

The Senate

Legal and Constitutional Affairs
Legislation Committee

Recognition of Foreign Marriages Bill 2014

September 2014

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Members of the committee

Members

Senator the Hon Ian Macdonald (LP, QLD) (Chair)
Senator the Hon Jacinta Collins (ALP, VIC) (Deputy Chair)
Senator Catryna Bilyk (ALP, TAS)
Senator Barry O'Sullivan (NATS , QLD)
Senator Linda Reynolds (LP ,WA)
Senator Penny Wright (AG, SA)

Substitute Members

Senator Sarah Hanson-Young (AG, SA) (from 16 June 2014)

Participating Members

Senator Carol Brown (ALP, TAS)
Senator David Fawcett (LP, SA)
Senator David Leyonhjelm (LDP, NSW)

Secretariat

Ms Sophie Dunstone, Committee Secretary
Ms Sandra Kennedy, Principal Research Officer
Ms Leah Ferris, Senior Research Officer
Mr Hari Gupta, Senior Research Officer
Mr Joshua Wrest, Research Officer (Acting)
Ms Jo-Anne Holmes, Administrative Officer

Suite S1.61 Telephone: (02) 6277 3560
Parliament House Fax: (02) 6277 5794
CANBERRA ACT 2600 Email: legcon.sen@aph.gov.au

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Recommendation

Recommendation

2.56 The committee recommends that the Bill not be passed.

CHAPTER 1

Introduction

Referral of the inquiry

1.1 The Recognition of Foreign Marriages Bill 2014 is a private senator's bill that was introduced into the Senate by Senator Hanson-Young on 15 May 2014.¹

1.2 On the same day, the Recognition of Foreign Marriages Bill 2014 (the Bill) was referred pursuant to a recommendation of the Selection of Bills Committee to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 3 September 2014.²

Conduct of the current inquiry

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to a number of organisations and individual stakeholders inviting submissions by 31 July 2014. Details of the inquiry were placed on the committee's website at http://www.aph.gov.au/senate_legalcon.

1.4 The committee held a public hearing in Melbourne on 21 August 2014. A list of stakeholders who gave evidence at the public hearing is provided at Appendix 2.

Numbers, categorisation and publication of submissions

1.5 The committee received approximately 6831 submissions in response to this inquiry. Overall, approximately 2297 submissions were in support of the Bill and 4534 submissions opposed the Bill.

1.6 Due to the volume of submissions received, along with obvious limitations on committee resources and staffing, it was not feasible to publish all submissions on the committee's website. Accordingly, the committee made the following decision: all submissions received from organisations would be published on the website, along with an equal number of individual submissions supporting and opposing the Bill.

1.7 In total, the committee published 158 submissions: 58 submissions from organisations; 50 submissions from individuals supporting the Bill and 50 submissions from individuals opposing the Bill. The submissions published on the committee's website are listed at Appendix 1 to this report.

1.8 For the purposes of the committee's administrative processes, the committee resolved that it would not publish on the website submissions categorised as form letters (or variations of form letters), or short or general statements. A submission was categorised as a form letter where it contained a specific, or easily identifiable, template of words. A submission was categorised as a variation of a form letter where the template was modified in some way but could still be identified as a particular

1 *Journals of the Senate*, No. 29-15 May 2014, p. 822.

2 *Journals of the Senate*, No. 29-15 May 2014, p. 822.

type of form letter, or where the template was supplemented with additional material, such as a personal story or other original content.

1.9 Of the form letters, or variations thereof, received approximately 1034 were in support of the Bill and 1569 were opposed to it (a total of 2603).

1.10 The committee also received the following 6 petitions, which it decided not to publish on the website:

- Citizens Against Recognition of Foreign Same-Sex/Polygamous/Child Marriages—409 signatures;
- Australian Cristian Lobby—41, 560 signatures;
- St. Christopher's Parish, Syndal—39 signatures;
- 'Bill obviously an attempt to bring same-sex marriage into Australia by stealth'—25 signatures;
- Couples for Christ (Australia) Oceania Mission Ltd—28 signatures;
- 'Preserve the definition of marriage'—13 signatures; and
- Petition by Michael Lawrence—15 signatures.

Acknowledgement

1.11 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.12 References in this report to the committee Hansard are to the proof. Hansard and page numbers may vary between the proof and the official Hansard transcript.

Purpose of the bill

1.13 The Bill would amend the *Marriage Act 1961* (Cth) (Marriage Act) to allow for same-sex marriages that take place in a foreign country to be legally recognised in Australia.³

1.14 In her second reading speech, Senator Hanson-Young stated that the Bill 'affords full recognition of overseas marriage to couples when they return to Australia, regardless of their gender or sexual orientation'.⁴

Provisions of the bill

1.15 The Bill contains only one provision. Item 1 of Schedule 1 would repeal and replace section 88EA of the Marriage Act. Currently section 88EA provides that

3 Item 1 of Schedule 1 of the Recognition of Foreign Marriages Bill 2014 (the Bill).

4 *Senate Hansard*, 15 May 2014, p. 2726.

unions between either a man and another man or a woman and another woman that are solemnised in a foreign country will not be recognised in Australia.⁵

1.16 The amendment would remove this prohibition and provide that despite the current definition of marriage in Australia, unions between same-sex couples solemnised in a foreign country would be recognised as a marriage in Australia. Such unions would have the same rights and obligations as those unions between a man and a woman.⁶

5 This provision was introduced by Item 3 of Schedule 1 of the *Marriage Amendment Act 2004* (Cth).

6 Subsection 88E(2) of Item 1 of the Bill.

CHAPTER 2

Key issues

2.1 This inquiry generated a high level of public interest and the committee recognises the policy arguments raised by submitters and witnesses during the course of this inquiry.

2.2 The focus of this inquiry was the Recognition of Foreign Marriages Bill 2014 rather than marriage equality more broadly. Therefore, this chapter briefly discusses the question of marriage equality before addressing key issues raised by submitters and witnesses with regard to the Bill. It also discusses certain issues faced by intersex Australians.

Marriage equality

2.3 The majority of the submissions received by the committee contained general arguments for and against marriage equality, as opposed to addressing the specific provisions of the Bill. The arguments put forward were similar in nature to the main arguments raised with regard to the Marriage Equality Amendment Bill 2010 during the 2012 Senate committee inquiry.¹

2.4 Submitters supportive of same-sex marriage argued that:

- marriage equality would address the inequality and discrimination felt by same-sex couples in not being allowed to marry;
- same sex couples have a right to marry and a right to non-discrimination at international law;
- public opinion is in favour of allowing same-sex couples the right to get married;
- marriage equality for same-sex couples has been recognised in a number of overseas jurisdictions;
- marriage will greatly benefit the health of lesbian, gay, bisexual, transgender and intersex people; and
- the amendments are in the best interests of children of same-sex couples.²

1 Senate Legal and Constitutional Affairs Legislation Committee, *Marriage Equality Amendment Bill 2010*, June 2012, pp 11-36.

2 See, for example: New South Wales Gay and Lesbian Rights Lobby, *Submission 1*, p. 1; Youth Family Services Ltd, *Submission 15*, pp 2-3; Law Society of New South Wales, *Submission 17*, pp 1-2; Australian Marriage Equality, *Submission 19*, pp 3-5; Human Rights Law Centre, *Submission 20*, pp 2-3; Australian Lawyers for Human Rights, *Submission 21*, pp 1-2; Victorian Gay and Lesbian Rights Lobby, *Submission 22*, pp 1-3; Parents & Friends of Lesbians and Gays, *Submission 27*, pp 2-6; Australian Psychological Society, *Submission 30*, pp 4-8; National LGBTI Health Alliance, *Submission 33*, pp 1-5; Freedom to Marry, *Submission 36*, pp 1-5.

2.5 Submitters opposed to same-sex marriage argued that:

- marriage should remain between a man and a woman;
- children have a right to both a mother and a father;
- the majority of Australians do not support marriage equality;
- the issue has already been debated by the Parliament;
- it is not discrimination to restrict marriage to between a man and a woman;
- international law does not provide a right for same-sex couples to marry; and
- allowing same-sex marriage would be a "slippery slope" for other forms of marriage.³

Committee comment

2.6 As stated above, the purpose of this inquiry was not to consider the merits or otherwise of marriage equality in Australia and the committee does not intend to address those matters in its report. However, as many witnesses noted, the issue of same-sex marriage has already been considered by the Parliament and the committee is not persuaded that this inquiry has yielded any new material that speaks to the issue.

Key issues arising from the Bill

2.7 During the course of the inquiry, submitters and witnesses identified a number of issues with regard to the Bill. These included:

- whether the Bill was a surreptitious attempt to introduce marriage equality in Australia;
- differential treatment of domestic same-sex partnerships versus overseas same-sex marriages, and whether the provisions of the Bill would result in economic discrimination between those who can afford to travel and those that cannot;
- that other jurisdictions have recognised same-sex marriage and whether this should influence Australia's position on the issue;
- the impact the Bill would have on religious freedom;
- whether the Bill would address some of the family law and migration issues currently facing same-sex couples or instead create more uncertainty;

3 See, for example: Australian Family Association, *Submission 2*, pp 4-5; Endeavour Forum Inc., *Submission 3*, p.1; Presbyterian Church of Tasmania, *Submission 6*, pp 1-2; Catholic Archdiocese of Sydney, *Submission 7*, pp 1-4; Australian Christian Lobby, *Submission 9*, pp 3-4; National Marriage Coalition, *Submission 12*, pp 11-20; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, pp 4-8; Presbyterian Church of Australia, *Submission 23*, pp 1-4; Family Voice Australia, *Submission 31*, pp 1-13; Australian Catholic Bishops Conference, *Submission 32*, pp 2-4.

- whether the amendment would be contrary to Australia's obligations under international law; and
- whether the Bill represented a "slippery slope" to allowing the recognition of other types of marriage (for example polygamy and child marriage).

2.8 These issues are discussed in the following sections.

Attempt to introduce marriage equality in Australia

2.9 Some submitters expressed concern that the Bill was a surreptitious attempt to introduce marriage equality in Australia.⁴ The Australian Christian Lobby (ACL) described the Bill as 'intended to be a different path to redefine marriage in Australian law'.⁵ A number of submitters suggested that the title of the Bill was misleading, as foreign heterosexual marriages are already recognised in Australia and the Bill only goes to foreign same-sex marriages.⁶

2.10 The National Marriage Coalition stated:

We would say that, if marriage equality or same-sex marriage is to be debated, it should be debated as a separate issue, not in this step-by-step approach...⁷

2.11 The ACL argued that the Bill 'shows contempt for Australia's democratic processes'⁸ and pointed out that the issue of marriage equality had already been debated a number of times in various legislative forms:

A bill to recognise foreign same-sex marriages was defeated in the Senate just last year. There have been at least 11 attempts at state or territory level to legislate a new definition of marriage. All have failed. A House of Representatives committee in 2012 declined to support same-sex marriage. There have been three Senate inquiries since 2010. There have been numerous state parliamentary inquiries in the past two years, all followed by votes opposing changing the definition of marriage. The exception was the ACT Legislative Assembly, where nine people voted to set a precedent

4 National Marriage Coalition, *Submission 12*, p. 4; Australian Christian Lobby, *Submission 9*, pp 5-6; The Australian Family Association, *Submission 2*, p. 3; Catholic Archdiocese of Sydney, *Submission 7*, p. 3; Catholic Women's League of Australia Inc., *Submission 28*, p. 1; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 3; Australian Baptists Ministries, *Submission 8*, pp 2-3.

5 Australian Christian Lobby, *Submission 9*, p. 5.

6 National Marriage Coalition, *Submission 12*, p. 4; Australian Christian Lobby, *Submission 9*, pp 5-6; The Australian Family Association, *Submission 2*, p. 3; Catholic Archdiocese of Sydney, *Submission 7*, p. 3; Catholic Women's League of Australia Inc., *Submission 28*, p. 1; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 3; Australian Baptists Ministries, *Submission 8*, pp 2-3.

7 Mrs Jenny Stokes, Representative, National Marriage Coalition, *Committee Hansard*, 21 August 2014, p. 18.

8 Australian Christian Lobby, *Submission 9*, p. 5.

for the nation, which was obviously later overturned by the High Court as unconstitutional. ACL, in approaching this inquiry, facilitated 42,000 signatures on a submission to this inquiry.⁹

2.12 In response to these claims, Senator Hanson-Young acknowledged that the Bill was quite plainly aimed at furthering the case for marriage equality in Australia.¹⁰ A number of submitters supported the Bill on this basis because 'it will move Australia closer to a position of marriage equality'.¹¹

2.13 Some submitters argued that there was no reason the Bill could not be debated on its own merits.¹² The New South Wales Gay and Lesbian Rights Lobby stated that the policy issue of marriage equality generally and the provisions of the Bill were separate issues.¹³

2.14 Australian Marriage Equality concurred. Mr Rodney Croome, National Director, stated:

Firstly, we can deal with this separately; there are no constitutional barriers to dealing with this issue. One of the reasons, certainly in my experience, that same-sex couples marry overseas is that they have a sense of urgency. The partners might be ageing and wish to marry before they die, or they may have children to whom they wish to provide the benefits of marriage before those children grow up, which was the case with the couple I mentioned earlier who married in Auckland.¹⁴

Differential treatment and discrimination

2.15 Another issue raised by some submitters was the differential treatment of domestic same-sex partnerships versus same-sex marriages solemnised overseas and potential discrimination against certain same-sex couples.¹⁵

2.16 The Law Council of Australia was concerned that the Bill would create "economic" discrimination by establishing a situation where same-sex couples with

9 Mr Lyle Shelton, Managing Director, Australian Christian Lobby, *Committee Hansard*, 21 August 2014, p. 48.

10 Senator Hanson-Young, *Committee Hansard*, 21 August 2014, p. 47.

11 Law Institute of Victoria, *Submission 39*, p. 1; Law Society of New South Wales, *Submission 17*, p. 1; New South Wales Gay and Lesbian Rights Lobby, *Submission 1*, p. 1; Human Rights Law Centre, *Submission 20*, p. 1.

12 Civil Liberties Australia Inc., *Submission 11*, p. 2; Australian Lawyers for Human Rights, *Submission 21*, p. 4; Tasmanian Gay and Lesbian Rights Group, *Submission 46*, p. 3.

13 Dr Justin Coonan, Co-convenor, New South Wales Gay and Lesbian Rights Lobby, *Committee Hansard*, 21 August 2014, p. 3.

14 Mr Rodney Croome, National Director, Australian Marriage Equality, *Committee Hansard*, 21 August 2014, p. 3.

15 Australian Christian Lobby, *Submission 9*, p. 5; National Marriage Coalition, *Submission 12*, pp 4-5; Catholic Archdiocese of Sydney, *Submission 7*, p. 2; Australian Baptists Ministries, *Submission 8*, pp 3-4; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 2; Australian Sex Party, *Submission 50*, p. 1

the financial resources to travel overseas would have access to same-sex marriage whilst same-sex couples without those financial resources would be denied access to same-sex marriage. On that basis, the Law Council submitted that the Bill would create a serious 'discriminatory effect':

The dichotomy that the Bill would create if passed in its current form is likely to be problematic and result in confusion.

Furthermore, it would create a situation in which same sex couples who are able to travel overseas and marry can have their marriages recognised in Australia, while others may not be able to do so, due to the expense involved or other factors such as disability or age.¹⁶

2.17 The Attorney-General's Department noted in its submission that:

The passage of the Bill will result in differential treatment for same-sex marriages solemnised overseas in contrast to same-sex partnerships recognised pursuant to some State and Territory laws.¹⁷

2.18 Other submitters acknowledged this concern but on balance supported the Bill¹⁸ on the grounds, for example, that the Bill was 'a first step towards marriage equality in Australia'.¹⁹ Yet other submitters argued that discrimination already exists towards same-sex couples and the benefits of the Bill would outweigh the concerns around economic discrimination.²⁰

Overseas jurisdictions

2.19 Some supporters of the Bill, such as Australian Marriage Equality, argued that due to the significant number of countries recognising same-sex marriage, the amendments in the Bill were necessary in order to ensure that those couples that marry overseas are not faced with having to choose between their nationality and their marriage.²¹

2.20 Mr Croome stated that there had been an increase in the number of Australian same-sex couples marrying overseas since the last time the Senate considered the issue of marriage equality:

What has changed is that an increasing number of Australian couples are marrying overseas, particularly in jurisdictions that are very similar to Australia's and where a large number of Australians reside, and that

16 Law Council of Australia, *Submission 4*, p. 1.

17 Attorney-General's Department, *Submission 41*, p. 2.

18 Tasmanian Gay and Lesbian Rights Group, *Submission 46*, p. 3.

19 Law Institute of Victoria, *Submission 39*, p. 1.

20 Mr Corey Iram, Co-convenor, New South Wales Gay and Lesbian Rights Lobby, *Committee Hansard*, 21 August 2014, p. 8; Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 14.

21 Australian Marriage Equality, *Submission 19*, p. 4; National LGBTI Health Alliance, *Submission 33*, p. 3.

includes New Zealand and Britain. So, the problem that already existed has magnified...²²

2.21 In addition, Australian Marriage Equality argued that 'the number of jurisdictions allowing same-sex couples to marry is growing rapidly' and provided information on countries that currently allow or will soon allow same-sex couples to marry.²³

2.22 The Law Institute of Victoria (LIV) noted that there are currently five countries which do not allow same-sex marriage domestically but do recognise foreign same-sex marriages:

...Israel, Japan, Italy, Malta and the Netherlands Antilles. They do for same-sex marriage what your bill will do for marriage equality. They do not allow it, just like we do not allow it. But they recognise it, as we should.²⁴

2.23 Other submitters argued that Australia should not feel compelled into action by the actions of other nations. For example, the ACL argued that 'Australia is a sovereign nation responsible for its own policies':

The fact that New Zealand, the UK, and a small group of other countries have legislated to redefine the most fundamental relationship in society does not compel Australia to follow suit.²⁵

2.24 The National Marriage Coalition noted that only 16 out of the 193 United Nations member states have legislated for same-sex marriage.²⁶ It argued that this is less than 10 per cent of countries, 'hardly a landslide of opinion'.²⁷

2.25 The Catholic Archdiocese of Sydney submitted that the Bill attempted to circumvent Australia's democratic process and that adoption of 'a foreign definition of marriage' would undermine Australian law:

It is unjust and underhand that the Bill attempts to change the meaning of marriage for all Australians whilst purporting to do so only for a small number of same-sex couples.²⁸

Religious freedom

2.26 The impact of the Bill on the right of organisations and individuals to uphold their religious beliefs was of concern to some submitters.²⁹

22 Mr Rodney Croome, National Director, Australian Marriage Equality, *Committee Hansard*, 21 August 2014, p. 3.

23 Australian Marriage Equality, *Submission 19*, p. 3.

24 Mr Jamie Gardiner, Member of Human Rights Committee and LIVout Working Group, Law Institute of Victoria, *Committee Hansard*, 21 August 2014, p. 42.

25 Australian Christian Lobby, *Submission 9*, p. 6.

26 National Marriage Coalition, *Submission 12*, p. 5.

27 National Marriage Coalition, *Submission 12*, pp 9-10.

28 Catholic Archdiocese of Sydney, *Submission 7*, pp 2-3.

2.27 The ACL argued that:

...there is a big threat to freedom of belief and freedom of conscience that flows as a result of a change in the legal definition of marriage. And I must say that this is of major concern to the Christian constituency in this nation.³⁰

2.28 A number of submitters referred to cases overseas where small businesses that refused to supply their services to same-sex couples were prosecuted under anti-discrimination laws.³¹ At the public hearing, Lawyers for the Preservation of the Definition of Marriage remarked that:

Our point is more in what we call the butcher, baker and candlestick maker cases, which is the people who are downstream in the religious faith community: so those like the camp that is being talked about, those who will not do the wedding cake, those who will not take photographs, those who will not hire out the hall and those who will not let out their accommodation because of fundamental conscientious beliefs.³²

2.29 Mr Shelton from the ACL also referred to some specific examples:

Our submission also references the florist in Washington state, the photographer in New Mexico and the baker in Colorado, who have all faced or are currently facing serious legal sanctions because of their conscientious objection into participating in same-sex weddings—and there are many more.³³

2.30 Conversely, the Law Society of New South Wales argued that section 47 of the Marriage Act provided sufficient protection for religious ministers who did not wish to solemnise same-sex marriages.³⁴ The Human Rights Law Centre (HRLC) shared this view, stating:

Our position is that the Marriage Act currently preserves religious freedom in the sense that it recognises the autonomy of religious organisations and their ability to undertake religious ceremonies and it does not require them to perform marriages that do not accord with their beliefs. Nothing in this bill will change that. Marriage is a civil institution and, as such, marriage

29 The Australian Family Association, *Submission 2*, pp 5-7; Australian Christian Lobby, *Submission 9*, p. 12; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, pp 7-8

30 Mr Lyle Shelton, Managing Director, Australian Christian Lobby, *Committee Hansard*, 21 August 2014, p. 50.

31 The Australian Family Association, *Submission 2*, pp 5-7; Australian Christian Lobby, *Submission 9*, pp 12-15; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, pp 7-8.

32 Professor Neville Grant Rochow SC, Founder, Lawyers for the Preservation of the Definition of Marriage, *Committee Hansard*, 21 August 2014, p. 29.

33 Mr Lyle Shelton, Managing Director, Australian Christian Lobby, *Committee Hansard*, 21 August 2014, pp 48-49.

34 Law Society of New South Wales, *Submission 17*, p. 2.

performed by civil celebrants should not be affected by religious views, whatever they may be.³⁵

2.31 In respect of the overseas cases cited by some submitters and witnesses, the LIV stated that such cases occurred in overseas jurisdictions and therefore did not apply under Australia's anti-discrimination law.³⁶

Family law and migration

2.32 During the course of the inquiry, some submitters and witnesses raised issues related to family law and migration.³⁷

Family law

2.33 Some submitters were concerned about legal ambiguity under Australian family law in the current circumstances where foreign same-sex marriages are not recognised, whilst others believed passage of the Bill would exacerbate these problems. For example, the HRLC discussed the matter of separation and divorce:

In certain circumstances, the lack of recognition of foreign marriages in Australia can have the cruel effect of denying people access to divorce and separation if they are, or have become, Australian citizens. Clients of community legal centres have found themselves in what is, effectively, a legal void. This can have a profound impact on individuals. The result for some has been that they continue to have legal obligations to a former spouse who continues to reside in their former country. This included continuity of claims to the (now Australian) spouse's estate in that former country.³⁸

2.34 The HRLC argued that passage of the Bill would 'resolve many legal and practical uncertainties and complexities':

It is worth pointing out that, despite lack of recognition under the Marriage Act, our family law recognises overseas same-sex marriages for the purposes of property settlement and parenting issues. Our family law also recognises same-sex couples as parents.³⁹

2.35 By contrast, the Australian Family Association opined that passage of the Bill would create inconsistency and confusion and, contrary to the views of the HRLC,

35 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 14.

36 Mr Jamie Gardiner, Member of Human Rights Committee and LIVout Working Group, Law Institute of Victoria, *Committee Hansard*, 21 August 2014, p. 42.

37 Human Rights Law Centre, *Submission 20*, pp 2-3; Civil Liberties Australia Inc., *Submission 11*, p. 2; National LGBTI Health Alliance, *Submission 33*, pp 2-3; Victorian Gay and Lesbian Rights Lobby, *Submission 22*, p. 3; Australian Marriage Equality, *Submission 19*, pp 4-5.

38 Human Rights Law Centre, *Submission 20*, pp 2-3.

39 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 12.

would further complicate family law matters for those in a same-sex marriage solemnised overseas and recognised in Australia.⁴⁰

Spousal visas

2.36 The Victorian Gay and Lesbian Rights Lobby voiced concern about current spousal visa arrangements for same-sex couples, in particular the evidentiary burden placed on couples in a de facto relationship:

The spousal visa requirements if you are in a registered relationship or a marriage are waived of any time limit. If you are in a de facto relationship or the law only recognises you as a de facto relationship, which is how the law would treat these same-sex couples who are married overseas, they have to be together for two years and have to be able to prove the existence of the relationship. It is a much higher burden that they are placed with than a married couple.⁴¹

2.37 In response to written questions on notice, the Department of Immigration and Border Protection (DIBP) informed the committee that 'there is no difference between the types of visa applied for by a married couple or a de facto couple':

The "spouse" or "de facto partner" of an eligible Australian sponsor (Australian citizen, permanent resident or eligible New Zealand citizen) may apply for a Partner visa. Same-sex marriages are not recognised under the Australian Marriage Act 1961. Same-sex couples who have been legally married overseas may still apply for a Partner visa, the only difference being that the applicant will be assessed as a "de facto partner", rather than a "spouse". This has no impact on the assessment or the outcome of the Partner visa application, which depends on whether an applicant meets all of the relevant criteria.⁴²

2.38 In response to a question about evidentiary requirements, DIPB provided the following information:

When assessing a spouse or de facto partner relationship for the purpose of a Partner visa, officers must, by law, consider all the circumstances of the relationship, including the:

- a) financial aspects of the relationship;
- b) nature of the household;
- c) social aspects of the relationship; and
- d) nature of the couple's commitment to each other

40 Mrs Terri Kelleher, National President, Australian Family Association, *Committee Hansard*, 21 August 2014, p. 16.

41 Mr Corey Iram, Co-convenor, New South Wales Gay and Lesbian Rights Lobby, *Committee Hansard*, 21 August 2014, p. 4.

42 Department of Immigration and Border Protection, *Response to Written Questions on Notice*, 15 September 2014, p. 1.

Examples of supporting evidence include but are not limited to statutory declarations from the couple as well as third parties and evidence of financial arrangements.

A marriage certificate alone is not sufficient to meet the requirements of being a "spouse" for visa purposes. In addition to being married, the Migration Act requires couples to:

- have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
- be in a genuine and continuing relationship; and
- live together or not live separately and apart on a permanent basis.

Generally, a marriage that is recognised as valid in the country in which it is solemnised will be recognised under Australian law. There are some exceptions, however, such as same sex and polygamous marriages.⁴³

2.39 DIBP noted that these requirements for de facto couples do not change, regardless of whether the couple has registered their relationship.⁴⁴

International law

2.40 Submitters and witnesses both for and against the Bill raised concerns with regard to Australia's international law obligations.

2.41 Submitters in favour of marriage equality argued that current section 88EA of the Marriage Act may contravene Article 9 of the *Hague Convention on the Recognition and Celebration of Marriages* (the Hague Convention).⁴⁵

2.42 At the public hearing, the HRLC commented:

The discrimination that characterises Australia's current marriage laws offends international human rights standards and the obligation for Australia to uphold the principles of non[-]discrimination and equality before the law. However, the issues raised by this particular bill go further. As a matter of international comity, Australia should recognise validly formed marriages from overseas, regardless of the sex or gender of the couple. We are a signatory to the Hague Convention on the Celebration and Recognition of Foreign Marriages and it is our obligation under that convention to recognise those marriages.⁴⁶

43 Department of Immigration and Border Protection, *Response to Written Questions on Notice*, 15 September 2014, pp 1-2.

44 Department of Immigration and Border Protection, *Response to Written Questions on Notice*, 15 September 2014, p. 2.

45 Law Council of Australia, *Submission 4*, p. 2; Australian Lawyers for Human Rights, *Submission 21*, pp 2-4; Law Institute of Victoria, *Submission 39*, p. 1; Human Rights Law Centre, *Submission 20*, p. 2.

46 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 11.

2.43 It was also argued that the Marriage Act 'directly discriminates on the grounds of sexual orientation in denying same-sex couples the right to marry'⁴⁷ and therefore breaches Australia's obligations under the *International Covenant on Civil and Political Rights* (the ICCPR).⁴⁸

2.44 Submitters who opposed the Bill argued that it was not discriminatory under human rights law for marriage to be restricted to between a man and a woman.⁴⁹

2.45 The Catholic Archdiocese of Sydney submitted that Article 23 of the ICCPR does not encompass same-sex marriage:

...international law has always recognised the truth that marriage is a union of a man and a woman orientated to the begetting and nurturing of children. As the United Nations Human Rights Committee has affirmed, the "right to marry and found a family", expressed in Article 23 and elsewhere, "implies, in principle, the possibility to procreate".⁵⁰

2.46 Lawyers for the Preservation of the Definition of Marriage similarly argued that Article 23 of the ICCPR does not give rise to the right for same-sex couples to marry:

The case was inviting the court to revisit the question of whether there is a right under the European covenants to same-sex marriage. That had been ventilated previously and it had been decided that there was no such right under any of the covenants that prevail in the European Union, which are obviously analogous to those that are provided for at the UN level as well.⁵¹

2.47 The Australian Christian Lobby claimed that the Hague Convention was never intended to apply to same-sex marriages in Australia⁵² while the Presbyterian Church of Australia stated that the Bill would be in conflict with Australia's obligations under the Convention on the Rights of the Child.⁵³

47 Australian Lawyers for Human Rights, *Submission 21*, p. 1.

48 Human Rights Law Centre, *Submission 20*, p. 2; Law Society of New South Wales, *Submission 17*, pp 1-2; Law Institute of Victoria, *Submission 39*, p. 1; Castan Centre for Human Rights Law, *Submission 29*, pp 2-3; Australian Lawyers for Human Rights, *Submission 21*, pp 1-2.

49 Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 7; Catholic Archdiocese of Sydney, *Submission 7*, pp 3-4.

50 Catholic Archdiocese of Sydney, *Submission 7*, p. 3.

51 Professor Neville Grant Rochow SC, Founder, Lawyers for the Preservation of the Definition of Marriage, *Committee Hansard*, 21 August 2014, p. 28.

52 Mr Lyle Shelton, Managing Director, Australian Christian Lobby, *Committee Hansard*, 21 August 2014, p. 49.

53 Reverend Darren Middleton, Convenor of the Church and Nation Committee, Presbyterian Church of Australia, *Committee Hansard*, 21 August 2014, p. 47.

The "slippery slope"

2.48 It was the view of some submitters that the recognition of foreign same-sex marriages in Australia would lead to other types of relationships, such as polygamous marriage and marriage to minors, also being recognised.⁵⁴

2.49 At the public hearing, the National Marriage Coalition raised this concern:

We also say that other groups could seek to have their foreign marriages recognised, and the Marriage Act is very clear in that it recognises foreign marriages that are legal in Australia. That is already the case, even though the name of the bill might not suggest that. So the Marriage Act currently recognises foreign marriages that are legal.⁵⁵

2.50 In its submission the ACL listed a number of unions that are recognised in other countries (child marriage, polygamy and polyamory) and argued that while the focus of the Bill was same-sex marriages, it was unlikely to be limited to such marriages in practice.⁵⁶

2.51 These claims were refuted by supporters of the Bill. The Victorian Gay and Lesbian Rights Lobby pointed out that 'that every single lesbian, gay, bisexual, transgender and intersex reform for the last 30 years we have been having this discussion on things always has an attack of slippery slope attached to it, and not one of those predictions have ever come true in those 30 years'.⁵⁷

2.52 Australian Marriage Equality stated that such concerns have not borne out in other countries where same-sex marriage is recognised:

In the world at the moment marriage equality prevails in almost 20 jurisdictions, the combined population of which is hundreds and hundreds of millions of people, and yet the Australian Christian Lobby can only find one example where there was legal recognition of a polygamous relationship in a country that does not otherwise have that cultural tradition.⁵⁸

Committee comment

2.53 The committee heard a range of views canvassing the broader issue of marriage equality and the definition of marriage. This, however, was not the purpose of this inquiry despite those on both sides of the debate acknowledging during the

54 Australian Christian Lobby, *Submission 9*, p. 10; Catholic Archdiocese of Sydney, *Submission 7*, p. 3; Australian Baptists Ministries, *Submission 8*, p. 3; Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 3

55 Mrs Jenny Stokes, Representative, National Marriage Coalition, *Committee Hansard*, 21 August 2014, p. 18.

56 Australian Christian Lobby, *Submission 9*, pp 6-10.

57 Mr Corey Iram, Co-convenor, New South Wales Gay and Lesbian Rights Lobby, *Committee Hansard*, 21 August 2014, p. 7.

58 Mr Rodney Croome, National Director, Australian Marriage Equality, *Committee Hansard*, 21 August 2014, p. 2.

course of the inquiry that the Bill is an intended step towards the wider goal of legislated marriage equality. In the committee's view, marriage equality is an issue that should be addressed honestly and directly in the context of wider debate, not through attempts to address the issue incrementally.

2.54 The committee notes that passage of the Bill would legislate a form of discrimination in that same-sex couples able to marry overseas would be afforded a different set of rights to Australian same-sex couples who under domestic law would be unable to marry.

2.55 The committee recommends that the Bill not be passed as it appears to have been introduced as a vehicle to progress marriage equality more generally, rather than the specific amendment proposed. While the inquiry did reveal some issues which should be addressed by the Commonwealth government at the appropriate time and in the appropriate forum—for example matters relating to family law and migration—it is not within the terms of reference of this inquiry to address those issues. The committee nonetheless urges the government to give these matters due consideration.

Recommendation 1

2.56 The committee recommends that the Bill not be passed.

Issues facing intersex Australians

2.57 A number of submitters and witnesses to the inquiry raised issues particular to intersex Australians and acknowledged that even if the Bill were passed, in its current form it would not allow for intersex Australians to marry.⁵⁹

2.58 Organisation Intersex International Australia Limited explained what the term intersex encompassed:

In this regard, we note that intersex is a term that relates to a range of physical traits or variations that lie between ideals of male and female. Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male. Many forms of intersex exist; it is a spectrum or umbrella term, rather than a single category. It can include differences in the number of sex chromosomes, different tissue responses to sex hormones, or a different hormone balance. Examples of intersex variations include Androgen Insensitivity Syndrome (AIS), Congenital Adrenal Hyperplasia (CAH), 5 alpha Reductase Deficiency, and sex chromosome differences such as 47, XXY (often diagnosed as Klinefelter Syndrome) and 45, XO (often diagnosed as Turner Syndrome).⁶⁰

59 Organisation Intersex International Australia Limited, *Submission 26*, p. 1; Law Institute of Victoria, *Submission 39*, p. 2; Law Society of New South Wales, *Submission 17*, p. 2; Human Rights Law Centre, *Submission 20*, p. 3; Australian Marriage Equality, *Submission 19*, p. 6; ACON, *Submission 35*, p. 1; Australian Sex Party, *Submission 50*, p. 1

60 Organisation Intersex International Australia Limited, *Submission 26*, p. 1.

2.59 During its inquiry, the committee heard evidence from Tony Briffa, Vice-President of both Organisation Intersex Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc. Tony referred to her own circumstances:

I was born with a biological intersex variation. Doctors refer to this as "Disorder of Sex Development" (specially "Androgen Insensitivity Syndrome" in my case) but essentially it means that I was born with a natural variation that resulted in being born with biological attributes of both sexes. As a result of my biological variation and the way it was treated by doctors, I have lived as a woman and a man at various times in my life though I was raised as a girl. (I have also had Victorian birth certificates that reflect my sex as female, male and nothing). I am extremely comfortable with who I am and am open about being an intersex person in all aspects of my life. Like most Australians, I identify in line with my biology at birth; I am both female and male.⁶¹

2.60 Tony explained that even if the Bill was passed, her marriage to her partner in New Zealand would still not be recognised in Australia due to the terminology used:

The bill before us is important to me. It is particularly about same-sex marriages solemnised in foreign countries. It assumes that people are either male or female. In Australia marriage is between a man and a woman to the exclusion of all others. This bill would allow marriages from overseas solemnised between two women or two men to also be recognised in Australia. The problem we have is that, for some people like me, it is not as easy as that, it is not as black and white as that.

I got married in New Zealand 11 months ago. I have my marriage certificate here, which I will table, and you will see on that certificate that my sex on my marriage certificate is not male or female. It says 'indeterminate'. I would have preferred, personally, that the sex would have reflected more accurately my sex, being part male and part female. They do have an option of 'indeterminate' in New Zealand and I chose that option, because that more accurately reflects me. I am fierce about being true to myself. I do not want to have to pretend, particularly in legal documentation, that I am one or the other, because I would be denying a part of myself.⁶²

2.61 Tony noted that she and her partner's marriage would be recognised in Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, the Netherlands, New Zealand and a few other countries, though not Australia.⁶³ She argued that even if the

61 Tony Briffa, *Submission 26*, p. 1.

62 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 33.

63 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 35.

Bill were passed, she would be 'one of the few people in Australia that cannot actually be legally married'.⁶⁴

2.62 She further pointed out that the Marriage Act as it currently stands is not clear with regards to whom she would be allowed to marry:

In fact, it is a terrible situation. I technically could have married my wife in Australia but I would have had to have been a man to do it. I would have to forget the female part of me, accept the male part of me, have a male birth certificate—and I have had a female birth certificate, a male birth certificate and a blank birth certificate—be in a heterosexual relationship and have that recognised to be able to marry in Australia. I could have married her that way, but I am not her husband. Physically, if you like, I am not her husband, so it would be very strange. I would always be worried about what that would mean in the future. Would someone invalidate my marriage if I get older and am in a nursing home or have had a car accident, because when I go to a nursing home or a hospital they would be able to identify that I am not male?⁶⁵

2.63 The HRLC acknowledged the difficulties faced by intersex Australians:

...that as a society we need to be more aware of the particular circumstances of transgender people, gender diverse people and intersex people that do not neatly fall into the categories of male and female. Some of our laws have been set up in a way that have really negative impacts for these people.⁶⁶

2.64 The HRLC also discussed how the Bill could be amended to ensure that the marriages of transgender, gender diverse and intersex people would be recognised under Australian law:

When we say a man and another man and a woman and another woman what a man and what a woman is under Australian law is not clear, particularly after the Norrie case, and we have seen moves in other states and territories that do recognise the greater diversity in sex and gender that does exist outside those strict categories. By using the words "two people" we can be sure that we are fully inclusive of anyone who is transgender, gender diverse or intersex and does not identify as purely male or female or may not fit within a legal definition of those concepts.⁶⁷

64 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 35.

65 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 34.

66 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 15.

67 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 15.

2.65 Tony also drew the committee's attention to other situations where intersex people are not properly or accurately recognised, such as passports and birth certificates. Australian birth certificates currently only allow for gender to be identified as 'man', 'woman' or 'indeterminate', while passports allow intersex people to have their gender listed as 'X'.⁶⁸ Tony explained why these options are unsuitable:

Like all intersex people, I consider myself to be one of the few classes of people in this country who cannot have a birth certificate which recognises what they are. Even a trans person, a person who is born one sex and identifies with the other and starts living as that opposite sex, they can get a birth certificate which recognises their affirmed sex. I am biologically born this way but I cannot have a birth certificate that acknowledges what I am because birth certificates at the moment require that you can only be one of the other or you could have 'indeterminate'. I am not indeterminate; I know what I am. My issue with the X personally is that it sets up a situation where you have males, you have females and then you have something that is outside of that—you have an X. I am not outside of that. I know what I am. I am actually part male and part female. That is why I do not particularly like the X.⁶⁹

Committee comment

2.66 The committee is concerned by the issues raised in relation to the recognition of marriages for intersex people, as well as their recognition in Australian birth certificates and passports.

2.67 Whilst the recognition of intersex people in Australian birth certificates and passports is not germane to the terms of the Bill subject to this inquiry, the committee urges the Commonwealth government to give further consideration to the evidence of Tony Briffa regarding intersex rights and intersex marriage and to how these issues can be addressed.

Senator the Hon Ian Macdonald Chair

68 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 36.

69 Tony Briffa, Vice President, Organisation Intersex International Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc., *Committee Hansard*, 21 August 2014, p. 34, 36.

Additional Comments from Senator Collins and Senator Bilyk

1.1 The community remains divided on this issue with differing and strongly held views expressed to the committee. Labor senators have a conscience vote on this issue.

1.2 This Bill would create a fundamental inconsistency in the legal treatment of same sex couples depending on their financial or physical capacity to travel overseas to marry.

1.3 In its submission, the Law Council of Australia noted that the Bill if passed:
...would create a situation in which same sex couples who are able to travel overseas and marry can have their marriages recognised in Australia, while others may not be able to do so, due to the expense involved or other factors such as disability or age.¹

1.4 There have already been a number of attempts to re-define the definition of marriage in Australia. Last year the Senate rejected the Marriage Act Amendment (Recognition of Foreign Marriage for Same-Sex Couples) Bill 2013 which contained very similar provisions to the Bill the subject of this inquiry.

1.5 As noted at paragraph 2.6 of the majority report, this inquiry has not produced any new evidence on the issue of same-sex marriage. The situation has remained the same since the last time this issue was considered by the Senate.

Senator the Hon Jacinta Collins

Senator Catryna Bilyk

1 Law Council of Australia, *Submission 4*, p. 1.

Dissenting Report of an Individual Labor Senator

1.1 This Bill seeks to amend the *Marriage Act 1961* (Marriage Act) to remove the prohibition on the recognition of same-sex marriages solemnised under foreign law.

1.2 Accordingly the focus of the Senate Committee's inquiry is restricted to this issue, rather than the broader issue of marriage equality. However, as acknowledged in the Majority Report, the bulk of the submissions provided to the committee contained arguments going to the broader issue of marriage equality.

1.3 These issues were comprehensively reported in the 2012 Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Marriage Equality Amendment Bill 2010.

1.4 The only significant developments since the tabling of that report have been continued growth in both public support of marriage equality in Australia¹ and the number of countries that have legalised same-sex marriage.²

1.5 Full marriage equality, irrespective of an individual's sexual orientation, gender identity or intersex status, is long overdue in Australia. Whilst any discrimination exists there is no equality, action must be taken in Australia to bring about true equality for same-sex couples.

1.6 The current definition of marriage contained within the Marriage Act discriminates against same-sex couples, denying them the fundamental social, cultural, psychological, health, administrative and legal benefits marriage can provide.

1.7 All adults, irrespective of their sexual orientation, gender identity or intersex status, deserve to have their relationships treated with dignity and respect and that is why marriage equality is critically important. Allowing all couples access to marriage under Australian law will only strengthen the institution of marriage, increasing its value and significance in the modern Australian community.

1.8 Whilst this Bill does not go far enough in addressing this issue, I believe that any move to bring Australia closer to marriage equality is positive.

1.9 I therefore reject the recommendation of the Majority Report and support an amended Bill. I also recommend that all political parties allow their federal senators

1 The Crosby/Textor survey on Australians attitudes to same-sex marriage from July 2014 found that 72% of Australians support marriage equality.

2 Note that for the purposes of this report the term 'same-sex marriage' is intended to be inclusive of two people of marriageable age irrespective of sexual orientation, gender identity or intersex status.

and members a genuine conscience vote in relation to the marriage equality, including recognition of foreign same sex marriages.

1.10 The Bill should be amended to adequately address concerns raised about the drafting, including the removal of gender specific terms which could exclude people who are intersex or transsexual.³

Recognition of Foreign Same-Sex Marriage in Australia

1.11 The number of foreign jurisdictions allowing same-sex couples to marry continues to grow. At the time of this inquiry the following countries had legalised same-sex marriage: The Netherlands; Belgium; Spain; Canada; South Africa; Norway; Sweden; Portugal; Iceland; Argentina; Denmark; Uruguay; New Zealand; France; Brazil; England and Wales; Luxembourg; and Scotland.⁴

1.12 Additionally, same-sex couples can marry in a number of sub-national jurisdictions of the Unities States of America and Mexico.⁵

1.13 A number of other jurisdictions, namely Israel, Japan, Italy, Malta and the Netherlands Antilles, recognise foreign same sex marriages even though they do not allow same-sex marriage under their domestic laws.⁶

1.14 Whilst foreign same-sex marriages are not recognised as marriages under Australian law, they are given some level of recognition, including under family law.⁷

1.15 The Tasmanian relationship recognition scheme automatically recognise foreign same-sex marriages as local civil unions, meaning that same-sex couples married under foreign laws have the same rights as married, civil union or de facto heterosexual couples under the laws of these states.⁸

1.16 In recent years there have also been policy changes in Australia to enable Australia citizens to enter into same-sex marriages under foreign laws.

3 See, for example, Organisation Intersex International Australia Limited, *Submission 26*, p. 1; Law Institute of Victoria, *Submission 39*, p. 2; Law Society of New South Wales, *Submission 17*, p. 2; Human Rights Law Centre, *Submission 20*, p. 3; Australian Marriage Equality, *Submission 19*, p. 6; ACON, *Submission 35*, p. 1 and Australian Sex Party, *Submission 50*, p.1.

4 Australian Marriage Equality, *Submission 19*, p. 4.

5 Victorian Gay and Lesbian Rights Lobby, *Submission 22*, p. 2.

6 Mr Jamie Gardiner, Member of Human Rights Committee and LIVout Working Group, Law Institute of Victoria, *Committee Hansard*, 21 August 2014, p. 42.

7 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 12.

8 Regulation 8, *Relationships Regulations 2013* (Tas).

1.17 Since 1 February 2012 the Commonwealth Government has issued Certificates of No Impediment to Marriage to same-sex couples seeking to marry in foreign countries where such certificates are required, including Portugal, Spain, Norway and South Africa.⁹

1.18 As of June this year Australian same-sex couples who qualify to marry under British Law have been able to marry in British consulates in Australia.¹⁰ However as the Marriage Act stands, these marriages are not be recognised as soon as the couples leave the consulate and return to Australian soil.

1.19 The most recent available Census figures, from 2011, show that more than 1,300 same sex couples have married overseas.¹¹ Evidence provided to the Committee suggests that this figure would be significantly higher now, particular following the legalisation of same-sex marriage in New Zealand and the legalisation of same-sex marriage in Britain (and the policy change which allows couples to marry in British consulates).¹²

1.20 For example, Australian Marriage Equality provided information to the Committee stating that New Zealand Registrar of Births, Deaths and Marriages records show that 234 Australian same-sex couples married in New Zealand between 19 August 2013 and 23 July 2014.¹³

1.21 It is incongruous that in spite of policy changes that enable same-sex couples to marry under foreign laws and the recognition of foreign same-sex marriages as civil unions or de facto partnerships under state and Commonwealth laws, these unions are still not legally considered marriage under Australia law.

Practical benefits of recognition of foreign same-sex marriages

1.22 The Federal Labor Government's 2008 same-sex law reforms made significant progress in removing discrimination against same-sex couples; however it is clear that inequality under the law remains.

9 See the Hon Nicola Roxon MP, Attorney-General, *Certificates of No Impediment to marriage for same-sex couples*, Media release, 27 January 2012, available at <http://www.andrewleigh.com/2130> (accessed on 22 September 2014).

10 Australian Marriage Equality, *Submission 19*, p. 6

11 Australian Bureau of Statistics, 2012, *Reflecting a Nation: Stories from the 2011 Census, 2012–2013*, cat. No. 2071.0, available at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features852012-2013> (accessed on 22 September 2014)

12 Mr Rodney Croome, National Director, Australian Marriage Equality, *Committee Hansard*, 21 August 2014, p. 1.

13 Australian Marriage Equality, *Submission 19*, p. 4.

1.23 Whilst same-sex foreign marriages are largely treated the same as de facto partnerships under many state, territory and Commonwealth laws there still remains a number of legal and administrative impediments for these couples.

1.24 Evidence to the committee provides real life examples of issues faced by same sex couples married under foreign laws, including the interaction between the foreign marriage laws and the state and territory relationship recognition schemes and immigration processes.

1.25 A number of submissions raised concerns about the interaction between some foreign marriage laws and state and territory relationship recognition schemes.

1.26 In their submission the Victorian Gay and Lesbian Rights Lobby states:

The ability for dual citizen couples to attain marriage in another jurisdiction but to not have that marriage recognized in Australia has created an unnecessary and burdensome legal minefield for many Australian based couples. The British Government (and some other jurisdictions) require couples to not be in a marriage or civil partnership (including civil partnership schemes recognized from another jurisdiction) before entering into a marriage under British law. Britain' civil partnership schemes recognises the Australian states and territories civil partnership schemes that operate in NSW, Victoria, Queensland, ACT and Tasmania.¹⁴

1.27 This means that same-sex couples who want to marry under foreign laws, such as those in Britain, but have already had their relationship recognised under one of the state or territories schemes are faced with the need to dissolve their partnership.

1.28 As the Victorian Gay and Lesbian Rights Lobby describe it:

In effect Australian same-sex couples are being forced to choose between the practical protections afforded to the recognition of their relationship under an Australian scheme (next of kin, immigration, legal recognition when not living under one-roof etc); or to have their relationship appropriately recognised as they see it by being legally married under the British scheme.¹⁵

1.29 This was echoed by the evidence of Australian Marriage Equality who argued:

No-one should have to face the choice of having substantive rights through having an Australian certificate or having the dignity and respect of a marriage but none of the rights. Those couples are being forced to make

14 Victorian Gay and Lesbian Rights Lobby, *Submission 22*, p. 3.

15 Victorian Gay and Lesbian Rights Lobby, *Submission 22*, p. 3.

that choice right now. An easy solution to that would be to recognise overseas same-sex marriages.¹⁶

1.30 A number of submissions cite immigration as an area where there would be practical benefits for couples if foreign same-sex marriages were recognised under Australian law.¹⁷

1.31 Specific concerns were raised about the current arrangements for partner visas and the different evidentiary burden placed on a de facto partner (which a member of same-sex couple marriage under foreign law would currently be considered) as opposed to a spouse. The New South Wales Gay and Lesbian Rights Lobby gave the specific example of de facto couples having to prove that they have been in a relationship for a specific length of time.¹⁸

1.32 In response to questions on notice from the Committee the Department of Immigration and Border Protection submitted that:

Same-sex couples who have been legally married overseas may still apply for a Partner visa, the only difference being that the applicant will be assessed as a 'de facto partner', rather than a 'spouse'. This has no impact on the assessment or the outcome of the Partner visa application, which depends on whether an applicant meets all of the relevant criteria.¹⁹

1.33 Further to this the Department's response stated that:

When assessing a spouse or de facto partner relationship for the purpose of a Partner visa, officers must, by law, consider all the circumstances of the relationship, including the:

- a) financial aspects of the relationship;
- b) nature of the household;
- c) social aspects of the relationship; and
- d) nature of the couple's commitment to each other.²⁰

16 Mr Rodney Croome, National Director, Australian Marriage Equality, *Committee Hansard*, 21 August 2014, p. 6.

17 Human Rights Law Centre, *Submission 20*, pp 2-3; Civil Liberties Australia Inc., *Submission 11*, p. 2; National LGBTI Health Alliance, *Submission 33*, pp 2-3; Victorian Gay and Lesbian Rights Lobby, *Submission 22*, p. 3 and Australian Marriage Equality, *Submission 19*, pp 4-5.

18 Mr Corey Irlam, Co-convenor, Victorian Gay and Lesbian Lobby, *Committee Hansard*, 21 August 2014, p. 4.

19 Department of Immigration and Border Protection, *Response to Written Questions on Notice*, 15 September 2014, p. 1.

20 Department of Immigration and Border Protection, *Response to Written Questions on Notice*, 15 September 2014, p. 2.

1.34 However as a number of submissions noted de facto couples face the additional requirement of proving that they have been in a de facto relationship for at least 12 months before the date of application. A requirement which is not applicable to 'spouses'.

1.35 Subregulation 2.03A(3) of the *Migration Regulations 1994* which sets out the criteria applicable to de facto partners states that 12 month criterion must be met by applicants for the following visas:

- a permanent visa
- a business skills (Provisional) (Class UR) visa
- a business skills (Provisional) (Class EB) visa
- a student (Temporary) (Class TU) visa
- a partner (Provisional) (Class UF) visa
- a partner (Temporary) (Class UK) visa
- a general skilled migration visa.

1.36 Another practical issue raised by submitters was the legal ambiguity in relation to divorce and separation where the members of a couple were married under foreign law but are Australian residents or have become Australian citizens.

1.37 In their submission Australian Marriage Equality explained the problem with the current legal situation:

For same-sex partners married overseas this can present a serious problem. They are unable to divorce under the laws of the jurisdiction that married them but are also unable to divorce in Australia because their marriage is not recognised here. The problem would be solved by recognising foreign same sex marriages as marriages for the purpose of Australian Law.²¹

1.38 The Human Rights Law Centre raised the same issue, stating that:

In certain circumstances, the lack of recognition of foreign marriages in Australia can have the cruel effect of denying people access to divorce and separation if they are, or have become, Australian citizens. Clients of community legal centres have found themselves in what is, effectively, a legal void. This can have a profound impact on individuals. The result for some has been that they continue to have legal obligations to a former spouse who continues to reside in their former country. This included continuity of claims to the (now Australian) spouse's estate in that former country.²²

21 Australian Marriage Equality, *Submission 19 – Second Supplementary Submission*, p. 4.

22 Human Rights Law Centre, *Submission 20*, pp 2-3.

1.39 These real life issues raised show that there are practical benefits to recognising same-sex foreign marriage under Australian Law. This Bill would address the legal ambiguities and complexities which have been outlined in evidence to the Committee.

Response to opposition to the Bill

1.40 Evidence to the Committee arguing against this Bill largely focused on the broader issue of marriage equality, rather than the specifics of this Bill.

1.41 As stated above these issues were comprehensively reported in the 2012 Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Marriage Equality Amendment Bill 2010.

1.42 In reference to the Bill under consideration by the Committee submitters made specific arguments about differential treatment and rights, including freedom of religion.

1.43 Several submitters raised concerns, including disingenuously by those advocating against marriage equality but also by some supporters of marriage equality, about creating a new form of inequality by restricting same-sex marriage to those with the resources and capacity to travel overseas.

1.44 In their submission Australian Baptist Ministries argue that:

The bill, if it became law, would inevitably lead to the creation of a sub-class of couples who lack the financial resources or nationality to be able to take advantage of marriage equality elsewhere. This should be avoided.²³

1.45 In respect of this argument I concur with the view expressed by the Human Rights Law Centre in their evidence to the Committee. In response to questions on this issue Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, stated:

Obviously discrimination already exists. This Bill remedies some of that discrimination. There is a difference in treatment, but there are differences in treatment at the moment.²⁴

Ms Brown went on:

But it also resolves a whole lot of legal and practical problems for these couples who are already in validly formed overseas same-sex marriages. So we think the benefits of this bill far outweigh arguments put to that effect.²⁵

23 Australian Baptist Ministries, *Submission 8*, p 4.

24 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 14.

25 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 14.

1.46 As set out in the Majority Report, a number of submitters also raised concerns about the impact of the Bill on the religious freedoms of organisations and individuals.²⁶

1.47 To support this argument submitters noted a number of overseas cases of businesses refusing services to same-sex couples being prosecution under anti-discrimination law.²⁷

1.48 This argument should be rejected on two grounds. Firstly, the case law presented did not link to the recognition of same-sex marriage. In fact as noted by Australian Marriage Equality, 4 of the 6 cases cited by the Australian Christian Lobby are from jurisdictions that do not have same-sex marriage. Accordingly it is misleading to assert that these cases have any link to marriage equality laws.

1.49 Secondly and most significantly, the Bill being considered by the Committee in no way changes existing protection of religious freedom under anti-discrimination law or within the Marriage Act. It should be reiterated that this Bill does not seek to amend section 47 of the Marriage Act, which clearly states that Ministers of religion are not obliged to solemnize any marriage. Furthermore the Bill related to marriages solemnize overseas and would therefore not impact on Ministers of religion solemnizing marriages in Australia.

1.50 Additionally, the Bill does not seek to amend existing legislation on discrimination on the grounds of sexuality, transgender identity or intersex status nor does it seek to amend various exemptions for religious institutions that exist under anti-discrimination legislation.

1.51 As canvassed in the Majority Report, submissions in support of and opposition to the Bill both raised the issue of Australia's international human rights obligations.

1.52 Submitters who supported the Bill argued that the current section 88E may contravene Article 9 of the *Hague Convention on the Recognition and Celebration of Marriages* which includes the obligation to recognise marriages lawfully entered into in another country.²⁸

1.53 In their evidence to the committee the Human Rights Law Centre stated:

26 The Australian Family Association, *Submission 2*, pp 5-7; Australian Christian Lobby, *Submission 9*, p. 12 and Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, pp 7-8.

27 Australian Christian Lobby, *Submission 9* and Lawyers for the Preservation of the Definition of Marriage, *Submission 18*.

28 Law Council of Australia, *Submission 4*, p. 2; Australian Lawyers for Human Rights, *Submission 21*, pp 2-4; Law Institute of Victoria, *Submission 39*, p. 1 and Human Rights Law Centre, *Submission 20*, p. 2.

As a matter of international comity, Australia should recognise validly formed marriages from overseas, regardless of the sex or gender of the couple. We are a signatory to the Hague convention on the celebration and recognition of foreign marriages and it is our obligation under that convention to recognise those marriages.²⁹

1.54 These submitters also highlighted Australia's obligations to uphold the fundamental rights of non-discrimination and equality and specific obligations under the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and *Universal Declaration of Human Rights*.³⁰

1.55 Submitters opposed to the Bill argued that restricting marriage to a man and a woman was not discriminatory under human rights law³¹ and that enacting the Bill would breach Australia's obligations under the *Convention on the Rights of the Child*.³²

1.56 Given the number of submissions that raised the rights of the child in relation to the Bill, it is important to clarify that the Bill under consideration does not impact on a couples legal right to foster or adopt children or access Artificial Reproductive Technology (all of which are largely governed by state and territory legislation).

1.57 Furthermore, it should be noted that Australian family law already recognises overseas same-sex marriages for the purposes of property settlement and parenting issues and recognises same-sex couples as parents.³³

Issues for Further Consideration

1.58 Submitters highlighted a number of drafting and substantive issues with the Bill in its current form. Consideration should be given to amending the Bill to ensure that each of these issues are adequately addressed.

1.59 Changes should be made, as necessary, to ensure the amendments would recognise marriages solemnised under foreign law at consulates and high commissions in Australia and marriages solemnised under the laws of sub-national jurisdictions

29 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 11.

30 Human Rights Law Centre, *Submission 20*, p. 2; Law Society of New South Wales, *Submission 17*, pp 1-2; Law Institute of Victoria, *Submission 39*, p. 1; Castan Centre for Human Rights Law, *Submission 29*, pp 2-3 and Australian Lawyers for Human Rights, *Submission 21*, pp 1-2.

31 Lawyers for the Preservation of the Definition of Marriage, *Submission 18*, p. 7; Catholic Archdiocese of Sydney, *Submission 7*, pp 3-4.

32 Reverend Darren Middleton, Convenor of the Church and Nation Committee, Presbyterian Church of Australia, *Committee Hansard*, 21 August 2014, p. 47.

33 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 12.

(where they rather than national laws regulate marriage, for example in the United States of America).

1.60 The Human Rights Law Centre suggest that both the consulate issue and the state based marriage laws in other countries could be addressed by drafting changes such as 'solemnised under foreign law' or 'solemnised outside of Australia'.³⁴

1.61 A number of submissions also highlighted that section 88B(4) of the Marriage Act provides that the meaning of marriage in section 88E is given by section 5(1), which defines a marriage as a union between a man and a woman.³⁵

1.62 The evidence to the Committee suggested that the Bill would fail to achieve its aim unless both sections 88B(4) and 88EA were repealed.³⁶

1.63 A number of submitters highlighted the inadequacy of the Bill in its current form in recognising the foreign marriages of intersex or otherwise gender or sex diverse individuals.³⁷ The Bill should be amended to address this issue.

1.64 As set out at page 17 of the Majority Report, this issue was highlighted to the Committee by the evidence of Tony Briffa, Vice-President of both Organisation Intersex Australia Limited and Androgen Insensitivity Syndrome Support Group Australia Inc.

1.65 I support the comments in the Majority Report at paragraphs 2.66–267:

The committee is concerned by the issues raised in relation to the recognition of marriages for intersex people, as well as their recognition in Australian birth certificates and passports.

Whilst the recognition of intersex people in Australian birth certificates and passports is not germane to the terms of the Bill subject to this inquiry, the committee urges the Commonwealth government to give further consideration to the evidence of Tony Briffa regarding intersex rights and intersex marriage and to how these issues can be addressed.

1.66 Submitters also suggested that consideration could be given to making amendments to avoid any uncertainty about the status of existing same-sex foreign marriages.

34 Mr Corey Irlam, Co-convenor, Victorian Gay and Lesbian Lobby, *Committee Hansard*, 21 August 2014, p. 7.

35 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 13.

36 Ms Anna Brown, Director of Advocacy and Strategic Direction, Human Rights Law Centre, *Committee Hansard*, 21 August 2014, p. 13.

37 Organisation Intersex International Australia Limited, *Submission 26*, p. 1; Law Institute of Victoria, *Submission 39*, p. 2; Law Society of New South Wales, *Submission 17*, p. 2; Human Rights Law Centre, *Submission 20*, p. 3; Australian Marriage Equality, *Submission 19*, p. 6; ACON, *Submission 35*, p. 1 and Australian Sex Party, *Submission 50*, p.1

Concluding Comments

1.67 It has been 10 years since the Marriage Act was amended to define marriage as being between a man and a woman and to establish that foreign marriages between members of the same-sex would not be recognised as marriages for the purposes of Australian law.

1.68 In this time an increasing number of countries have legalised same-sex marriage and more Australians have entered into foreign same-sex marriages.

1.69 This Bill will not only remove the legal impediments that this Committee have heard evidence of but also to provide the respect and dignity of recognition to those couples who have entered into legally valid marriages under foreign laws.

1.70 Full marriage equality is long overdue in Australia and whilst this will not be achieved by this Bill it is a positive step.

1.71 I strongly support the Bill and call on the major political parties to allow a genuine conscience vote on the matter.

Recommendation 1

1.72 That an amended Bill be passed, which based on my conscience I will be supporting.

Recommendation 2

1.73 That all political parties allow their senators and House of Representatives members a conscience vote in relation to marriage equality, including the recognition of foreign same-sex marriages.

**Senator Carol Brown
Senator for Tasmania**

Dissenting Report from the Australian Greens

Foreign Marriages Bill 2014

Introduction

1.1 The inquiry into the *Recognition of Foreign Marriages Bill 2014* generated a large amount of community interest. Evidence provided to the committee made it clear that with an increasing number of same-sex couples in Australia marrying overseas the need for formally recognising their relationship was essential.

1.2 The majority committee report fails to acknowledge the submissions provided by thousands of Australians and the evidence from legal experts who have supported the intention of this Bill.

1.3 Throughout the inquiry the committee heard from a number of witnesses and experts who made suggestions as to how best strengthen the Bill to ensure that equality was afforded to all LGBTI Australians.

1.4 The Australian Greens recommend that the Bill be passed as amended, subject to suggested amendments.

Reasons to support the recognition of foreign marriages

1.5 This Bill enables same-sex couples who choose to marry overseas or in consulates in Australia to be recognised equally before the law. Denying same-sex couples the right to have their marriage recognised violates international and human rights law.¹

1.6 Research provided to the committee revealed that LGBTI people who were in legally recognised relationships reported less internalised homophobia, fewer depressive symptoms, less stress, and greater wellbeing in feeling that their lives had meaning.²

1.7 Similarly, as highlighted by Australian Marriage Equality in their submission, research from the Netherlands and the US shows that a) marriage strengthens same-sex relationships, b) enhances same-sex couples interactions with their families and communities, and c) the children of same-sex couples families gain when their parents can marry.³

1.8 By recognising same-sex marriages entered into overseas, as we do with all other marriages, this Bill will help gay and lesbian Australians who are in loving relationships get the recognition that they deserve and will have a positive impact on Australian society.

1 Human Rights Law Centre and the National Association of Community Legal Centres, *Submission 20*, p 2.

2 National LGBTI Healthy Alliance, *Submission 33*, p 1.

3 Australian Marriage Equality, *Submission 19*, p. 3.

Suggested amendments to the Bill

1.9 A number of submitters were concerned that the Bill in its current form is too narrow and risks excluding transgender, gender diverse or intersex and others who do not identify as purely male or female. The Australian Greens agree and thank those experts in the field for raising this through the inquiry process. In order to address the issue The Australian Greens will be recommending that the Bill be amended so as remove the gender specificity.

1.10 Further to this, the Human Rights Law Centre noted that the Bill retains s 88B(4), which provides that the meaning of marriage in s 88E is given by subsection 5(1), that is, that marriage is between a man and a woman. The Human Rights Law Centre recommended that this provision be repealed so as to address issues of inconsistency and conflict. The Australian Greens acknowledge the evidence provided and will seek to amend the Bill accordingly.

1.11 The Bill currently uses the term “solemnised in a foreign country” and “solemnised in a foreign country under a local law”. Australian Marriage Equality suggested that that the laws in question are national laws and that it should be clear that the Bill deals with these laws. Suggested amendments include “solemnised under foreign laws” and “solemnised outside Australia”. The Australian Greens acknowledge the evidence provided and will seek to amend the Bill accordingly.

Objection to recognition of foreign marriages between same-sex partners

1.12 Evidence provided to the committee by submitters who oppose the recognition of foreign same-sex marriages raised similar arguments to opponents of marriage equality. These included impingement on religious freedoms, that this was a ‘slippery slope’ to the recognition of non-conventional marriages in Australia and concerns about children and preserving the family unit.

1.13 These arguments have been comprehensively dealt with by previous inquiries, in particular the inquiry into the *Marriage Equality Amendment Bill 2010*⁴ which recommended that the Bill be passed into law. The Australian Greens will not revisit these arguments in this report and ask that those interested refer to the final report of the *Marriage Equality Amendment Bill 2010* inquiry.

1.14 Further to this there was concerns that this Bill would create a new form of inequality by restricting marriage to those same-sex partners who have the capacity to travel overseas.

1.15 This argument was challenged by a number of submitters, in particular Australian Marriage Equality, who argued that:

This objection fails to understand the reasons many same-sex couples marry overseas. Some value marriage as an institution very highly. Some have a sense of urgency...In these situations couples are willing to make the sacrifices

4 Please see:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/marriageequality2012/report/index#

necessary to marry overseas. It is a necessity for them, not a luxury. Whether or not a couple marries overseas is their decision, not the decision of those parliamentarians.

1.16 It is evident from the evidence provided to this committee that those who are opposed to this Bill are similarly opposed to marriage equality and affording same-sex couples the right to marry under the law.

Conclusion

1.17 The Australian Greens thank those who submitted to the inquiry and for evidence relating to suggested amendments to strengthen the Bill.

1.18 It is evident that the recognition of foreign marriages is necessary to address fundamental human rights issues which currently exclude LGBTI Australians. This Bill offers a modest and practical step towards marriage equality and is consistent with the foundational Australian ideal of equality before the law.

1.19 The Australian Greens recommend that the Bill be passed as amended, subject to suggested amendments.

Recommendation 1

1.20 The Australian Greens recommend that new section 88EA be amended to replace “a woman and another woman” and “a man and another man” with “two people”.

Recommendation 2

1.21 The Australian Greens recommend that the Bill be amended to repeal subsection 88B (4).

Recommendation 3

1.22 The Australian Greens recommend that the Bill be amended to replace references to “solemnised in a foreign country” and “solemnised in a foreign country under a local law” with “solemnised under foreign laws”.

Recommendation 4

1.23 The Australian Greens strongly support the Foreign Marriages Bill 2014 and recommend that it be debated and passed into law, subject to the amendments set out in recommendations, 1, 2 and 3.

**Senator Sarah Hanson-Young
Senator for South Australia**

Appendix 1

Public submissions

<u>Submission No.</u>	<u>Submitter</u>
1	NSW Gay & Lesbian Rights Lobby (GLRL)
2	Australian Family Association
3	Endeavour Forum Inc.
4	Law Council of Australia
5	Humanist Society of Victoria
6	The Presbyterian Church of Tasmania
7	Catholic Archdiocese of Sydney
8	Australian Baptist Ministries
9	Australian Christian Lobby
10	Catholic Women's League Tasmania Inc
11	Civil Liberties Australia
12	National Marriage Coalition
13	The Ovulation Method Research & Reference Centre of Australia Ltd
14	Leadership Australia
15	YFS Legal
16	Knights of the Southern Cross Victoria
17	The Law Society of New South Wales
18	Lawyers for the Preservation of the Definition of Marriage (LPDM)
19	Australian Marriage Equality
20	Human Rights Law Centre (HRLC) and the National Association of Community Legal Centres
21	Australian Lawyers for Human Rights
22	Victorian Gay & Lesbian Rights Lobby
23	Presbyterian Church of Australia

- 24 Church and Nation Committee of the Presbyterian Church of Victoria
- 25 Family Life International Australia Ltd
- 26 Organisation Intersex International Australia Limited
- 27 Parents & Friends of Lesbians and Gays NSW Inc (PFLAG)
- 28 Catholic Women's League of Australia Inc
- 29 Castan Centre for Human Rights Law
- 30 Australian Psychological Society
- 31 FamilyVoice Australia
- 32 Australian Catholic Bishops Conference
- 33 National LGBTI Health Alliance
- 34 Rainbow Labor South Australia (RLSA)
- 35 ACON
- 36 Freedom to Marry
- 37 Australian Marriage Forum
- 38 Liberty Victoria
- 39 Law Institute of Victoria
- 40 Tony Briffa
- 41 Attorney General's Department
- 42 Human Rights Watch
- 43 Dads4Kids Fatherhood Foundation
- 44 Catholic Women's League of Victoria & Wagga Wagga
- 45 National Alliance of Christian Leaders (NaCl)
- 46 Tasmanian Gay and Lesbian Rights Group
- 47 Catholic Women's League (Cobden Branch)
- 48 Catholic Women's League of Australia – New South Wales Inc.
- 49 Salt Shakers
- 50 Australian Sex Party
- 51 Canberra Declaration
- 52 Reformation Ministries
- 53 National Association of Catholic Families
- 54 Tasmanian Baptist Churches

55	Mr Peter Murray
56	Ms Ruth Hainsworth
57	Rev. Anthony D Trafford
58	Mr & Mrs Ross & Peggy Campbell
59	Mr & Mrs Richard & Beverley Grant
60	Mr Gerard Flood
61	Mr Dennis Cuming
62	Mr David Shearer
63	Mr Peter Seager
64	Mr Edgar Andrew Matthews
65	Ms Anne M Kirkwood
66	Mr Gary Edmonds
67	Rev Walter Abetz (retired)
68	Mrs Shirley Fisher
69	Mr Steven Playford
70	Mrs Debbie Zanetti
71	Mr & Mrs Shane & Carolyn Varcoe
72	Mr Brian Symons
73	Mr Cameron Todd
74	Mr John Spence
75	Mrs Jan Greig
76	Mrs Sandra Freeman
77	Ms Rita Joseph
78	Ms Christine Wood
79	Ms Janet Wallace
80	Dr Frank Gee
81	Mr Spencer Gear MA
82	Mr Patrick Shea
83	Dr Andrew Corbett
84	Rev Phill Graham
85	Mr Alastair Lawrie
86	The Honourable Greg Donnelly MLC

87	Mr & Mrs Mort & Pamela Stamm
88	Mr Christopher Middleton
89	Ms Sandra Kremor
90	Mr Blaise Joseph
91	Mr Peter Abetz MLA
92	Mr John Walker
93	Mr Lindsay Milton
94	Reverend Peter J Waterhouse JP
95	Ms Jennifer Rowntree
96	Dr David Lovett
97	Mr Francis Pulsford
98	Mr Peter J Young
99	Mr Arthur Wauchope
100	Mr Max Mudford
101	Prof Romano C. Pirola OAM & Mrs Mavis C. Pirola OAM
102	Ms Susan Diggles
103	Mr Nigel Campbell
104	Mr Martin Webb
105	Family Council of Australia
106	Professor M. V. Lee Badgett, Center for Public Policy & Administration, University of Massachusetts Amherst
107	Mr Matthew Anderson
108	Mr Luke Beck
109	Mrs Beverly Caddy
110	Mr Gregory Storer
111	Mr Olivier Duvillard
112	Ms Susan Schofield
113	Mr Anthony Francis Ferguson
114	Ms Shirleene Robinson
115	Mr Boaz Kogon
116	Mr Andrew Dockery
117	Mr Benjamin Lintmeijer

118	Ms Christine Sipma
119	Ms Mary Ryan
120	Ms Roisin Aine Nic Dhonnacha-Nagorcka
121	Mr Darren Tector
122	Ms Kathryn Wilson
123	Ms Lindley Louise Earnshaw Walter Smith
124	Mr Christopher Murray
125	Mr Paul Whitford
126	Mr Shawn Willis
127	Mr Francis Leister
128	Mr Dean Stretton
129	Mr Nick Moffatt
130	Ms Lisa Anne Cooley
131	Ms Stanley Schofield
132	Mr Gary J Hull
133	Mr Phil Browne
134	Mr Timothy Clague
135	Mr Peter Stevenson Fraser
136	Dr Alexandra Murray
137	Ms Danielle McLeod-Robertson
138	Ms Stephanie Mcluckie
139	Dr Warren Kealy-Bateman
140	Ms Kristen Inchley
141	Ms Julie Burns
142	Mr Jamie Gardiner
143	Ms Carly Vause
144	Ms Sonja Elliott
145	Mr Paul White
146	Mr Simon Mikulich
147	Mr Phillippe Cahill
148	Ms Caroline Norrington
149	Rev. Janis Rae Huggett

150	Ms Nicole Aebi-Moyo
151	Mr Alex Greenwich MP
152	Mr Larry Galbraith
153	Australian Family Association (WA)
154	Australian Federation for the Family
155	National Civic Council
156	Rev. Neil Ericksson
157	Mr Matthew Burke
158	Rev. Kenneth Devereux

Appendix 2

Public hearings and witnesses

Thursday 21 August 2014—Melbourne

CROOME, Mr Rodney, National Director, Australian Marriage Equality

HORNER, Mr Jed, Policy and Projects Officer, New South Wales Gay and Lesbian Rights Lobby

IRLAM, Mr Corey Brian, Co-convenor, Victorian Gay and Lesbian Rights Lobby

KOONIN, Dr Justin, Co-convenor, New South Wales Gay and Lesbian Rights Lobby

MULCAHY, Mr Sean, Associate Committee Member, Victorian Gay and Lesbian Rights Lobby

BOERS, Mr Paul, Private capacity

BROWN, Ms Anna, Director, Advocacy and Strategic Direction, Human Rights Law Centre

KELLEHER, Mrs Terri, National President, Australian Family Association

MUEHLENBERG, Mr Bill, Spokesman, National Marriage Coalition

STOKES, Mrs Jenny, Representative, National Marriage Coalition

BROHIER, Mr Frederick Christopher, Lawyers for the Preservation of the Definition of Marriage

ROCHOW, Professor Neville Grant SC, Lawyers for the Preservation of the Definition of Marriage

BRIFFA, Mr Tony, Vice President, Organisation Intersex International Australia Limited; Vice President, Androgen Insensitivity Syndrome Support Group Australia Inc.

BRADIN, Ms Clare, Member, Young Lawyers Section, Law Reform Committee, Law Institute of Victoria

GARDINER, Mr Jamie, Member, Human Rights Committee and LIVout Working Group, Law Institute of Victoria

KENNEDY, Mr Nathan, President, Australian Lawyers for Human Rights Inc.

BENSON, Reverend Rod, Public Issues Consultant, Australian Baptist Ministries

COMBRIDGE, Reverend Daniel, Presbyterian Church of Australia

JOBBERNS, Reverend Keith, National Ministries Director, Australian Baptist Ministries

JOSEPH, Miss Mary, Research and Project Officer, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney

MENEY, Mr Christopher, Director, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney

MIDDLETON, Reverend Darren, Convener, Church and Nation Committee,
Presbyterian Church of Australia

SHELTON, Mr Lyle, Managing Director, Australian Christian Lobby

Appendix 3

Tabled documents, answers to questions on notice and additional information

Additional information

- 1 Information provided by National Marriage Coalition - Opening statement (received 21 August 2014)
- 2 Information provided by National Marriage Coalition - Article from The Washington Times, published 21 January 2014(received 21 August 2014)
- 3 Information provided by National Marriage Coalition - Expanding Recognition of Foreign Polygamous Marriages: Policy Implications for Canada(received 21 August 2014)
- 4 Information provided by the Australian Christian Lobby- additional information (received 21 August 2014)
- 5 Information provided by the Australian Christian Lobby - letter from Mr Simon Corbell (received 21 August 2014)
- 6 Information provided by the Australian Christian Lobby - additional information, video evidence (received 21 August 2014)
- 7 Information provided by the Australian Family Association - additional information (received 21 August 2014)
- 8 Information provided by Tony Briffa – marriage certificate (received 21 August 2014)
- 9 Information provided by Lawyers for the preservation of the definition of marriage - The demographics of same sex marriages in Norway and Sweden, Andersson G, Noack T, Seierstad A, Weedon-Fekjaer H (received 21 August 2014)
- 10 Information provided by Lawyers for the preservation of the definition of marriage - Frederick Michael Borman v. Larry Kevin Pyles-Borman, Memorandum Opinion (received 21 August 2014)
- 11 Information provided by Lawyers for the preservation of the definition of marriage - Marriage Act Amendment (Recognition of Foreign Marriages for Same-Sex Couples) Bill 2013, Second reading Speech (received 21 August 2014)
- 12 Information provided by Lawyers for the preservation of the definition of marriage - Equality, Religion, and Nihilism, Mr Steven D. Smith (received 21 August 2014)

- 13 Information provided by Lawyers for the preservation of the definition of marriage - Case of Hamalainen v. Finland, Judgment (received 21 August 2014)
- 14 Information provided by Lawyers for the preservation of the definition of marriage - Is Same-Sex Parenting Better for Kids? The New Australian Study Can't Tell Us, Mark Regnerus (received 21 August 2014)
- 15 Information provided by Lawyers for the preservation of the definition of marriage - What about that Australian study about same-sex parenting?, Janice Shaw Crouse (received 21 August 2014)
- 16 Information provided by Lawyers for the preservation of the definition of marriage - Hansard Transcript from House of Representatives – Social Policy and Legal Affairs Committee - dated Thursday, 12 April 2012 pages 60 to 63 (received 21 August 2014)
- 17 Information provided by Lawyers for the preservation of the definition of marriage - Charlie Craig and David Mullins v. Masterpiece Cakeshop. Inc., and any successor entity, and Jack C. Phillips – Initial Decision, Granting Complainants' Motion for Summary Judgment and Denying Respondents' Motion for Summary Judgment (received 21 August 2014)
- 18 Information provided by Lawyers for the preservation of the definition of marriage - Charlie Craig and David Mullins v. Masterpiece Cakeshop. Inc., and any successor entity, and Jack C. Phillips – Final Agency Order (received 21 August 2014)
- 19 Information provided by Lawyers for the preservation of the definition of marriage - Elane Photography, LLC v. Vanessa Willcock – Original Proceeding on Certiorari (received 21 August 2014)

Answers to Questions on Notice

- 1 Law Institute of Victoria - answer to questions on notice from public hearing 21 August 2014 (received 4 September 2014)
- 2 National Marriage Colalition, Mrs Jenny Stokes - answer to questions on notice from public hearing 21 August 2014 (received 28 August 2014)
- 3 National Marriage Colalition, Mr Bill Muehlenberg - answer to questions on notice from public hearing 21 August 2014 (received 28 August 2014)
- 4 Department of Immigration and Border Protection - answer to questions on notice from public hearing 21 August 2014 (received 15 September 2014)

Correspondence

- 1 Correspondence received from Mr Paul Boers (received 26 August 2014)