



Senator David Fawcett
Chair, Select Committee on the Exposure Draft
of the Marriage Amendment (Same-Sex Marriage) Bill
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**Submission to the Select Committee on the Exposure Draft of
the Marriage Amendment (Same Sex Marriage) Bill**

Dear Senator Fawcett

Thank you for the opportunity to provide a submission to the Select Committee on the Exposure Draft of the Marriage Amendment (Same Sex Marriage) Bill (the Exposure Draft) on behalf of the ACT Government.

Our government is committed to the principle that marriage equality legislation will make the strongest possible statement that all people are entitled to respect, dignity, the right to participate in society, and to receive the full protection of the law, regardless of sexual orientation. We will continue to advocate for equal recognition of same sex relationships by the Australian Parliament.

We would like to reiterate the ACT's long running support for marriage equality and call on the Australian Parliament to legislate to amend the discriminatory definition of marriage in the *Marriage Act 1961* (Marriage Act). It is the ACT's view that marriage equality will be best achieved through a timely free vote of all Federal members and senators on legislation to amend the definition of marriage.

We know such an amendment is constitutionally possible as a result of litigation on this question. In December 2013 the High Court handed down its decision in proceedings initiated by the Federal Government challenging the ACT's marriage equality legislation - the *Marriage Equality (Same-Sex) Act 2013*. The Court overturned the legislation. The High Court was clear that neither the ACT Government nor state governments have power to legislate for marriage equality, but acknowledged that the marriage head of power under section 51 of the Constitution allows the Australian Parliament to legislate for marriage equality.

The ACT agrees with the High Court that there is now no doubt that the Federal Parliament can make laws regarding marriage to end discrimination on the basis of sex and gender. A plebiscite is not

necessary for reform of Australia's marriage laws and is likely to be counterproductive. There is no clear reason for the Commonwealth Government to delay reform any longer, by pursuing a costly, divisive and non-binding vote. The Commonwealth Parliament has the constitutional authority, the legal ability and the human rights imperative. Public opinion, both in Australia and internationally, prevails strongly in favour of marriage equality.

We also understand and respect the need for a free, positive and respectful discussion on the issue in the community. However, the role of elected representatives is to frame that discussion, listen to the views of the communities they represent and then to take action to make decisions in the interests of their constituents.

Should the Commonwealth Government decide to pursue a marriage equality plebiscite, now or in the future, the ACT Government will actively engage in the plebiscite debates locally and nationally, and will support local Lesbian, Gay, Bisexual, Trans, Intersex and Queer (LGBTIQ) communities. Consistent with ACT Government policy on other public debates, ACT Government employees will not be prevented from participating in constructive, respectful and informed discussions about this important issue.

The ACT's position on marriage equality is based on human rights principles and the ambition for our society to be inclusive and fair. The ACT recognises many LGBTIQ people are still unfairly subjected to discrimination within Australia and has observed the change in community values which now consider this prejudice as unacceptable and abhorrent.

The ACT also notes that wedding ceremonies can often be based on religious belief and practice, but marriage itself is, at law, a civil institution. The desire to love someone and commit to share lives together is universal. Everyone has their own ideas of what this commitment means and it may take different forms in different cultures, but love is a universal emotion. The feelings of love and commitment between couples of the same sex are no different than between couples of the opposite sex. Same-sex couples simply want the right to have their love recognised by the same civil institution.

In recognition that LGBTIQ people are valued members of our community, the ACT has over many years put in place legislation and undertaken law reform to support and afford the LGBTIQ community the same legal rights and protections that anyone can expect to enjoy in our society. The *Domestic Relationships Act 1994* (ACT), *Civil Unions Act 2006* (ACT), and *Civil Unions Act 2012* (ACT) recognised same-sex relationships and other law reform processes have been undertaken to clear our statute books of discrimination against the LGBTIQ community in the areas of property rights, adoption laws and requirements for a person to change the legal status of their sex. We introduced the first marriage equality framework which saw 31 same sex couples happily married for a very brief period. The vast support we received from the local and national community has strengthened our resolve to advocate for full marriage equality rights for all Australians, and to help foster a climate where that equality can be achieved without debate that descends into vilification.

It is within this context that the ACT Government has formed the view that the Exposure Draft before the Committee is inconsistent with modern Australian values and that it will operate to perpetuate systemic discrimination against LGBTIQ peoples. While the ACT supports marriage equality, we cannot endorse the Exposure Draft based on sections five, six, and eleven.

The proposed exemptions to the *Sex Discrimination Act 1984* (Sex Discrimination Act) within the Exposure Draft to allow marriage celebrants and religious bodies and organisations to refuse to conduct or solemnise marriages, display an misunderstanding of the issue and the ongoing discrimination that LGBTIQ peoples face in our communities.

It is the ACT's view that proposed reform to the Marriage Act to allow for same sex marriage should be considered to be a process to address systemic and formal exclusionary barriers LGBTIQ people experience within our community. As members of a free and democratic society, Australians expect to be able to live their lives without being harassed, victimised or excluded from participating in the community. However, it appears that the proposed legislation seeks to formalise existing institutional prejudices and discrimination into law rather than remove them.

The ACT notes that the Exposure Draft sections five and six of schedule 1 do not specifically mention any other circumstances that a minister of religion or other marriage celebrant may refuse to solemnise marriages, other than the marriage is not the union of a man and a woman. Adding a reference specifically to gender is unnecessary with respect to ministers of religion and entrenches discrimination by singling out one kind of relationship. There is no rational basis for creating a right for marriage celebrants who are not ministers of religion to discriminate as contemplated by the proposed section 47A. The ACT asks that the Committee consider marriage equality law reform as a process of removing barriers for the participation of LGBTIQ people within their communities. The references to a marriage that is "not the union of a man and a woman" in these sections of the Exposure Draft should be removed.

The ACT also notes section six of the Exposure Draft allows religious bodies and organisations to refuse to make facilities available or provide goods or services. This provision goes significantly beyond what we consider appropriate for the protection of freedom of religion. Australia is a multicultural, multiethnic, multid denominational society that recognises and celebrates diversity. The proposal will actively preclude the participation of people and therefore can be considered to be discriminatory and encroach on these national values. The ACT asks that the committee consider section 12(2) of the *ACT Marriage Equality (Same Sex) Act 2013* as a more balanced model for protecting religious freedoms and LGBTIQ people from discrimination. The wording used in this section is that a "minister of religion is not required to make a place (for example a church or other place of public worship) available for solemnising a marriage under this Act." At the very least the committee should consider removing the exception for the provision of goods and services from the exposure draft as this would create an inconsistency with established discrimination law principles across Australia.

The Exposure Draft significantly encroaches on the protections provided to LGBTIQ people by the Sex Discrimination Act. This legislation was designed to affirm that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law, without discrimination on the ground of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities. The proposed amendments appear to be intentionally designed to undermine the protection afforded to LGBTIQ people in this legislation. The amendments would also establish a dangerous precedent undermining Australian's faith in the protections that the Sex Discrimination Act provides. The ACT

asks that the Committee reconsider the implications of circumventing the protections within the Sex Discrimination Act.

Finally, we reiterate the ACT Government's call on the Australian Parliament to genuinely consider this issue as a priority, resolving it through a timely free vote of all Federal members and senators. No-one should be made to feel different or lesser because of who they love. Dozens of countries have already legalised marriage equality and the majority of Australians support this reform.

We ask that the Select Committee acknowledge the ACT Government's concerns with the Exposure Draft and consider that marriage equality law reform should seek to support and afford the LGBTIQ people the same legal rights and protections that anyone in our country can expect.

Yours sincerely

Andrew Barr MLA
Chief Minister

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Gordon Ramsay MLA
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