



A Submission from the Australian Democrats

to

Parliament of Australia – SENATE

Inquiry into the Marriage Equality Amendment Bill 2010

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The Australian Democrats believe people in same-sex relationships should not be discriminated against because of their sexual preference. Whilst many areas of equality for same-sex couples have been addressed, we regard it as a basic human right that same-sex couples must have the right to marry.

We believe that all couples should be treated equally to ensure full partnership equality, particularly in relation to division of property and stamp duty, access to partners at time of sickness and incapacity, superannuation and life insurance, employment entitlements and benefits, and in death, such as in funerals, post mortems, intestacy and succession.

Further, we believe there should be no discrimination based on sexuality or gender identity against couples in their assessment for suitability and eligibility, for parenting in relation to official separation of partners.

We maintain that discrimination against same-sex couples is not appropriate in the modern liberal democracy in which we live.

Same-sex couples are legally regarded as *de facto*. As such they have the same rights and responsibilities as other couples in all state/territory and federal jurisdictions— except the right to marry. It is time to give same-sex couples the right to marry, bringing them fully into equality with heterosexual couples.

In 2006, the Australian Democrats drafted a Private Member's Bill, the *Same Sex Marriages Bill 2006*, which was introduced into Federal Parliament in June of that year. The bill aimed to reverse the changes that were made in the *Marriage Amendment Act 2004*, which redefined marriage as a union entered into by one man and one woman only.

The *Marriage Amendment Act 2004*, effectively stopped the ability of the courts to recognise marriages between two people of the same sex, particularly in cases where a legalised marriage had taken place in another country.

The *Same Sex Marriages Bill 2006* called for the use of gender-neutral language in the Marriage Act. The *Marriage Equality Amendment Bill 2010* will achieve that too.

We also recommend the inclusion of a “to avoid doubt” clause, stating that nothing in the Act should be interpreted as preventing same sex marriages.

Church and state are regarded as separate in Australia. There is no established state church. However, the state still mostly requires clergy to undertake the state duties of marriage. We submit that this role should be resumed by the state, leaving religious institutions free to bless or solemnise a union (or not) according to their own particular laws and canons.

We believe that legalising same-sex marriages at a Federal level and removing this form of discrimination against people in same sex relationships will finally give them the same status and recognition as people in heterosexual marriages or *de facto* relationships.

The *Marriage Equality Amendment Bill 2010*, currently before Federal Parliament, is very similar (although much simpler) to what was introduced by the Australian Democrats in 2006, and a Private Members Bill in 2009. It is a simple bill to effect the necessary change.

The Australian Democrats recommend the new bill be used to amend the *Marriage Act*

1961 and contain the following provisions:

- 1) the inclusion of a "to avoid doubt" clause. eg. "To avoid doubt, nothing in this Act is intended to prevent the marriage of two people of the same sex under this Act."
- 2) Repeal the 2004 definition of marriage and insert a clause accepting that all "marriages," "civil unions," "civil partnerships" and "civil marriages," etc. between two people of the prescribed legal age be treated equally under the law and redefine marriage to recognise it as the societal definition of "marriage."
- 3) In all sections using the term "wife (or husband)", substitute "spouse."
- 4) In all sections using the term "a man and a woman", substitute "two people".
- 5) That marriages be conducted by licensed civil marriage celebrants only, being a legal state institution. Churches and other religious bodies should remain totally free to determine if solemnisation and blessing and sacramental marriage is permitted under their particular canon or their applicable religious laws.

We call on the federal government to commit to redressing the unnecessary discrimination against same-sex couples, and to recognise that all Australians are equal.

The Australian Democrats thank you for your consideration of our submission.

Prepared for and on behalf of the Australian Democrats.

Yours sincerely,

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