



2 April 2012

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee,

Inquiry into the Marriage Equality Amendment Bill 2010

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Legal and Constitutional Committee for the opportunity to comment on the Marriage Equality Amendment Bill 2010 which seeks to remove all discriminatory references currently contained in the *Marriage Act 1961* to allow all people, regardless of sex, sexuality and gender identity, the opportunity to marry.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. WLS NSW has read and we endorse the submission to this inquiry by the Hawkesbury Nepean Community Legal Centre.
4. WLS NSW submits equality and non-discrimination are fundamental principles of international law.¹ We further refer to the decision of *Toonen v Australia* in which the Human Rights Committee found the reference to "sex" in Articles 2(1) and 26 of the *International Covenant on Civil and Political Rights (ICCPR)* to include sexual

¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), ratified by Australia 13 August 1980, entered into force for Australia 13 November 1980, Articles 2, 3, 26; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976), ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976, Articles 2, 3, 10.

orientation.² WLS NSW submits that a human rights analysis based on the principle of equality and non-discrimination supports the recognition of same-sex marriage.³

5. Under the current terms of the *Marriage Act 1961*, Australia is discriminating against same-sex couples on the basis of sexual orientation and gender identity by failing to afford all persons equal protection before the law.⁴
6. Australia is also failing in its obligations to take all legislative and other measures required to ensure that all rights contained [in the abovementioned covenants] are guaranteed.⁵
7. We further refer to Australia's Universal Periodic Review appearance before the United Nations Human Rights Council in January 2011. This is a peer review of each United Nations Member State's human rights records undertaken by United Nations Member States. We note that Colombia, Switzerland and New Zealand recommended Australia prohibit discrimination on the basis of sexual orientation and gender.⁶ The United Kingdom recommended Australia take measures to ensure consistency and equality across individual States in recognising same-sex relationships.⁷ Norway recommended Australia amend the *Marriage Act* to allow same sex partners to marry and recognition of same sex marriages from overseas.⁸
8. WLS NSW urges the Committee to ensure that the discrimination currently enshrined in the *Marriage Act 1961* is removed as a matter of priority so that Australia can take another step forward in ensuring that all citizens are treated equally regardless of their sexual orientation or gender identity.
9. If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Janet Loughman, Principal Solicitor

Yours sincerely,

Liz Snell
Law Reform and Policy Coordinator

² *Toonen v Australia* (488/1992) UN Doc. CCPR/C/50/D/488/92 at paragraph 8.7, accessed on 1 April 2012 at: http://www.unhchr.ch/tbs/doc.nsf/0_d22a00bcd1320c9e80256724005e60d5

³ See also: Australian Human Rights Commission, *Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Marriage Equality Amendment Bill 2009 submission*, 10 September 2009 accessed on 1 April 2012 at: http://www.hreoc.gov.au/legal/submissions/2009/20090910_marriage_equality.html

⁴ This is required by virtue of Article 26 of ICCPR which Australia has ratified.

⁵ ICCPR, Article 2; ICESCR, Article 2.

⁶ UPR Recommendations 86.66-86.68 respectively in *Report of the Working Group on the Universal Periodic Review, Australia*, A/HRC/17/10

24 March 2011 at 5 accessed on 2 April 2012 at:

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AUSession10.aspx>

⁷ UPR Recommendation 86.69

⁸ UPR Recommendation 86.70