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Senate Legal and Constitutional Affairs Committee
Online submission

7 March 2012

Dear Committee,

Re: Inquiry into the Marriage Equality Amendment Bill

Thank you for the opportunity to make a submission to this inquiry. I confine my comments to the single issue whether the denial of same sex marriage is contrary to Australia's international human rights treaty obligations.

The United Nations Human Rights Committee addressed the scope of marriage in an individual communication brought under the First Optional Protocol to the *International Covenant on Civil and Political Rights* (ICCPR). In *Joslin v New Zealand*, UN Human Rights Committee, Communication No 902/1999 (30 July 2002), the Committee interpreted article 23(2) of the ICCPR as defining marriage between men and women:

Given the existence of a specific provision in the Covenant on the right to marriage, any claim that this right has been violated must be considered in the light of this provision. Article 23, paragraph 2, of the Covenant is the only substantive provision in the Covenant which defines a right by using the term 'men and women', rather than 'every human being', 'everyone' and 'all persons'. Use of the term 'men and women', rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other.

There remains debate about the correctness of the Committee's interpretation, but it is the prevailing authoritative view of the Committee for the time being, and arises from the restrictive textual language and drafting intention of article 23.

The ICCPR does not, however, prohibit in any way a more expansive definition of marriage being adopted by domestic legislation; it provides only that marriage between men and women is protected by the ICCPR. My own view is that recognition of same sex marriage would be more consistent with the purpose of a universal human rights regime – that is, the protection of human dignity and equal worth of all persons. That particular provisions of the ICCPR may now be anachronistic over time, with the progressive development of societal attitudes, is unsurprising, if unfortunate.

Yours sincerely
Ben Saul