



Top End Women's Legal Service Inc.

2 April 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

Dear Sir or Madam

We note that on 8 February 2012, the Senate referred the *Marriage Equality Amendment Bill 2010* ('the Bill') to the Legal and Constitutional Affairs Legislative Committee. The Bill seeks to remove discriminatory aspects of the *Marriage Act* to allow all Australians access to marriage regardless of sex, sexual orientation or gender identity.

Our Submission

As it currently stands, the *Marriage Act* permits and entrenches discrimination against lesbian, gay, bisexual and transgender people. In effect, it subordinates the relationships of lesbian, gay, bisexual and transgender people to those of heterosexual couples, therefore diminishing the ability of gay, lesbian, bisexual and transgender people to participate in Australian society as equal citizens. Not only does the *Marriage Act* undermine fundamental human rights to equality and non-discrimination, we submit that the law does not actually reflect the values and views of contemporary Australia. We note that Galaxy Research polling for 2009-2011 showed that 62% of Australians support marriage equality.¹

The *Marriage Act* should be reformed to reflect the worth and dignity of individuals in same-sex relationships as equal to those in heterosexual relationships. This would be consistent with Australia's obligations under Articles 2(1) (non-discrimination) and 26 (equality before the law) of the *International Covenant on Civil and Political Rights* (ICCPR)² and Article 2(2) (non-discrimination) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It would also reflect the heart of Article 1 of the *Universal Declaration on Human Rights*, that all "human beings are born free and equal in dignity and rights".

Comments on the content of the Bill

TEWLS commends the objectives of the Bill to remove discrimination from the *Marriage Act* and recognise freedom of sexual orientation and gender identity as fundamental human rights.

¹ See <http://www.smh.com.au/national/new-poll-backs-samesex-marriage-20120213-1r1h4.html>

² The cases of *Toonen v Australia* and *Young v Australia* before the Human Rights Committee confirm that the reference to 'sex' in Articles 2 and 26 of the ICCPR include sexual orientation and that sexual orientation rights form part of the ICCPR, including Article 26.

The exclusion of same sex couples from marriage has been deliberate and a “direct consequence of prolonged discrimination based on the fact that their sexual orientation is different from the norm.”³ TEWLS is strongly supportive of the third object of the Bill, which is to “promote acceptance and the celebration of diversity”, thereby directly acknowledging one of the causes of discrimination against lesbian, gay, bisexual and transgender people; being ‘different’.

In relation to the other amendments to the *Marriage Act* proposed by the Bill, TEWLS wholeheartedly supports these.

Who we are

The Top End Women's Legal Service Inc (TEWLS) is a community legal centre funded by the Commonwealth Attorney-General's Department to provide referrals, legal advice, casework, law reform and community legal education to women in the Top End of the Northern Territory. TEWLS was established in 1996 following recommendation by the Australian Law Reform Commission for the establishment of a network of women's legal services to respond to the particular legal needs of women, which were not being met by traditional legal services. TEWLS is an active member of the National Association of Community Legal Centres and Women's Legal Services Australia.

If you would like to further discuss this submission, please do not hesitate to contact

Yours Sincerely,
TOP END WOMEN'S LEGAL SERVICE INC


Managing Solicitor

³ *Minister for Home Affairs v Fourie and Another* (CCT 60/04) [2005] ZACC 19, at para 76.