organisations and individuals from across Australia that work to improve the health and well-being of lesbian, gay, bisexual, trans/transgender, intersex and other sexuality, sex and gender diverse (LGBTI) people and communities.

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The Alliance acknowledges the traditional custodians of country throughout Australia, their diversity, histories and knowledge and their continuing connections to land and community. We pay our respect to all Australian Indigenous peoples and their cultures, and to elders of past, present and future generations.

The Alliance also acknowledges our LGBTI Elders for their work and sacrifice on behalf of LGBTI Australians.

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Summary of Recommendations

(a) To remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexual orientation or gender identity.

The National LGBTI Health Alliance strongly endorses the proposed changes to the Marriage Act 1961 as outlined in 'Schedule 1 – Amendment of the Marriage Act 1961'. Marriage should be made available to all Australians, regardless of their sex, sexual orientation or gender identity.

(b) To recognise that freedom of sexual orientation and gender identity are fundamental human rights.

The right to marry, and the right to recognition of one's identity irrespective of marital status, are clearly enshrined in human rights law.

Introduction: Who we are

The Alliance is the national peak health organisation for a range of organisations and individuals from across Australia that work together to improve the health and well-being of lesbian, gay, bisexual, transgender, intersex and other sexuality, sex and gender diverse people (LGBTI)¹ and communities. Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with 67 Member Organisations and more than 50 individual member drawn from each State and Territory.

Alliance Members have come together to work collaboratively to improve the health and wellbeing of LGBTI people, their carers, families, and communities by:

- supporting evidence-based decision-making through improved data collection covering sexuality, sex and gender identity;
- developing policy and advocating with a national voice on LGBTI health and wellbeing issues;
- seeking increased commitment to health services for LGBTI people and communities;
- building the capacity of our members to work with and for LGBTI people, their carers, families, and communities.

Key areas of work for the Alliance include: Ageing and aged care; alcohol, tobacco and other drugs; disabilities; health and human rights; mental health and suicide prevention; monitoring and research; primary care; relationship recognition; sex and gender diversity; sexual health; and violence, homophobia and transphobia. The Alliance's website (www.lgbtihealth.org.au) provides a wide range of resources, including copies of policy submissions, media statements, governance information and LGBTI health information.

We welcome the opportunity to comment on the Senate Inquiry into the Marriage Equality Amendment Bill 2010.

Why we are interested in this Inquiry?

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people make up a significant proportion of the Australian population: 9% of adult men and 15% of women report either same sex attraction or some sexual experience with the same sex (Smith et al. 2003); up to 1:1,000 people may be transgender (Department of Health 2008, Olyslager & Conway 2007); and up to 1:200 intersex (Diamond 2004, Blackless 2000). LGBTI people are part of all population groups, including Australians living in rural and remote areas, indigenous communities, and in culturally and linguistically diverse populations.

Many LGBTI people lead healthy and fulfilling lives contributing to their families, local communities, workplaces and society as a whole. Nevertheless, the experience of dealing with marginalisation and stigmatisation often impacts on LGBTI people's health. For example, we know that LGBTI people have disproportionately negative mental health outcomes in comparison with the rest of the population, including depression and suicide (Rosenstreich 2011). The use of alcohol, tobacco and other drugs is also higher than the wider population (AIHW, 2011). Research demonstrates that these negative outcomes are not due to sexual orientation, sex or gender identity as such, but rather are related to the social determinants of health. In particular, these include the discrimination, social exclusion and isolation experienced by LGBTI Australians (Couch et al. 2007, Dyson et al. 2003, Hillier et al. 2005). One of the major examples of this discrimination, social exclusion and isolation of people of LGBTI people in Australia is the inability of same-sex couples to legally marry.

¹ The Alliance uses 'LGBTI' to cover lesbian, gay, bisexual, trans/transgender, intersex and other sexuality, sex and/or gender diverse people. Other groups and previous Alliance documents may use these and/or other initials in a different order.

Objects of the Bill

(a) To remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexual orientation or gender identity.

LGBTI Australians have significantly poorer health across the board than the general population, and a number of health areas where they are a particularly vulnerable, 'at-risk' group (AIHW 2011, Hillier et al 2005, Couch et al 2007, Pitts et al 2006). This is not due to sexuality, sex or gender identity in and of themselves, but rather due to discrimination and exclusion as key social determinants of health (Wilkinson & Marmot 2003). As noted by the Law Council of Australia, the exclusion of same-sex couples from the legal definition of 'marriage' is key to their experience of discrimination and in contravention of Australia's obligations under Article 26 of the International Covenant on Civil and Political Rights – Freedom from Discrimination (HREOC 2007).

The right to equality in relationships represents more than a private choice or even equal access to legal benefits, important as they are. Marriage is also a social institution which confers certain benefits and advantages to people who marry, and which has effects on the society as a whole. Marriage is positively associated with a large number of outcomes including better mental and physical health for adults, improved cognitive, emotional and physical well-being for children, and greater economic advantage for family members (Ribar 2004). Research indicates that marriage affords social recognition and thereby improves health, socioeconomic achievement, civic participation and involvement with extended family members (Waite and Gallagher 2000). Further, the denial of the right to marry conveys the message that same-sex relationships are less worthy than those of opposite-sex couples, and reinforces heterosexist assumptions and discrimination (Bilbarz and Stacey 2005). Extending the right to marry to same-sex couples will reduce prejudice against lesbian, gay and bisexual people and their children in Australia, and contribute to the improved wellbeing of a significant part of the population (Rosenstreich 2011).

For example, the number of visits by gay men to health clinics dropped significantly after same-sex marriage was allowed in Massachusetts in 2003, regardless of whether the men were in a stable relationship. Researchers from Columbia University surveyed the demand for medical and mental health care from 1,211 gay men registered with a particular health clinic in the 12 months prior to the change, and the 12 months afterwards. They found a 13% drop in healthcare visits after the law was enacted, as well as a reduction in blood pressure problems, depression and "adjustment disorders". Dr Mark Hatzenbuehler, who led the study, said: "Our results suggest that removing these barriers improves the health of gay and bisexual men. Marriage equality may produce broad public health benefits by reducing the occurrence of stress-related health conditions" ('Gay marriage improves health' 2011).

It's no surprise that people who are treated as second class citizens tend to have low self-esteem, which in turn makes them more likely to take risks"

Terrence Higgins Trust
spokesman

Equal Marriage will also confer economic benefits on Australian society, in terms of increased spending and less government aid. The US Congressional Budget Office has calculated that Equal Marriage would benefit the national economy, particularly in terms of decreased demand for social services (Kostigen 2009). Kostigen also notes the potential for increased revenue from weddings for hotels, restaurants, retail outlets and travel services, which Forbes magazine estimated at around \$17 billion in the US.

(b) To recognise that freedom of sexual orientation and gender identity are fundamental human rights.

The International Covenant on Civil and Political Rights, to which Australia is a signatory, contains the following Articles:

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized (UNHCHR 1976).

Denying the right to marry to two people because of their sex is clearly a contravention of their fundamental human rights.

Because Equal Marriage is not available in Australia at the moment, married people who undergo a gender transition are required to divorce before they can have their change of sex registered on their birth certificate. Principle 3, 'The Right to Recognition Before the Law', of the Yogyakarta Principles (2006) states:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom . . . No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity.

Requiring a person to divorce their life partner, even if their marital relationship continues in all but name, is one of the unconscionable results of prohibiting access to marriage to same-sex couples, and clearly abrogates their fundamental human rights.

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